

**CIRCULATED AT
THE MEETING**



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

**to
CENTRAL AREA PLANNING COMMITTEE
2 DECEMBER 2020**

MEMBERS' UPDATE

AGENDA ITEM NO. 5

Application Number	20/000796/FUL
Location	119 High Street Maldon Essex
Proposal	Change of use of rear service building to C3 residential live/work unit including provision of secure bike storage and bin storage and replacement roof tiles, in association with shop 119 High Street, including minor internal alterations to shop to create separate toilet facility – Resubmission following a recent refusal reference: 20/00198/FUL
Applicant	Mr Jarman
Agent	Sharon Smith
Target Decision Date	20 October 2020
Case Officer	Kathryn Mathews
Parish	Maldon Town Council
Reason for Referral to the Committee / Council	Called in by Cllr Mayes and Policies D1 and H4 were referenced in the Call-In.

5 MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 Since publication of the Officer report, the Council has concluded that it is not currently able to demonstrate a deliverable five-year supply of housing land. The development proposed has been re-assessed in light of this change.
- 5.1.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the NPPF require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the development plan comprises of the approved LDP.
- 5.1.3 As part of the drive to deliver new homes the Government has stated that there is a need for councils to demonstrate that there are sufficient sites available to meet the housing requirements for the next five years; this is known as the Five Year Housing Land Supply (5YHLS).

- 5.1.4 Where a Local Planning Authority is unable to demonstrate that it has a 5YHLS, the presumption in favour of sustainable development will apply; this is known as the ‘Tilted Balance’. This position is set out in paragraph 11d, together with its footnote 7, of the National Planning Policy Framework which states:

“For decision taking this means:

“(d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

“(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

“(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

Footnote 7 - 7 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73).

- 5.1.5 At the heart of the NPPF is a presumption in favour of sustainable development (the ‘presumption’) which is central to the policy approach in the Framework, as it sets out the Government’s policy in respect of housing delivery within the planning system and emphasises the need to plan positively for appropriate new development. The NPPF replaces those Local Plan policies that do not comply with the requirements of the NPPF in terms of housing delivery. In addition, leading case law assists the Local Planning Authority in its application of NPPF policies applicable to conditions where the 5-year housing land supply cannot be demonstrated (*Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC* [2017] UKSC 37).
- 5.1.6 It is necessary to assess whether the proposed development is ‘sustainable development’ as defined in the NPPF. If the site is considered sustainable then the NPPF’s ‘*presumption in favour of sustainable development*’ applies. However, where the development plan is ‘*absent, silent or relevant policies are out of date*’, planning permission should be granted ‘*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or that specific policies in this Framework indicate development should be restricted*’.
- 5.1.7 In judging whether a residential scheme should be granted, it is necessary to consider the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall, against the adverse impacts identified (if any) arising from the proposal in relation to the policies contained within the NPPF and relevant policies in the Local Plan.
- 5.1.8 There are three dimensions to sustainable development as defined in the NPPF. These are the economic, social and environmental roles. The Local Development Plan through Policy S1 re-iterates the requirements of the NPPF but there are no specific

policies on sustainability in the current Local Plan. Policy S1 allows for new development within the defined development boundaries. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. However, because the Council cannot demonstrate an up to date five year supply of deliverable housing, the Local Planning Authority is obliged to exercise its judgement as to whether to grant planning permission having regard to any other relevant planning policies and merits of the scheme.

- 5.1.9 Government advice currently states that all sites should be examined in order to determine their potential for redevelopment for residential purposes. It should also be noted that Government policy seeks to optimise the use of urban land. The proposed development would change the use of part of an existing building within the settlement boundary of Maldon. It is therefore, considered that the principle of residential accommodation on this site could be acceptable subject to compliance with other appropriate policies as set out in the main Officer report.

5.2 Housing Need and Supply

- 5.2.1 Recent case law, as noted above and having regard to S38 (6), restates the primacy of the of the statutory development plan as the starting point in the determination of planning applications. However, in respect of the Council's current land supply position, the NPPF states that Local Authorities should consider applications for new dwellings in the context of the presumption in favour of sustainable development, and the Local Development Plan policies in relation to the supply of housing should not be considered to be up-to-date. As a result, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted.
- 5.2.2 Whilst the LDP carries limited weight at present due to the lack of a 5YHLS and consequent impact on its housing delivery policies in particular (including those policies which define settlement boundaries), the NPPF is clear that housing should be provided to meet an identified need. The application is for a single residential unit and, therefore, would make a negligible contribution to the supply of housing within the District.

5.3 Planning Balance and Sustainability

- 5.3.1 It is important to recognise the balance between the Local Plan policies relevant to the development under consideration and the position of the NPPF in respect of the LDP policies now considered to be out of date due to the lack of a 5YHLS. The tilted balance is engaged in this case and hence the local planning authority must give significant weight to the NPPF and its fundamental position of sustainable development which is the defining purpose of the planning system, as a material consideration.
- 5.3.2 The key priority within the NPPF, stated at paragraph's 7 and 8., is the provision of sustainable development. This requires any development to be considered against the

three dimensions within the definition of ‘sustainable development’ providing for an economic, social and environmental objective as set out in the NPPF.

- 5.3.3 Notwithstanding the considerations as contained in those paragraph’s, it is incumbent on the LPA, where appropriate to consider, as a matter of general planning judgment, the site specific or scheme specific reasons for refusal.
- 5.3.4 In judging whether a residential scheme should be granted, it is necessary to set out the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall (with reasons), against the harm identified (if any) arising from the proposed development.
- 5.3.5 With regard to the 3 tests of sustainability, in economic terms, it is reasonable to assume that there may be some support for local trade from the development, and the additional unit may support local businesses within the settlement such as shops and services. This would however be very limited given the scale of the proposal. Equally, there is no guarantee that the construction would be undertaken by local businesses, with locally sourced materials. Limited details are provided within the application to this effect. Furthermore, the proposal would result in the loss of commercial floorspace and potentially result in the loss of the remaining retail unit due to its limited size as explained in the main Officer report. Therefore, the proposal would result in economic dis-benefits.
- 5.3.6 In social terms the proposal would create an additional residential unit within an accessible location but, as only a single unit is proposed, any social benefits would be extremely limited.
- 5.3.7 In environmental terms, the site is within an accessible location, but no off-street parking would be provided for the occupiers of the residential unit proposed so failing to accommodate the demand for car parking which, in turn, will lead to cars parking off-site in adjoining streets causing conditions of obstruction, congestion and danger to residents and other road users as explained in the main Officer report.
- 5.3.8 Overall, taking this into account, the development is not considered to be sustainable, and subject to other considerations, the principle of development would not therefore be acceptable.