



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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to  
**NORTH WESTERN AREA PLANNING COMMITTEE  
13 JANUARY 2021**

<b>Application Number</b>	<b>20/01013/FUL</b>
<b>Location</b>	Willows, Brick House Road, Tolleshunt Major
<b>Proposal</b>	Proposed alterations to existing kennels and replacement with two log cabins and the erection of replacement kennels
<b>Applicant</b>	Mr And Mrs P O Connor - Benbela Cockapoos
<b>Agent</b>	Mr Mark Jackson - Mark Jackson Planning
<b>Target Decision Date</b>	15.01.2021
<b>Case Officer</b>	Hayleigh Parker-Haines
<b>Parish</b>	<b>TOLLESHUNT MAJOR</b>
<b>Reason for Referral to the Committee / Council</b>	Member call in from Councillor Mrs M E Thompson Reason: D1 1(d), 2 and 4

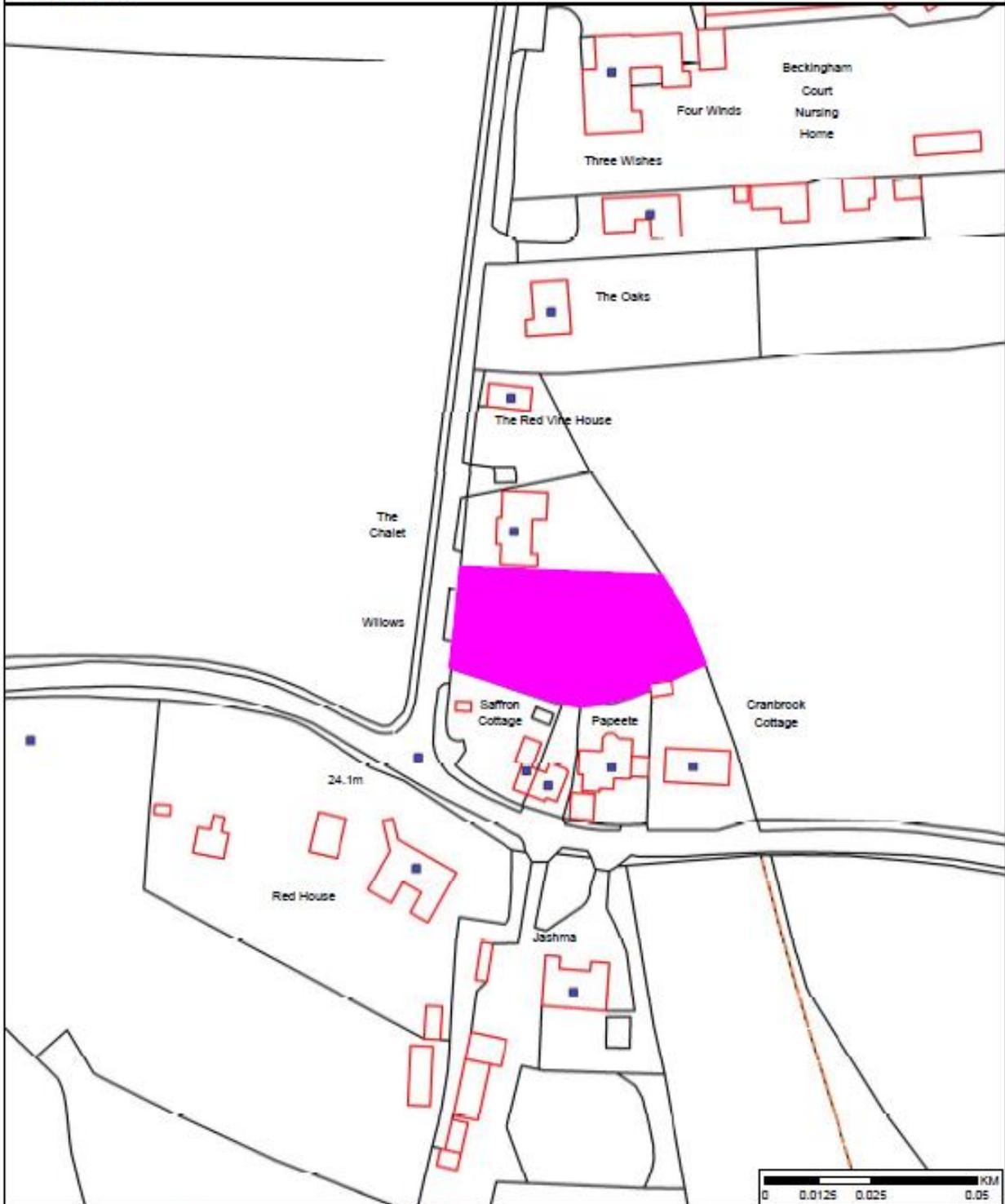
**1. RECOMMENDATION**

**APPROVE** subject to conditions as detailed in Section 8 of this report.

**2. SITE MAP**

Please see overleaf.

**Willows, Brick House Road, Tollesbury**  
20/01013/FUL



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	<b>Organisation:</b> Maldon District Council	<b>Department:</b> Department
<b>Comments:</b> NW Area Planning Committee	<b>Date:</b> 15/12/2020	<b>MSA Number:</b> 100018588
<a href="http://www.maldon.gov.uk">www.maldon.gov.uk</a>		

### **3. SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information**

3.1.1 The application site is located to the eastern side of Brickhouse Road and does not fall within a defined settlement boundary. The application site is occupied by a detached dwellinghouse, with detached outbuildings currently occupied in association with an existing dog breeding use at the application site. The outbuilding to the north eastern boundary is stables, the outbuilding to the south of the dwelling is referred to as kennels on all supporting documents accompanying the application besides the annotation on the proposed block plan whereby it is referred to as a garage, this is considered to be an administrative error and the outbuilding directly east of the dwelling accommodates kennels and a run.

3.1.2 Planning permission is sought to demolish the existing outbuilding directly to the east of the dwelling and the construction of two 'log cabins' to be used as kennels. The existing structure has a maximum height of 2.4 metres and occupies a footprint of 77m<sup>2</sup>. These proposed buildings are denoted on the block plan as Log Cabin A and Log Cabin B. Log Cabin A would have a maximum height of 2.4 metres with an eaves height of 2 metres, a width of 4 metres and a depth of 5 metres. This would accommodate three spaces each to accommodate one dog. Log Cabin B would have a maximum height of 2.4 metres with an eaves height of 2 metres, a width of 7 metres and a depth of 4 metres. This would accommodate an office area and two further spaces for a maximum of three dogs. These would be constructed of timber weatherboarding and would have a felt roof; no windows are proposed to the northern, western or eastern elevations.

3.1.3 Planning permission is also sought for the extension of the outbuilding to the south of the dwelling. This would be a wraparound extension to the northern and western elevations of the building. The proposed extension would have a height of 2.1 metres, a maximum depth of 5.7 metres (increasing the overall depth of the building by 1 metre) and a maximum width of 5.2 metres. This would accommodate kennels. This would include alterations to the existing openings and the removal of the existing pitched roof of the garage being replaced with a flat roof to match the proposed extension.

#### **3.2 Conclusion**

3.2.1 It is considered that the proposed works, by reason of their location and design would not harm the appearance or character of the locality and, due to its relationship with the adjoining properties and appropriately worded conditions, the proposed development is not considered to result in any undue harm by way of overlooking or loss of amenity to neighbouring residents. In addition the proposed development does not demonstrably impact on the provision of amenity space and car parking provision. It is therefore considered that the proposed development is in accordance with policies D1, S1 and H4 of the approved LDP.

### **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
- 54 – 57 Planning conditions and obligations
- 117-123 Making effective use of Land
- 124-132 Achieving well-designed places

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

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- E1 Employment
- E4 Agricultural and Rural Diversification
- H4 Effective Use of Land
- T1 Sustainable Transport
- T2 Accessibility

#### **4.3 Relevant Planning Guidance / Documents:**

- Maldon District Vehicle Parking Standards SPD (VPS)
- Maldon District Design Guide SPD (MDDG)
- Planning Practice Guidance (PPG)

### **5. MAIN CONSIDERATIONS**

#### **5.1 Principle of Development**

5.1.1 The principle of extending/altering a building in association with the functional requirements of the site is considered acceptable in compliance with policies S1, E1 and E4.

5.1.2 It is noted that the site is a sui generis use as it consists of a dwellinghouse, and therefore has a residential use, alongside the commercial use brought about by the use of the site in association with dog breeding and kennels. Having carried out a history search for the site, no planning history can be found in relation to the Sui Generis use having been approved. However, it has been confirmed that the Applicants have held a license for a minimum of 18 Bitches in excess of 10 years and therefore, on the balance of probability, the use of the site is considered to be lawful. Therefore, it is considered that the principle of the proposed development is acceptable. Other material considerations are discussed below.

#### **5.2 Design and Impact on the Character of the Area**

5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised

principles of good design seek to create a high quality built environment for all types of development.

- 5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. The NPPF states that:

*“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.*

*“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents”.*

- 5.2.3 The basis of policy D1 of the approved LDP seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of:-

*‘Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;*

*Height, size, scale, form, massing and proportion;*

*Landscape setting, townscape setting and skylines;*

*Layout, orientation, and density;*

*Historic environment particularly in relation to designated and non-designated*

- 5.2.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG.

- 5.2.5 The proposed removal of the existing kennel and run to the rear of the site and the replacement with two log cabins would not be highly visible within the surrounding area due to the existing dwelling largely blocking any views. The existing structure to the east of the dwelling occupies a footprint of 77m<sup>2</sup>, the proposed log cabins would occupy a combined footprint of 41m<sup>2</sup> which is a decrease in built form at the application site. Furthermore, these are in a similar location and of the same scale and bulk as the existing structure. Whilst it is noted that the proposed log cabins are of limited architectural merit, they are considered to be an improvement on the existing built form on site which appears untidy. Therefore, it is not considered that this aspect of the proposal would have an unacceptable impact on the character and appearance of the site or surrounding area than the existing structure.

- 5.2.6 The proposed extension to the garage to the south of the site would be visible as would be the alterations are to the front. However, due to the minor nature of the works, that they would result in a 12m<sup>2</sup> increase in the footprint to the building and the alterations to the roof would reduce the bulk of built form visible within the streetscene. It is not considered that this aspect of the proposal would have a detrimental impact on the character and appearance of the site or surrounding area.

5.2.7 Therefore, it is considered that the development, by reasons of its position, scale, design and appearance would not result in demonstrable harm to the character and appearance of the existing dwelling and the locality in accordance with policies D1, H4 and H7 of the LDP.

### **5.3 Impact on Residential Amenity**

5.3.1 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 MDDG. Similarly, policy D2 of the approved LDP requires all development to minimize all forms of possible pollution including air, land, water, odour, noise and light. Any detrimental impacts and potential risks to the human and natural environment will need to be adequately addressed by appropriate avoidance, alleviation and mitigation measures.

5.3.2 The application site is bordered by four neighbouring properties. To the north is 'The Chalet'; to the south are 'Saffron Cottage', 'Papeete' and 'Cranbrook Cottage'

5.3.3 The proposed developments would sit a minimum of 26 metres from the shared boundary with Cranbrook Cottage and a minimum of 14 metres from Papeete. Due to this substantial degree of separation and the single storey nature of the developments it is not considered that these would represent an unneighbourly form of development, in respect of overshadowing, domination or overlooking, in relation to these neighbouring properties.

5.3.4 The proposed log cabins would sit 1.1 metres from the shared boundary with The Chalet. The existing kennels and run sit 1.09 metres from this boundary and has the same height as the proposed kennels (2.4 metres). Currently the kennels and run project directly from the rear elevation of the host dwelling and extend 6.7 metres from the rear elevation of this neighbouring property. The proposed kennels would sit 1.7 metres further back from the rear elevation of this neighbouring property which is considered to be an improvement on the current built form. Due to the limited height of the proposed log cabins it is not considered that these would represent an unneighbourly form of development in relation to loss of light or privacy. The proposed extension to the kennels to the south would sit over 20 metres from this neighbouring property and would largely be blocked from view by the host dwelling. Therefore, this aspect of the proposal is not considered to be acceptable in relation to these matters.

5.3.5 The proposed extension to the outbuilding to the south would sit on the shared boundary with Saffron Cottage and around 13 metres from the neighbouring property. This would result in 1 metre increase in the depth of the outbuilding and whilst the development is close to the boundary with the rear amenity space for this neighbouring property, due to the decrease in height of the outbuilding, it is not considered that the proposed extension and alteration to the roof would have a detrimental impact on the neighbouring amenity for this property. The proposed log cabins would sit over 20 metres from the shared boundary with this neighbouring property. Due to the single storey nature of the development and this degree of separation it is not considered that this aspect of the proposal would have a detrimental impact on the neighbouring properties in relation to loss of light,

overlooking, overshadowing etc.

- 5.3.6 It is noted that a number of objections and concerns have been made by neighbouring residents in relation to the increase in the number of dogs kept at the site and the impact this would have on the noise and odour. Such matters are a material consideration in the determination of the application; however, it must be noted that the application solely relates to operational development. As stated in section 5.1 of this report there is no evidence that the site benefits from planning permission for the sui generis use but it would appear to the Local Planning Authority that, on the balance of probability, that the use has occurred for in excess of ten years and is therefore, lawful in planning terms. Furthermore, whilst it can be reasonably assumed that the provision of more modern enclosures would reduce the level of noise this has not been evidenced as part of this application. It is therefore, considered that the inclusion of appropriate conditions to ensure details are provided in relation to noise mitigation is included as part of this permission. This would also be similar for details in relation to odour control.
- 5.3.7 Environmental Health has confirmed that the number of dogs has increased on the license due to legislation changes having come into effect (2018) meaning that Breeders now have to declare any stud dogs as well as the Bitches on site. The site has accommodated 18 bitches since 2008 and the license allows for up to 20 dogs currently and is renewed annually in December. It is considered that an appropriately worded condition will be imposed to ensure that a noise management plan is provided prior to the occupation of the proposed kennels in both locations to ensure that the noise insulation of the buildings and runs are sufficient. It should be noted that Environmental Health has advised this condition is not required, due to the Applicant seeking to increase their star rating under the Animal Welfare (Licensing of Activities involving animals) 2018. However, the intensification of the use of the site in the future, including the increase in the number of stud dogs or bitches, would not be considered development and would not require the need for planning permission. Whilst it is noted that the application has been submitted in response to the aspirations of the Applicant at this time it must be noted that this could be withdrawn in the future or the ownership could change in the future. Therefore, appropriate mitigation for noise would not be secured; with this in mind it is also considered reasonable to impose a condition in relation to limiting the number of dogs to the number that has been homed on site. Therefore, it is considered reasonable to include these conditions.

#### **5.4 Access, Parking and Highway Safety**

- 5.4.1 Policy T1 of the approved LDP seeks to create additional sustainable transport opportunities. Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide 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 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.
- 5.4.2 The proposed development would not alter the current parking provision provided on site, as there are no alterations to the current parking provision and the number of

dogs to be kept on site is not directly a planning consideration and is not considered to directly correlate to the number of visitors to the site. Further information has been provided to advise that in *normal* circumstances each puppy would be visited twice with stays lasting a maximum of 45 minutes. Therefore, there are no concerns in relation to parking or highway safety subject to an appropriately worded condition to ensure that the number of dogs kept at the site does not increase. This has been discussed further both above and in section 5.6 of the report.

## **5.5 Private Amenity Space and Landscaping**

5.5.1 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 MDDG advises a suitable garden size for each type of dwellinghouse, namely 100m<sup>2</sup> of private amenity space for dwellings with three or more bedrooms, 50m<sup>2</sup> for smaller dwellings and 25m<sup>2</sup> for flats.

5.5.2 The proposed development would result in the minor loss of private amenity space as shown on the block plan. However, the site benefits from a spacious garden that would remain in excess of the minimum of 100m<sup>2</sup> as required by the standards, taking into account exercise facilities for the dogs. Therefore, it is considered that subject to an appropriately worded condition securing the maximum number of dogs kept at the site for breeding purposes does not exceed 20, the proposal is in compliance with Policy D1 of the LDP.

## **5.6 Other Matters**

5.6.1 Consideration has been given to the welfare of the dogs and whether the proposed facilities and land area would be compliant with the Department for Environment Food and Rural Affairs (DEFRA) code of practice. The code of practice states that as a general rule, each dog would require a kennel size of 4m<sup>2</sup>, with an additional 1.5m<sup>2</sup> should an additional dog be kept in the same pen. Breeding females with litters are required to have double this space allowance.

5.6.2 Log cabin A would provide three pens each with a floorspace of 4.4m<sup>2</sup> and therefore, would comply with the minimum size for housing a single dog. Log Cabin B would provide two pens with a floor space of 7.2m<sup>2</sup>, which is adequate space as per the above standards for the keeping of three dogs per pen. The kennels to the south would accommodate three pens each with a floor space of 10m<sup>2</sup> and is adequate for a maximum of three dogs. Therefore, there are no concerns in relation to the proposed kennel sizes.

5.6.3 The above-mentioned guidance states that '*opportunities to exercise which benefit the animals' physical and mental health must be provided*'. The guidance that follows is that this should include at least one walk per day or access to a secure open space. Whilst the welfare of the animals would be a planning consideration, whether this is undertaken would be a licensing issue which falls outside of the Development Managements process. As the proposal is within a secured garden, there are no concerns from a planning point of view in relation to this.

5.6.4 It is noted that objections received have also raised concerns in relation to the disposal of waste in association with the use of the site for the kennelling and breeding of

dogs. Further information has been received to advise that there is a contract to start early next year for specialist waste collection, with two lidded bins that will be emptied weekly or fortnightly (to be confirmed depending on how full they are). It is also considered that this issue could be overcome by an appropriately worded condition to ensure appropriate waste disposal for the use of the site.

5.6.5 As discussed throughout the report, it is considered to be necessary to include a condition restricting the number of dogs to be kept at the site for breeding purposes, whilst it is noted that due to the passage of time, it is considered, on the balance of probabilities that the use of the site as sui generis is lawful, and that intensification itself is not a material change of use, it is considered that to ensure the use of the site remains acceptable in planning terms, that this condition is imposed.

## 6. **ANY RELEVANT SITE HISTORY**

6.1 **No relevant site history**

## 7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Great Braxted Parish Council.	No response at the time of writing this report	N/A

### 7.2 **Internal Consultees**

<b>Name of Internal Consultee</b>	<b>Comment</b>	<b>Officer Response</b>
Environmental Health	No objections. Some concerns in relation to the number of dogs to be kept at the premises for breeding purposes	Comments noted

### 7.3 **Representations received from Interested Parties**

#### 7.3.1 **Representations objecting to the application:**

Six letters objecting to the proposal have been received.

<b>Comment</b>	<b>Officer Response</b>
Noise concerns	Comments noted and are discussed in section 5.3.6 of the report
Odour concerns	Comments noted and are discussed in section 5.3.6 of the report
Parking/access concerns	Comments noted and are discussed in section 5.4 of the report

<b>Comment</b>	<b>Officer Response</b>
Building works have commenced prior to planning permission being approved	This is not a material consideration in determining a planning application; legislation allows for retrospective application to be made
The application has been made in the names of Mr and Mrs P O'Connor. Mr O'Connor has not lived at the property for some time	Comments noted – the residence at the property does not stop the named Applicants being the owners of the property and therefore, there are no concerns with the Ownership Certificate that has been provided
There are no details for the existing garage extension – unaware that a change of use to kennels has been granted	Details provided with this application state that the garage is being used as kennels currently. The lawful use of the site is discussed in section 5.1 of this report.
There are no internal details of the garage plans	These are provided on Plan 297-001 REV F
The Kennels would be washed and drained into the pond – This institutes a potential health hazard	This information was not provided as part of the application. Additional information has been provided advise that the run-off from the kennels goes to a water treatment unit that replaced the old cess-pit. Furthermore, environmental health have no concerns in this regard
I have seen a drainage pipe in the garden but this is not shown in the plans	Comments noted
The plans do not show the drainage ditch which the pond can and does overflow into – this will cause pollution. There is no overflow facility for the pond.	Comments noted – the Applicant has advised that the pond has an overflow that goes out to the ditch to the back of the property bordering farmers field. It does not overflow into the ditch between properties as the water in there is static. Furthermore, environmental health have raised no concerns in this regard
No provision for waste removal, currently this is stored in a permanent skip on the driveway.	Comments noted and discussed in section 5.6 of this report
In addition to dogs and horses there are chickens, pigeons and ducks at this property	Comments noted
Adjacent properties have been infested with rats	Comments noted
The site does not appear to be paying business rates so is not a business and it is not a smallholding	This is not a planning consideration
No historical evidence for permission for the stables nor the use of the garage for kennels	Comments noted and discussed throughout the report
Concerns in relation to the welfare of the dogs	Comments noted and discussed in section 5.6 of this report

## **8. PROPOSED CONDITIONS**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
REASON To comply with Section 91(1) The Town & Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 297-001 Rev F

REASON To ensure that the development is carried out in accordance with the details as approved.

- 3 The materials used in the construction of the development hereby approved shall be as set out within the application form/plans hereby approved.

REASON In the interest of the character and appearance of the area in accordance with policy D1 of the approved Local Development Plan and guidance contained within the National Planning Policy Framework.

- 4 Prior to the occupation of the development hereby permitted an Odour Management plan shall be submitted to and approved in writing by the Local Planning Authority. the use of the development hereby approved will be fully in accordance with the details as approved shall be fully implemented and retained as such thereof

REASON To protect the residential amenity of neighbouring occupiers, in accordance with policy D1 of the approved Local Development Plan and guidance contained within the National Planning Policy Framework

- 5 A Noise Management plan shall be submitted to and approved in writing by the Local Planning Authority. The details as approved shall be fully implemented prior to the first use of the development hereby permitted and retained as such thereafter.

REASON To protect the residential amenity of neighbouring occupiers, in accordance with policy D1 of the approved Local Development Plan and guidance contained within the National Planning Policy Framework.

- 6 Details in relation to the storage of refuse and waste shall be provided and approved in writing by the Local Planning Authority. The details as approved shall be fully implemented prior to the first use of the development hereby permitted and retained as such thereafter.

REASON To ensure that adequate refuse facilities are proposed in accordance with policy D1 of the approved Local Development Plan and the guidance contained in the Maldon District Design Guide SPD

- 7 No more than 20 dogs/bitches shall be kept on site, for breeding purposes, at any one time.

REASON To protect the residential amenity of neighbouring occupiers and to ensure that appropriate amenity space and parking provision is provided on site, in accordance with policy D1 of the approved Local Development Plan and guidance contained within the National Planning Policy Framework