



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
DISTRICT PLANNING COMMITTEE (SPECIAL)
23 OCTOBER 2019

Application Number	OUT/MAL/19/00556
Location	Manor Farm, The Avenue, North Fambridge
Proposal	Remove conditions 16 & 29 on approved application OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) and replace with a new condition.
Applicant	BDW Eastern Counties
Agent	N/A
Target Decision Date	8 November 2019 (Under PPA)
Case Officer	Julia Sargeant
Parish	North Fambridge
Reason for Referral to the Committee / Council	Member Call In Under Planning Performance Agreement (PPA)

1. RECOMMENDATION

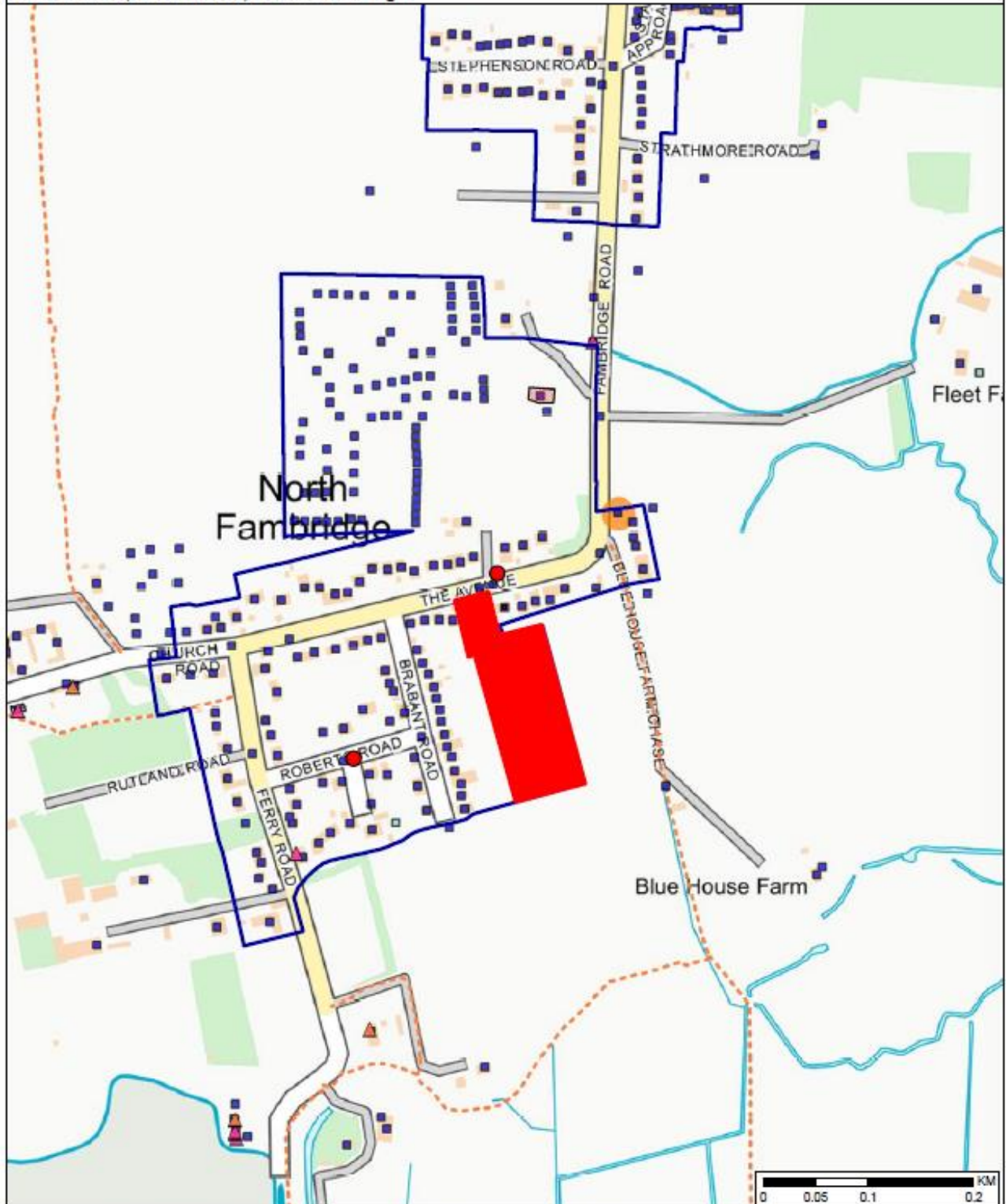
APPROVE subject to the applicant entering into a deed of variation legal agreement to tie the Section 106 legal agreement pursuant to the Town and Country Planning Act 1990 (as amended) attached to OUT/MAL/14/01018 to this permission to secure the planning obligations and subject to conditions as detailed in Section 8.

2. SITE MAP

Please see overleaf.

19/00556/OUT

Manor Farm, The Avenue, North Fambridge



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Maldon District Council 100018588 2014

Scale: 1:5,000

Organisation: Maldon District Council

Department: Department

Comments: NW Area Planning Committee

Date: 02/10/2019

3. SUMMARY

3.1 Proposal

3.1.1 This application seeks the removal of two conditions attached to outline consent OUT/MAL/14/01018 and their replacement with a new condition under Section 73 of the Town and Country Planning Act 1990. Under this section a Local Planning Authority may amend or remove conditions but may not amend any other part of the permission. If approved a section 73 application results in the grant of a new planning permission and therefore the original permission remains intact.

3.1.2 Outline consent OUT/MAL/14/01018 was granted on 11 January 2016 for the following description of development:

“Outline planning application for up to 30 dwellings”

3.1.3 Reserved matters consent has also subsequently been approved under reference RES/MAL/18/00558 on 17 July 2018.

3.1.4 The two conditions that the applicant wishes to have removed from the outline consent are conditions 16 and 29 which read as follows:

“16. No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter.

REASON In order to prevent damage to the environment and harm to the amenity of residential occupiers in the locality arising from flooding, in accordance with policies BE1 and CON5 of the adopted Maldon District Replacement Local Plan, and policies D1 and I1 of the Submission Maldon District Local Development Plan.”

“29. No development shall commence until a detailed wastewater strategy has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details and retained as such thereafter.

REASON In order to prevent damage to the environment and harm to the amenity of residential occupiers in the locality, in accordance with policies BE1 and CON5 of the adopted Maldon District Replacement Local Plan, and policies D1 and I1 of the Submission Maldon District Local Development Plan.”

3.1.5 The applicant is proposing a new condition which would read as follows:

“No occupation of dwellings approved by this permission shall occur until:

- 1) a foul and wastewater scheme has been submitted to and approved in writing by the Local Planning Authority;*
- 2) the foul and wastewater scheme referred to above is implemented, and*
- 3) there is confirmation obtained of available permitted capacity in the network and at the South Woodham Ferrers treatment works.*

The foul and wastewater scheme as agreed and implemented shall be retained as such thereafter.”

3.2 Site Description

- 3.2.1 The application site comprises farm buildings which have been unused for a number of years as part of an agricultural holding as well as an area of grassland. Adjoining the site, but outside of the application area is the Manor Farm farmhouse which is to be retained in residential use. Adjoining the farmhouse also on The Avenue frontage is a brick built former stable block which is currently used for storage ancillary to the dwelling. The remaining buildings lie behind the road frontage and are clustered along the western boundary of the site. These are agricultural style buildings which are used for the storage of a variety of materials and machinery, including hay. There are also areas of concrete hardstanding. The total site area is 1.25 hectares.
- 3.2.2 The site lies to the south of The Avenue which is the main residential street in the southern part of North Fambridge. The Avenue is residential in character with detached dwellings set back from the road on large plots. To the west of the site are properties in Brabant Road which are also detached on large plots. These properties typically have rear gardens in the order of 40 metres and there is mature vegetation along the common boundary with the application site. The eastern boundary of the site comprises a mature hedgerow and the southern boundary is a low broken hedgerow.
- 3.2.3 In the approved Local Development Plan, the application site is within the defined settlement boundary of North Fambridge. To the south is the Crouch and Roach Estuaries Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). Blue House Farm, which is a Local Nature Reserve run by the Essex Wildlife Trust, lies to the east beyond Blue House Farm Chase. The application site lies in Flood Zone 1.

3.3 Relevant Planning History

- 3.3.1 This Section 73 application relates to two outstanding pre-commencement conditions attached to outline consent OUT/MAL/14/01018. The conditions require the submission and agreement of a foul water strategy and a wastewater strategy for the development prior to any work commencing on site.
- 3.3.2 There have been previous submissions to get conditions 16 and 29 formally discharged under references DET/MAL/17/05142 and DET/MAL/18/05092; however both submissions were refused in relation to conditions 16 and 29.
- 3.3.3 DET/MAL/17/05142 was submitted on 19 September 2017 and was formally refused on 15 May 2018. The reason given for refusing to clear the conditions was as follows:

“16 - The North Western Area Planning Committee on 14 May 2018 determined that it has not been demonstrated to the satisfaction of the Local Planning Authority that adequate capacity for the handling and disposal of foul water is available to serve the development and therefore Condition 16 of outline planning application OUT/MAL/14/01018 is not discharged.”

“29 – At the North Western Area Planning Committee on 14 May 2018 it was concluded that it has not been demonstrated to the satisfaction of the Local Planning Authority that adequate capacity for the handling and disposal of wastewater is available to serve the development and therefore Condition 29 of outline planning application OUT/MAL/14/01018 is not discharged.”

- 3.3.4 Following the Council’s refusal to clear conditions 16 and 29 under DET/MAL/17/05142 the applicant lodged an appeal and re-submitted a further discharge of conditions application under reference DET/MAL/18/05092.

- 3.3.5 DET/MAL/18/05092 was determined prior to the appeal decision relating to DET/MAL/17/05142 with the reason given by the Council for refusing to discharge the conditions as follows:

“16 - The North Western Area Planning Committee on 06 August 2018 determined that it has not been demonstrated to the satisfaction of the Local Planning Authority that adequate capacity for the handling and disposal of foul water is available to serve the development and therefore Condition 16 of outline planning application OUT/MAL/14/01018 is not discharged.”

“29 - At the North Western Area Planning Committee on 06 August 2018 it was concluded that it has not been demonstrated to the satisfaction of the Local Planning Authority that adequate capacity for the handling and disposal of wastewater is available to serve the development and therefore Condition 29 of outline planning application OUT/MAL/14/01018 is not discharged.”

- 3.3.6 The appeal decision relating to DET/MAL/17/05142 was issued on 7 March 2019 and dismissed conditions 16 and 29 of the Manor Farm application. The appeal also dealt with conditions attached to a near by development site known as Land West of Fambridge Road, North Fambridge. This site is larger and has outline and reserved matters consent (under references OUT/MAL/14/01016 and RES/MAL/19/00252) for 75 market and affordable dwellings, a village centre of up to 1,000sq m of flexible commercial and community floorspace, a 1.8ha village green and public open space.
- 3.3.7 When outline consent was granted for the larger site at Land West of Fambridge Road it was subject to condition No. 13 which amongst other elements ensures that no dwellings shall be occupied until confirmation is obtained of available permitted capacity in the network and at the treatment works. No such condition restricting occupation until confirmation is obtained of available permitted capacity in the network and at the treatment works was attached to the Manor Farm development site.
- 3.3.8 The Inspector confirmed within his Decision “that whilst it has been demonstrated that surface water from the two sites would be adequately dealt with and that with the works proposed additional flows would not overload the local foul sewer network, problems would remain with capacity at the Water Recycling Centre (WRC)”.
- 3.3.9 The Inspector went on to state that in relation to the larger site Land West of Fambridge Road “the requirement in condition 13 that no occupation of dwellings occurs until, amongst other matters, confirmation of the available permitted capacity at the treatment works offers sufficient control over the timing of improvements to

ensure that any necessary works are implemented before the houses on this site place demands on the WRC”.

3.3.10 When considering the appeal in relation to Manor Farm the Inspector concluded that “no such condition preventing occupation or the commencement of development until available permitted capacity at the WRC was confirmed was attached to the planning permission. Whilst conditions (Nos 17 and 30) attached to this permission prevent occupation of the houses on this site until the foul and wastewater strategies required for this development have been implemented, the submitted strategy does not include addressing capacity issues at the WRC. As a result, the 30 houses on this site could be built and occupied before the WRC has available capacity to deal with the additional flow from these dwellings”.

3.3.11 This current Section 73 application has therefore been submitted to address the Inspector's comments in relation to the recent appeal decision, to align the conditions on the Manor Farm site closely with the larger development site and to ensure that there is control over the capacity at the WRC prior to the occupation of any dwelling.

3.4 Conclusion

3.4.1 It is considered that the removal of conditions 16 and 29 on approved application OUT/MAL/14/01018 and their replacement with a new condition as detailed in section 3.1.4 above would address the concerns raised within the previous Inspector's appeal decision and would meet the six tests as set out in the NPPF at paragraph 55.

3.4.2 The principle of the development has already been agreed through the granting of outline consent OUT/MAL/14/01018 and the subsequent reserved matters consent RES/MAL/18/00558. Subject to appropriate conditions detailed within section 8 and subject to a deed of variation to tie this current Section 73 application to the existing Section 106 (S106) it is considered that the proposal would represent sustainable development and the benefits of the development would outweigh any identified harm.

4. MAIN RELEVANT POLICIES

Members' attention is drawn to the list of background papers attached to the agenda.

4.1 National Planning Policy Framework 2019 including paragraphs:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 59-66 Delivering a sufficient supply of homes
- 91-95 Promoting healthy and safe communities
- 102-111 Promoting sustainable transport
- 117-121 Making effective use of land

- 124-132 Achieving well-designed places
- 148-165 Meeting the challenge of climate change, flooding and coastal change
- 170-183 Conserving and enhancing the natural environment

4.2 Maldon District Local Development Plan 2014 – 2029 approved by the Secretary of State:

- S1 Sustainable Development
- S2 Strategic Growth
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- D5 Flood Risk
- H1 Affordable Housing
- H2 Housing Mix
- H4 Effective Use of Land
- N1 Green Infrastructure Network
- N2 Natural Environment, Geodiversity and Biodiversity
- T1 Sustainable Transport
- T2 Accessibility
- I1 Infrastructure and Services

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Car Parking Standards
- Essex Design Guide
- Maldon District Design Guide

4.4 Necessary Associated Infrastructure Improvements Required and/or Affordable Housing

- 30% Affordable Housing required
- School Transport Contribution

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 The Council is required to determine planning applications in accordance with the Development Plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) and Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990). In terms of the material considerations for Section 73 applications the NPPG states that local planning authorities should, in making their decisions, focus their attention on national and

development plan policies, and other material considerations which may have changed significantly since the original grant of permission. Furthermore paragraph 031 of the NPPG states *“In deciding an application under section 73, the Local Planning Authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A Local Planning Authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question”*.

5.1.2 The Local Development Plan (LDP), as approved, has been produced in light of the NPPF’s emphasis on sustainable development and Policy S1 promotes the principles of sustainable development encompassing the three interdependent objectives (economic, social and environmental) identified in the National Planning Policy Framework.

5.1.3 The principle of the development has already been agreed through the granting of outline consent OUT/MAL/14/01018 and the subsequent reserved matters consent RES/MAL/18/00558.

5.2 Foul and Wastewater

5.2.1 The application relates to the conditions which require foul and wastewater strategies to be submitted to and agreed in writing by the Local Planning Authority prior to any work commencing on site. There are known capacity issues with the Latchingdon WRC which led to the previous attempts to discharge the existing conditions to be refused.

5.2.2 In order to address the existing capacity constraints the proposed new condition would read as follows:

“No occupation of dwellings approved by this permission shall occur until:

- 1) a foul and wastewater scheme has been submitted to and approved in writing by the Local Planning Authority;*
- 2) the foul and wastewater scheme referred to above is implemented, and*
- 3) there is confirmation obtained of available permitted capacity in the network and at the South Woodham Ferrers treatment works.*

The foul and wastewater scheme as agreed and implemented shall be retained as such thereafter.”

5.2.3 The above referenced condition would allow work to start on site but not permit any dwellings to be occupied until the foul and waste water schemes had been submitted, agreed and implemented, and confirmation obtained of available permitted capacity in the network and at the South Woodham Ferrers treatment works. This would ensure that the foul and wastewater from the proposed development would not cause any harm to the water environment downstream.

5.2.4 The NPPG offers guidance in relation to development where there is inadequate wastewater infrastructure and states that: “The timescales for works to be carried out by the sewerage company do not always fit with development needs. In such cases,

local planning authorities will want to consider how new development can be phased, for example so it is not occupied until any necessary improvements to the public sewage system have been carried out”.

- 5.2.5 The proposed condition would accord with the NPPG as it would not permit occupation until the necessary improvements to the public sewage system have been carried out.
- 5.2.6 The original foul and wastewater arrangements proposed for this development (under DET/MAL/17/05142 and DET/MAL/18/05092) sought to connect into the existing local sewage network which drains to the Latchingdon WRC. However the Latchingdon WRC has no capacity to deal with any additional flows and the Environment Agency have advised that Latchingdon WRC has been flow non-compliant with the existing permit conditions for two years.
- 5.2.7 In order to overcome the capacity issues at the Latchingdon WRC the applicant has worked with Anglian Water to find a revised foul and wastewater strategy to serve the development. The revised foul water drainage strategy will direct flows to the sewerage network draining to the South Woodham Ferrers WRC via a new rising main. As no local connections are made the developments will have no impact upon the headroom / capacity issues at Latchingdon WRC.
- 5.2.8 Anglian Water have examined the performance of South Woodham Ferrers WRC against its current flow permit and have reviewed this with reference to all predicted growth in the South Woodham Ferrers WRC catchment. It is confirmed that South Woodham Ferrers WRC has headroom within its current permit to take the flows from both North Fambridge development sites (Manor Farm and Land West of Fambridge Road).
- 5.2.9 Anglian Water has a duty to serve sites with planning permission and installation of the rising main is funded by Anglian Water through the zonal charge levy. The zonal charge forms part of the plot connection charges levied to all plots connected within the Anglian Water region.
- 5.2.10 Anglian Water’s statutory powers allow the rising main to be installed in the public highway subject to the requisite highway opening notices. Where the rising main is to cross third party land the statutory powers extend to allow land entry subject to the necessary notices (S159 of the Water Industry Act 1991) being served and compensatory payments. This is not a planning consideration and is dealt with under separate legislation.
- 5.2.11 Anglian Water and the Environment Agency have both been consulted on this application. Anglian Water has confirmed that they have no objection to the proposal and that they have been working closely with the applicant to ensure an effective strategy is delivered for the two sites. The Environment Agency have also stated that following formal confirmation from Anglian Water Services that these two development sites will be accepted via connection to a rising main that will take foul flows to South Woodham Ferrers WRC, they are satisfied that the proposed replacement of conditions 16 and 29, attached to outline permission for OUT/MAL/14/01018, and subsequent rewording to form a single condition would be acceptable.

- 5.2.12 The Environmental Health Team has also been consulted on the proposal and have advised that they have no objections to the principal of the proposal. The Environmental Health team have requested reassurance that connections will be in a timely manner so that the properties on the development are not standing empty for any length of time. Anglian Water have advised that they have a duty to serve sites with planning permission and have committed funds to complete this strategy with enabling works having already begun with a projected completion date of October 2020.
- 5.2.13 Overall it is considered that the proposal would address the concerns raised by the inspector within the previous appeal decision, would accord with guidance within the NPPG and meet the six tests for conditions as set out in the NPPF. It would prevent any occupation of the dwellings until the foul and wastewater schemes had been submitted, agreed and implemented, and confirmation obtained of available permitted capacity in the network and at the South Woodham Ferrers treatment works.

5.3 Six Tests as Set Out in NPPF Paragraph 55

- 5.3.1 It is necessary to assess the proposed new condition against the six tests that planning conditions have to meet as set out in NPPF paragraph 55. Paragraph 55 states that planning conditions should be kept to a minimum and only imposed where they are:

- Necessary;
- Relevant to planning, and
- to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects

5.3.2 Necessary

- 5.3.2.1 The condition is necessary to make the development acceptable in planning terms and ensure that the development would not result in any harm to the water environment downstream.

5.3.3 Relevant to Planning

- 5.3.3.1 The condition relates to planning objectives and is within the scope of the permission to which it is attached. It follows NPPG guidance in relation to development where there is inadequate wastewater infrastructure and does not control matters that are subject to specific control elsewhere in planning legislation.

5.3.4 Relevant to the Development

- 5.3.4.1 The condition is relevant to the development and justified in order to ensure appropriate foul and wastewater strategies are in place for the development. The condition does not remedy a pre-existing problem but seeks to ensure appropriate infrastructure is in place for the proposed development.

5.3.5 Enforceable

5.3.5.1 The condition is considered to be enforceable. It would be possible to detect a contravention of the condition and seek a remedy should it be breached. The condition includes wording in a negative form as a Grampian condition – it is designed to prevent occupation until there is confirmation of available permitted capacity in the network and at the treatment works (linked to the provision of supporting infrastructure which is one common use of a Grampian condition).

5.3.6 Precise

5.3.6.1 The condition is considered to be precise and clear.

5.3.7 Reasonable in all other respects

5.3.7.1 The condition is considered to be reasonable in all other respects and it does not place unjustified or disproportionate burdens on the applicant.

5.3.8 Given the above assessment it is considered that the proposed condition meets the six tests as set out in paragraph 55 of the NPPF.

5.4 **Housing Land Supply, Need, Mix and Affordable Housing**

5.4.1 Housing Land Supply

5.4.1.1 On 19 February 2019 the Government published the results of the first Housing Delivery Test (HDT), which stated that the Maldon District had passed the HDT (101%) and as a result does not need either an Action Plan or 20% buffer. Consequently the buffer in the 2017 / 18 Five Year Housing Land Supply Statement (5YHLS) has been amended to 5%. This change results in the Council being able to demonstrate 6.34 years' worth of housing supply against its identified housing target. As there is a sufficient supply of housing land in the District and the Council's housing provision policies are not out-of-date, NPPF paragraph 11d is not engaged in this case.

5.4.1.2 The application site already has extant outline and reserved matters consent and currently forms part of the Council's housing land supply.

5.4.2 Affordable Housing

5.4.2.1 In terms of affordable housing provision outline consent OUT/MAL/14/01018 was granted with 30% affordable housing provision which was secured through a S106 legal agreement.

5.4.2.2 LDP policy H1 would now require 40%, however at the time of the original determination of OUT/MAL/14/01018 30% affordable housing was policy compliant. Section 73(2) of the Town and Country Planning Act states "*On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted*". As both outline consent and reserved matters consent for the development has already been granted, and would remain intact if this consent is granted, this represents the fall-back position in

relation to this site. This Section 73 application has been submitted to address infrastructure capacity constraints and the previous appeal inspector's comments and it would be unreasonable for the Council to now try to seek a higher amount of affordable housing provision as at the time of original determination the application was policy compliant.

- 5.4.2.3 The 30% affordable housing would be secured through a deed of variation which would tie this current Section 73 application to the existing S106.

5.5 Layout, Scale, Design and Impact on the Character of the Area

- 5.5.1 Policy D1 of the approved LDP is applicable to the consideration of design. This policy coupled with the NPPF, aims to ensure good design taking into account matters including architectural style, historic environment, natural environment, layout, materials, visual impact and height, scale and bulk. The NPPF is clear that good design is indivisible from good planning and development of a poor design should be refused. The Maldon District Design Guide SPD (MDDG SPD) supplements Policy D1 Design and Built Environment and was adopted December 2017.
- 5.5.2 In addition, policy H4 requires all development to be design-led and to seek to optimise the use of land having regard, among others, to the location and the setting of the site, and the existing character and density of the surrounding area.
- 5.5.3 This current application relates to an outline consent and the removal of conditions 16 and 29 and the imposition of a new condition in relation to foul and wastewater would not impact upon the layout, scale, design or impact upon the character and appearance of the area. No material considerations in this regard have altered significantly since the granting of OUT/MAL/14/01018.

5.6 Nature Conservation and Biodiversity

- 5.6.1 Paragraph 170 of the NPPF states that '*Planning policies and decisions should contribute to and enhance the natural and local environment by; (amongst other things) minimising impacts on and providing net gains for biodiversity*'.
- 5.6.2 Strategic LDP policy S1 includes a requirement to conserve and enhance the natural environment, by providing protection and increasing local biodiversity and geodiversity, and effective management of the District's green infrastructure network.
- 5.6.3 The application site lies close to the Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI). This SSSI is part of the Crouch and Roach Estuaries Special Protected Area (SPA) and Ramsar site. The site is also close to the Essex Estuaries Special Area of Conservation (SAC) and the Blue House Farm nature reserve.
- 5.6.4 Since the granting of outline consent OUT/MAL/14/01018 Natural England and a number of Essex Local Planning Authorities have begun preparing a Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for the Essex Coast. This development falls within the 'Zone of Influence' (ZoI) for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). It is anticipated that,

without mitigation, new residential development in this area and of this scale is likely to have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure when considered ‘in combination’ with other plans and projects. The Essex Coast RAMS is a large-scale strategic project which involves a number of Essex authorities, including Maldon District Council, working together to mitigate the effects arising from new residential development. Once adopted, the RAMS will comprise a package of strategic measures to address such effects, which will be costed and funded through developer contributions.

- 5.6.5 However only new residential developments where there is a net increase in dwelling numbers are included in the RAMS. In this instance outline and reserved matters consent has already been granted for the development and the principle of developing the site has been accepted. The granting of this Section 73 application would not result in any net increase in dwelling numbers from those already granted under the outline and reserved matter consent and it would therefore be unreasonable for the Council to seek a RAMS contribution.

5.7 Impact on Residential Amenity

- 5.7.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the Maldon District Design Guide (2017).
- 5.7.2 Full consideration of the impact of the proposed development upon residential amenity was undertaken in reference to outline consent OUT/MAL/14/01018 and no material considerations have altered in relation to this.

5.8 Access, Parking and Highway Safety

- 5.8.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to include sufficient parking facilities having regard to the Council’s adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council’s adopted parking standards and to maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.
- 5.8.2 The Council’s adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as minimum standards.
- 5.8.3 This Section 73 application relates to an outline planning consent and full details of access and parking were considered under the associated reserved matters consent (RES/MAL/18/00558). The removal of conditions 16 and 29 and the imposition of a new condition in relation to foul and wastewater would not impact upon any highway considerations for the development.

5.9 Private Amenity Space and Landscaping

- 5.9.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted Maldon Design Guide SPD advises a suitable garden size for each type of dwellinghouse, namely 100m² of private amenity space for dwellings with three or more bedrooms, 50m² for smaller dwellings and 25m² for flats.
- 5.9.2 This Section 73 application relates to an outline planning consent and full details of private amenity space and landscaping were considered under the associated reserved matters consent (RES/MAL/18/00558). The removal of conditions 16 and 29 and the imposition of a new condition in relation to foul and wastewater would not impact upon any private amenity space and landscaping considerations for the development.

5.10 Flood Risk

- 5.10.1 Policy D5 of the approved LDP provides local flood risk considerations and seeks to direct development to the lower risk zones, which this site falls within.
- 5.10.2 The site falls within the lowest flood risk area, Flood Zone (FZ) 1. Based on the NPPG flood risk vulnerability and flood zone compatibility table the development is considered 'appropriate' in this low risk flood zone. The development satisfies the Sequential Test based on the site falling within Flood Zone 1. The status of the site in relation to flood risk has not altered since the granting of the extant outline and reserved matters consents.

5.11 Education

- 5.11.1 Outline consent OUT/MAL/14/01018 was granted with a school transport contribution as requested by Essex County Council (ECC) Education which was secured through a S106 legal agreement. The school transport contribution would be secured through a deed of variation which would tie this current Section 73 application to the existing S106.

5.12 Conditions

- 5.12.1 In determining section 73 applications the NPPG advises that "To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the Local Planning Authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission".
- 5.12.2 This Section 73 application relates to an outline consent that already has its reserved matters approved and a number of the conditions discharged. The conditions will therefore need to be updated to reflect the reserved matters consent granted as well as the discharged conditions. Furthermore pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to

refuse the whole permission. Any outstanding pre-commencement conditions will therefore be updated accordingly.

6. ANY RELEVANT SITE HISTORY

- **OUT/MAL/13/00473** - Outline planning application for up to 30 dwellings – Refused- 11.02.2014.
- **OUT/MAL/14/01018** - Outline planning application for up to 30 dwellings – Approved subject to S106 - 11.01.2016.
- **RES/MAL/17/00766** - Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) – Refused - 04.04.2018.
- **DET/MAL/17/05142** - Compliance with conditions notification OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) Condition 4 - Samples of external surfaces. Condition 5 - Archaeological assessment. Condition 8 - Finished ground and finished floor levels. Condition 12 - On-site construction management plan. Condition 15 - Responsibility of maintenance of surface water drainage system. Condition 16 - Foul water strategy. Condition 18 - Investigation and risk assessment. Condition 25 - Removal of trees & hedgerows. Condition 26 - Siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers. Condition 27 - Ecological mitigation measures. Condition 29 - Wastewater strategy. – Conditions Part Cleared Part Refused - 04.05.2018 – Appeal Part Allowed Part Dismissed – 07.03.2019.
- **RES/MAL/18/00558** - Reserved matters application for the approval of access, appearance, landscaping, layout and scale on approved planning application OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) – Approved - 17.07.2018.
- **DET/MAL/18/05080** - Compliance with conditions notification OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) Condition 18. Investigation and risk assessment – Approved - 07.08.2018.
- **DET/MAL/18/05092** - Compliance with conditions notification OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) Condition 12. On-site construction management plan Condition 15. Responsibility of maintenance of surface water drainage system. Condition 16. Foul water strategy. Condition 29. Wastewater strategy – Conditions Part Cleared Part Refused - 07.08.2018.
- **DET/MAL/18/05122** - Compliance of conditions notification of approved application OUT/MAL/14/01018 Outline planning application for up to 30 dwellings. Condition 6. Site clearance or groundworks. Condition 7. Level 3 of the code for sustainable homes. Condition 19. Remediation scheme – Conditions Part Cleared Part Refused - 03.12.2018.
- **DET/MAL/19/05117** - Compliance with conditions notification OUT/MAL/14/01018 (Outline planning application for up to 30 dwellings) Condition 16 - Foul water strategy. Condition 29 - Detailed wastewater – Pending Consideration.

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 **Representations received from Parish / Town Councils**

Name of Parish / Town Council	Comment	Officer Response
North Farnbridge Parish Council	<p>Recommend refusal for the following reason:</p> <p>Consider it would be unwise to accept the proposed new sewer as a plan/strategy at this early stage and that it would be prudent to obtain Ofwat's assurance that the proposed funding plan would be allowed. In addition a legal and enforceable undertaking should be obtained from Anglian Water regarding the provision of the new sewer. The Inspector's decision remains until such a sewer has been laid and tested and just the promise of a sewer is insufficient.</p>	<p>Please see section 5.2 of the report.</p> <p>Anglian Water have a duty to serve sites with planning permission and installation of the rising main is funded by Anglian Water through the zonal charge levy.</p> <p>The proposed new condition would prohibit occupation until the foul and wastewater strategies have been submitted, agreed, implemented and capacity in the network confirmed.</p>

7.2 **Statutory Consultees and Other Organisations (*summarised*)**

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Anglian Water Services	<p>No objection to the proposal.</p> <p>Anglian Water advise they have been working closely with the applicant to ensure an effective strategy is delivered for the two sites.</p> <p>It can be seen from the submitted documents that Anglian Water are now in delivery of a new strategy which overcomes all the Inspectors concerns.</p> <p>Advise that their engagement with the applicant will continue throughout delivery of the strategy.</p>	<p>Noted and referred to in section 5.2 of the report.</p>

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Essex County Council Sustainable Drainage Systems (SuDS)	<p>Advise that this does not relate to surface water drainage and therefore have no further comments accordingly in relation to this application.</p> <p>Advises of conditions to consider if relevant to the application.</p>	Noted. The conditions referred to are not relevant to the application as this is a Section 73 application and nothing in relation to the surface water drainage scheme already approved is altering.
Environment Agency (EA)	<p>Following the formal confirmation from Anglian Water Services that these two development sites will be accepted via connection to a rising main that will take foul flows to South Woodham Ferrers WRC, the EA are satisfied that the proposed replacement of conditions 16 and 29, attached to outline permission for OUT/MAL/14/01018, and subsequent rewording to form a single condition would be acceptable.</p> <p>The EA are satisfied with the evidence presented in the Pre-Development Report, referenced 'N Fambridge FW Drainage Strategy – Version 2' and dated 22/07/2019, confirming the revised plans to send foul water flows to South Woodham Ferrers Water Recycling Centre (WRC). It is reassuring to see that the strategy has considered the implications of the two development sites on the current permit at South Woodham Ferrers in combination with the wider growth within the catchment. The strategy confirms that there is adequate capacity within the existing permit at South Woodham Ferrers to accommodate the additional foul flows from these developments as well as from other sites that are expected as part of the Growth Agenda.</p> <p>The EA recommends an informative be attached to any consent granted to</p>	Noted and referred to in section 5.2 of the report.

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
	detail the level of information that will be required to discharge the proposed condition.	

7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Environmental Health	Advises that whilst in principle the proposal would appear acceptable Environment Services would like some reassurances that firstly the strategy will be implemented as proposed and secondly that connections will be in a timely manner so that the properties on the development are not standing empty for any length of time.	<p>If this Section 73 consent is granted it would be subject to appropriate conditions – including the one recommended- which would then require full details of the foul and wastewater schemes to be submitted for approval. The condition would then require the schemes to be implemented as approved.</p> <p>In terms of timing Anglian water have a duty to serve sites with planning permission. It is not possible to tie the consent into a timeframe but this is true of most developments.</p>

7.4 Representations received from Interested Parties (*summarised*)

- 7.4.1 A number of letters were received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
Removal of these conditions would allow builder to complete and sell the properties and then who could stop the purchaser from moving into their new house.	Prior to occupation conditions are standard and would bring the Manor farm site in line with the larger Land West of Farnbridge Road site.
Should the properties be left empty there is a great risk of squatters.	Prior to occupation conditions are standard use.
The current water systems are only just suitable now and I am sure that the extra houses already approved and built put an	The supporting information demonstrates that the dwellings would not connect into the local network and therefore will not

Objection Comment	Officer Response
extra load on an already struggling system.	impact on the existing system.
No new dwellings can be built until a new sewage system is built to run alongside the old one.	Prior to occupation conditions are standard and would bring the Manor farm site in line with the larger Land West of Fambridge Road site.
Any new sewage system must be built to handle the surface water issues that exist.	Surface water drainage issues from the site are dealt with under separate conditions and through the reserved matters approval.
On occasion of heavy rainfall existing homes are already subject to flooding by raw sewage due to overloading of the existing system.	Noted. The proposed new condition would ensue the development would not connect into the existing system.
South Woodham Ferrers WRC has minimal capacity.	Anglian water and the EA have confirmed capacity for the development.
The cost of the new sewage system would make it an impossible undertaking.	Anglian Water have a duty to serve developments with planning permission and have advised funding is in place.
Concerns over who will pay for the new sewage system as Anglian water is a private company.	Anglian water has confirmed they will fund the new rising main.
New condition omits the requirement for the development to be in accordance with the submitted proposals.	Proposed new condition was revised and subject to further consultation including requirement for scheme to be in accordance with submitted proposals.
Manor Farm is the first phase of the development and would unlock the whole of the build stage on both developments.	Manor Farm and larger site at land West of Fambridge Road are separate consents and can be implemented separately.
If confirmation of system capacity is not available, then the Council would come under considerable pressure to allow alternative means of removing sewage so that the houses could be occupied.	The Council has a duty to consider applications submitted.
The foul and wastewater strategies are different issues and should be dealt with by different conditions.	It is standard for conditions to address more than one element at a time.
The site is partly below the 5metre mark and is in an area identified by the EA as liable to flood risk.	The site is not within the Flood risk zones defined by the EA.
There has been no mention of the ditch which runs along the back of the properties in Brabant Road – this is also part of the water system and needs to be addressed before any building work commences.	Ditches would form part of the surface water details which are dealt with under a different condition and the reserved matters consent already granted.
No legal basis for the proposal to be sanctioned as it will result in harm to the villagers of North Fambridge and result in health and safety risks.	This application has been submitted under S73 of the Town and Country Planning Act. The Council as the Local Planning Authority (LPA) has a duty to

Objection Comment	Officer Response
	determine this application and take into account all comments from consultees as well as all material considerations.
The proposed Anglian Water revised foul water drainage strategy is a promise rather than a legally binding contract.	Anglian Water have a duty to serve developments with planning permission and have advised funding is in place.
Any new condition must be worded to insist the development be in accordance with the submitted proposals with no occupation before the new Anglian Water off-site rising main is completed and tested.	Details of the proposed new condition can be found in section 3.1.1 of this report.
4" main seems very narrow and likely to be blocked even if the waste is pumped.	Anglian Water have confirmed that the 4" (or 100mm) nominal bore rising main is a suitable standard for this purpose and is in fact the same as the current rising main from Franklin Road PS, which serves the whole of North Fambridge.
The proposed siting for the pumping station is not acceptable and likely to lead to noise and odour nuisance.	This application is not to consider the position of the pumping station – this has already been agreed.
Only one road in and out of the village which crosses the railway bridge – MDC need to ensure the bridge is sufficiently strong to cope with the heavy construction traffic.	This application is not to consider access arrangements or construction management – these matters have already been agreed.

8. **PROPOSED CONDITIONS, INCLUDING HEADS OF TERMS OF SECTION 106 AGREEMENT**

HEADS OF TERMS OF DEED OF VARIATION / SECTION 106 AGREEMENT:

- 30% Affordable Housing required
- School Transport Contribution

CONDITIONS:

- 1 The development shall be carried out in accordance with plans and particulars relating to the layout, scale, appearance, the means of access to the site and the landscaping of the site (hereinafter called "the reserved matters"), for which approval was granted under reference RES/MAL/18/00558 on 7 July 2018. The development shall be carried out fully in accordance with the details as approved.

REASON To comply with the requirements of Section 92 of the Town & Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be begun by 17 July 2020. The development shall be carried out as approved.

REASON To comply with the requirements of Section 92 of the Town & Country Planning Act 1990 (as amended).

- 3 The development hereby approved shall be constructed in accordance with the finished ground and finished floor levels agreed under DET/MAL/17/05142 and detailed on the submitted Site Levels Layout plan (Drawing No: Site B 132915-301-5 Revision P4 dated 21.02.2018 prepared by RSK) unless further details showing the finished ground and finished floor levels of the development in relation to the levels of the surrounding area are submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the scheme as approved.

REASON In order to protect the visual amenity of the area and to safeguard the residential amenity of adjacent occupiers in accordance with policy D1 of the Approved Maldon District Local Development Plan, and the NPPF and Planning Policy Guidance (PPG).

- 4 The hard landscape works approved under RES/MAL/18/00558 (as specified on External Works Plan Drawing No: 746.231.07 dated 05.06.2018) shall be carried out as approved prior to the beneficial occupation of the development hereby approved and retained as such thereafter.

REASON To ensure that the hard landscaping is carried out in a timely manner and that the external materials used for the construction of the development is appropriate to its site and surroundings in accordance with Policy D1 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.

- 5 The tree protection and soft landscape works approved under RES/MAL/18/00558 as per the following details and Drawing No:-

- JBA 17/004-SK01 Revision F - Landscape Proposal for PLOTS and POS dated 23.05.2018
- JBA 17/004-SK02 Revision F - Landscape Proposal for PLOTS and POS dated 23.05.2018
- Measured Works Schedule Revision B dated 15.05.2018 prepared by James Blake Associates Ltd
- Landscape Management and Maintenance Plan (JBA 17/004 Rev B dated 15.05.2018) prepared by James Blake Associates Ltd
- Arboricultural Method Statement (JBA 17/004 AR02 Rev D dated 4 May 2018) prepared by James Blake Associates Ltd
- Landscape Programming (JBA 17/004-01 Revision G dated 27.04.2018) prepared by James Blake Associates Ltd
- Landscape Programming (JBA 17/004-02 Revision G dated 27.04.2018) prepared by James Blake Associates Ltd
- Tree Protection Plan (JBA 17/004-02 TP01 Revision C dated 26.04.2018) prepared by James Blake Associates Ltd

shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development. If within a period of five years from the date of the planting of any tree or plant that tree or plant, or any tree or plant planted in its

replacement, is removed, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the Local Planning Authority gives its written consent to any variation.

REASON To secure appropriate landscaping of the site in the interests of visual amenity and the character of the area in accordance with Policy D1 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.

- 6 Prior to the first occupation of the development hereby approved, a lighting strategy for the development, including the details of any street lights shall be submitted to and approved in writing by the Local Planning Authority. All illumination within the site shall be installed and retained in accordance with the approved details. There shall be no other lighting of the external areas of the site.

REASON In the interests of visual amenity, the neighbouring rural countryside and highway safety in accordance with policy D1 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.

- 7 The construction of the development hereby approved shall be carried out in accordance with the construction management plan approved under DET/MAL/18/05092 and detailed in the following submissions:

- Construction Management Plan – Rev D – dated July 2018
- Crouch Road Access Plan (BDW_2A_SP_004 Revision A)
- Construction Management Layout Plan (BDW_2A_SP_001 Revision D)

The construction management plan shall be implemented prior to any development commencing on site and shall remain in force for the duration of the construction period of the development. All construction infrastructure shall be removed from the site within three months of completion of the development.

REASON In the interests of protecting the amenities of adjacent occupiers during construction, having regard to policy D1 the Approved Maldon District Local Development Plan, the NPPF and PPG.

- 8 Prior to the first occupation of the proposed development, the developer shall be responsible for the provision and implementation of a residential travel information pack for sustainable transport which shall be submitted to and approved in writing by the Local Planning Authority. The travel information pack shall be provided on first occupation of each of the new dwellings.

REASON In the interest of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies D1, T1 and T2 of the Approved Maldon District Submission Local Development Plan the NPPF and PPG.

- 9 The surface water drainage scheme approved as part of RES/MAL/18/00558 (Flood Risk Assessment & Surface Water Drainage Strategy (132915-R7(01)-FRA-Site B dated 10 May 2018) shall be implemented prior to the first occupation of the development.

REASON To prevent flooding by ensuring the satisfactory storage of / disposal of surface water from the site in accordance with policy D5 of the Approved Maldon District Submission Local Development Plan the NPPF and PPG.

- 10 The surface water drainage scheme as referred to in condition 9 shall be managed and maintained in accordance with the details agreed under DET/MAL/17/05142 unless further details of who shall be responsible for the maintenance of the surface water drainage system in perpetuity, have been submitted to and approved in writing by the Local Planning Authority. The management of the surface water drainage system shall accord with the approved details thereafter.

REASON To ensure the surface water drainage scheme is satisfactorily managed and maintained to prevent flood risk in accordance with policy D5 of the Approved Maldon District Local Development Plan and the NPPF and PPG.

- 11 No occupation of dwellings approved by this permission shall occur until:
- 1) a foul and wastewater scheme has been submitted to and approved in writing by the Local Planning Authority;
 - 2) the foul and wastewater scheme referred to above is implemented, and
 - 3) there is confirmation obtained of available permitted capacity in the network and at the South Woodham Ferrers treatment works.

The foul and wastewater scheme as agreed and implemented shall be retained as such thereafter.

REASON To prevent the increased risk of pollution to the water environment and to prevent an increased risk of flooding to existing property in accordance with policy D5 of the Approved Maldon District Submission Local Development Plan and the NPPF and PPG.

- 12 The approved remediation scheme agreed under DET/MAL/18/05122 (WSP Remediation Strategy dated September 2018) must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced. This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

REASON To ensure any contamination found present on the land is remediated in the interests of the occupiers of the dwellings on this development in accordance with policy D2 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.

- 13 Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to the Local Planning Authority for approval in writing. These approved schemes shall be carried out before the development is resumed or continued. Following completion of measures identified in the approved remediation scheme, a verification report demonstrating the effectiveness of the remediation scheme carried out must be submitted to the Local Planning Authority for approval in writing.
REASON To ensure any contamination found present on the land is remediated in the interests of the occupiers of the dwellings on this development in accordance with policy D2 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.
- 14 Prior to the commencement of the development, and in accordance with plan reference b/PvPTheAvenue.1/01, received on 21 October 2014 under OUT/MAL/14/01018, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 90 metres to the east and west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.
REASON To provide adequate inter-visibility between vehicles using the access and those in the existing highway in the interests of highway safety, efficiency and accessibility in accordance with policy T2 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.
- 15 The carriageway(s) of the proposed estate road(s) shall be constructed up to and including at least road base level, prior to the commencement of the erection of any dwelling intended to take access there from. Furthermore, the carriageways and footways shall be constructed up to and including base course surfacing to ensure that each dwelling prior to occupation has a properly consolidated and surfaced carriageway and footway, between the dwelling and the existing highway. Until such time as the final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or bordering the footway. The carriageways, footways and paths commensurate with the frontage of each dwelling shall be fully completed with final surfacing within twelve months from the occupation of such dwelling.
REASON In the interests of highway safety, efficiency and accessibility in accordance with policies T1 and T2 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.
- 16 Prior to the first occupation of the development a scheme works setting out details of the access shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- The construction of the access by way of a bellmouth with minimum radii of 6 metres;

- The provision of two pedestrian dropped kerb crossing points with appropriate tactile paving across the bellmouth;
- The provision of a 1.8 metres wide footway to the east of the access, for approximately 25-30 metres to tie in with the existing footway outside of the property known as Orchard House.

The access shall be implemented as per the approved scheme of works.

REASON In the interests of highway safety and improving accessibility to the site and locality in accordance with policies T1 and T2 of the Approved Maldon District Local Development Plan, and the NPPF and PPG.

- 17 The boundary treatment erected as part of the development hereby permitted shall be as agreed under DET/MAL/17/05142 (as shown on Drawing No: 746.231.05 dated 19.02.2018) unless further details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers are submitted to and approved in writing by the Local Planning Authority. The screening as approved shall be constructed prior to the first use / occupation of the development to which it relates and be retained as such thereafter.

REASON In order to safeguard the amenities of neighbouring residents and in the interests of visual amenity in accordance with policy D1 the Approved Maldon District Local Development Plan, the NPPF and PPG.

- 18 The development hereby permitted shall be carried out in accordance with the Outline Ecological Mitigation Strategy dated July 2017 approved under DET/MAL/17/05142 unless a further scheme detailing ecological mitigation measures are submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and completed in accordance with the approved mitigation scheme.

REASON To ensure appropriate protection for protected species and to mitigate for other impacts on the ecology of the site in accordance with policy N2 of the Approved Maldon District Local Development Plan, the NPPF and PPG.