



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**CENTRAL AREA PLANNING COMMITTEE
31 MARCH 2021**

Application Number	20/01315/FUL
Location	Land Adjacent Heybridge House Industrial Estate, Bates Road, Maldon, Essex
Proposal	Construction of open sided storage barn (resubmission of 20/00388/FUL)
Applicant	Mr R Smith
Agent	Mr P Calder – Real8
Target Decision Date	06.04.2021
Case Officer	Kathryn Mathews
Parish	MALDON NORTH
Reason for Referral to the Committee / Council	Major application Member call-in – Councillor C Mayes for the following reasons: D1 (3.2; 3.5. 3.7); D2 (3.11; 3.14; 3.15; 3.17) E1 (4.6; 4.13) H4 (5.27) N2 (6.15)

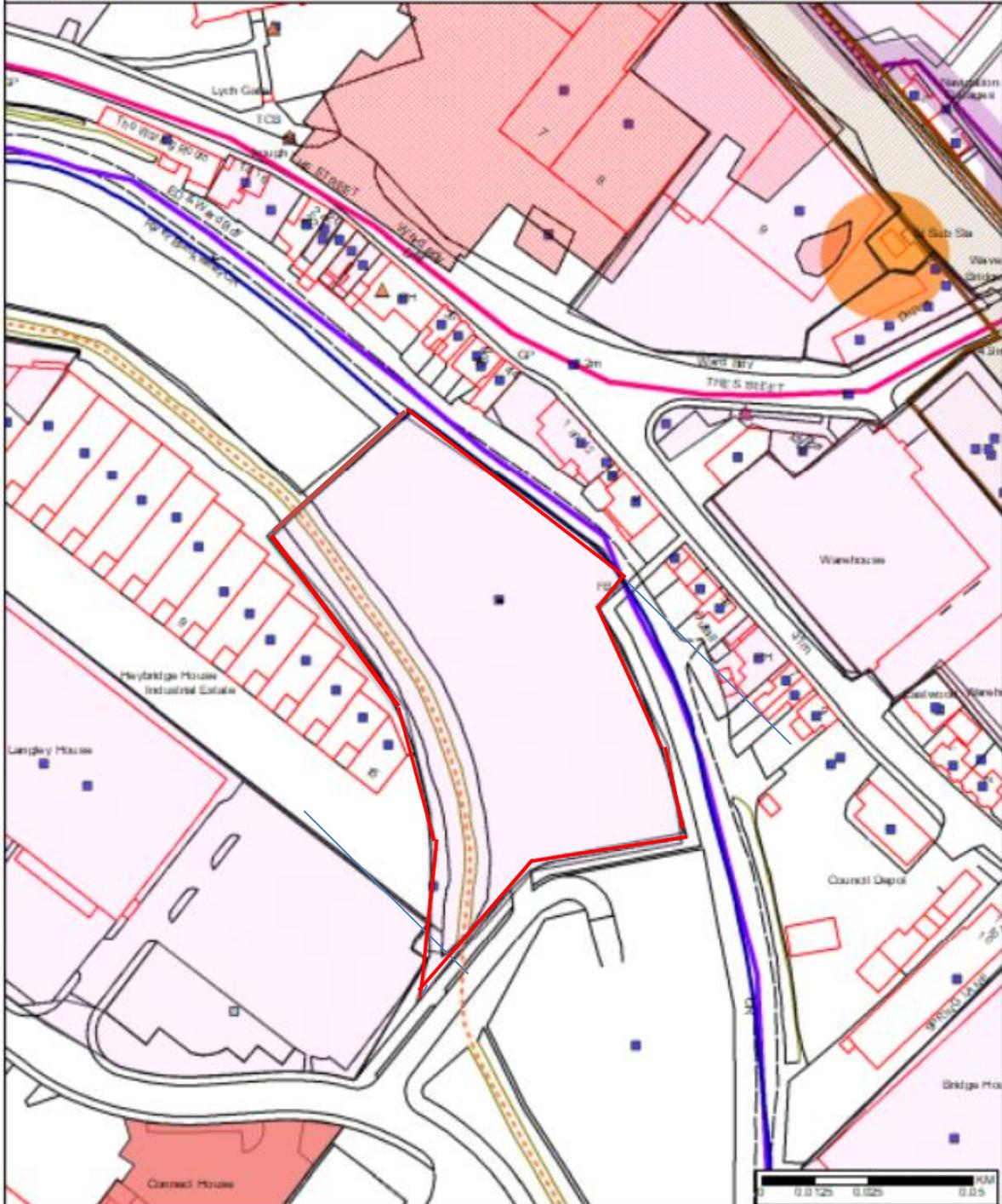
1. RECOMMENDATION

REFUSE for the reasons as detailed in Section 8 of this report.

2. SITE MAP

Please see overleaf.

Land adjacent Heybridge House IE, Bates Road, Maldon
20/01315/FUL



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	Organisation: Maldon District Council	Department: Department
Comments: Central Area Committee	Date: 04/02/2021	MSA Number: 100018588
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3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 This application relates to the parcel of land (around 0.63ha) to the north of Bates Road which is currently vacant. The site is undulating with an existing public footpath located on an embankment which runs along the southern boundary. The site has a further public footpath running along its north-eastern perimeter connecting Bates Road to Hall Road and The Street in Heybridge to the north. The site has been largely cleared of vegetation but there are a few trees within the site. The majority of the site is currently enclosed by a mixture of palisade fencing (south-eastern and part of north-eastern boundaries) and post and wire fencing (south-western and north-western boundaries).
- 3.1.2 The northern boundary of the site is adjacent to part of the River Blackwater. Beyond the north-eastern boundary of the site is a mixture of residential and commercial uses which back onto the site including the Heybridge Inn which is a grade II listed building located around 20m to the north of the site. The nearest residential property is 10m from the site and around 20m from the building proposed. The site adjoins the Quayside Industrial Estate and is adjacent to an existing car park which is unrelated to the site. The Heybridge House Industrial Estate is located immediately to the west.
- 3.1.3 The site is within the development boundary for Maldon/Heybridge but does not form part of any allocation within the approved Maldon District Local Development Plan (MDLDP). However, the adjacent industrial estate is an allocated employment site in the Local Development Plan (LDP). The site forms part of the Causeway Regeneration Area which is within the Maldon and Heybridge Central Area Masterplan. As part of the Masterplan, the application is identified as a site of Local Ecological Importance and the stretch of the River Blackwater forms part of a Green Corridor.
- 3.1.4 The site is located within Flood Zone 3b (the functional flood plain) and the Blackwater Estuary Ramsar site, Special Protection Area (SPA), Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) are located around 400m to the south east of the site.
- 3.1.5 It is proposed to erect 1139.6 square metres of storage and distribution (Class B8) floorspace in the form of a new open sided barn to be positioned at the northern end of the site. As part of the application, reference is made to the new building being used to store, for example, heavy construction and engineering goods but reference is also made to the building being used for the storage of recycling bins.
- 3.1.6 The building would measure 51.8m in length and 22m in width. It would have a shallow pitched roof with a maximum height of 7.3m and an eaves height of 3.3m. The building would be finished in grey cladding.
- 3.1.7 8no. lorry parking spaces (17m x 3.5m), 13no. parking spaces, two disability parking spaces and an area for cycle parking would be provided towards the southern end of the site. Access to the site would be taken from an existing access off Bates Road which also provides access to an existing car park to the south of the site.

- 3.1.8 In terms of employment, it is stated that there would be 7 full time and 5 part time employees (10 full time equivalent).
- 3.1.9 As part of the application, it is explained that Land Drainage Byelaws require buildings to be at least 9m distance from part of the River Blackwater (which is located adjacent to the north east boundary of the site). The applicant states that this distance has been observed through the creation of a 10m wide 'ecological enhancement area'. It is also proposed that a strip of land to the southwest of the site will benefit from 'ecological enhancement'.
- 3.1.10 There are a number of documents submitted with the application including a Planning Statement, a Design and Access Statement, Flood Risk Assessment (FRA) (April 2020), Sequential Test (December 2020), Landscape Summary, Essex Biodiversity Validation Checklist, Preliminary Ecological Appraisal (April 2020), Environmental Noise Assessment (May 2020), Arboricultural Impact Assessment (May 2020), Economic Statement (May 2020), Drainage Strategy Report rev.A, Transport Statement (April 2020) and a Health Impact Assessment (May 2020) which concludes that the screening exercise carried-out shows that the proposal either has a positive or neutral impact upon the determinants of health.
- 3.1.11 The current application has been submitted following the refusal of planning permission for a similar scheme (reference 20/00388/FUL). The reasons for refusal were as follows:
1. The applicant has failed to meet the requirements of the flood risk Sequential Test and, therefore, the proposal is unacceptable on flood risk grounds, contrary to Policies S1 and D5 of the approved Maldon District Local Development Plan and the NPPF.
 2. The proposal would fail to accommodate the demand for car parking, bicycle storage and lorry parking which, in turn, will lead to cars and lorries parking off-site elsewhere within the adjacent industrial estate potentially causing conditions of obstruction, congestion and danger to other road users to the detriment of highway safety and the quality of this allocated employment site, contrary to Policies T2, E1 and D1 of the Maldon District Approved Local Development Plan.
 3. There is a lack of certainty and clarity regarding the means of surface water drainage from the development proposed. Therefore, it has not been demonstrated to the satisfaction of the local planning authority that an adequate means of surface water drainage would be provided and that the development would not result in an increase in flood risk, contrary to Policy D5 of the approved Maldon District Local Development Plan and the NPPF.
 4. The development (which consists of a large, open-sided building to be used for storage and distribution purposes only 10m from the curtilage of a dwellinghouse) has the potential to cause harm to the occupiers of existing, residential properties, particularly due to noise disturbance, contrary to Policies D1 and D2 of the Maldon District Approved Local Development Plan, the NPPF and the Maldon District Design Guide SPD.
- 3.1.12 The current scheme includes the following amendments and additional/revised information:
- The floorspace of the building has been reduced from 1,408sq.m. to 1139.6sq.m.

- The depth of the building has been reduced from 64m to 51.8sq.m.
- The number of car parking spaces has been increased from 10 to a total of 15 spaces and 8no. lorry parking spaces are also now proposed.
- Sequential Test document.
- Revised Drainage Strategy Report.

3.1.13 In response to the previous concerns raised regarding the impact of the proposed development on local residents, it is reiterated that an acoustic fence is proposed along the east and north of the site which would reduce the predicted noise levels by 5 dB at the nearest dwellings from LAeq 46 dBA to LAeq 41 dBA. Noise contours of predicted emissions are shown in Figure 5 of the submitted noise report. This mitigation would reduce the assessment level from +10 “Significant Adverse Impact” to +5 “Adverse Impact”. The applicant considers that this is acceptable for a “worst-case” assessment in a mixed use residential/industrial area. The applicant has also highlighted that the reduced scale of the barn would reduce activities on the site compared to that previously proposed. However, the Acoustic Report submitted is the same as that received as part of the previous application (20/00388/FUL).

3.2 Conclusion

- 3.2.1 The development would potentially result in economic benefits and no objections to the proposal are raised in relation to the impact of the proposal on the character and appearance of the area and nature conservation. The development would satisfactorily accommodate the demand for car parking, bicycle storage and lorry parking.
- 3.2.2 However, the development does not comply with the flood risk Sequential Test and is, therefore, not acceptable from a flood risk perspective.
- 3.2.3 The proposal would also have the potential to cause harm to the amenity of the neighbouring residents.
- 3.2.4 Furthermore, there is a lack of certainty and clarity regarding the means of surface water drainage from the development proposed. Therefore, it has not been demonstrated to the satisfaction of the local planning authority that an adequate means of surface water drainage would be provided and that the development would not result in an increase in flood risk.
- 3.2.5 The current application has, therefore, not overcome all of the reasons the previous application was refused and it is recommended below that planning permission is refused.

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
- 80-82 Building a Strong, Competitive Economy
- 117-118 Making effective use of land
- 124-132 Achieving well-designed places
- 148-169 Meeting the challenge of climate change, flooding and coastal change
- 184-192 Conserving and enhancing the historic environment

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

- S1 Sustainable Development
- S5 Maldon and Heybridge Central Area
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- D3 Conservation and Heritage Assets
- D4 Renewable and Low Carbon Energy Generation
- D5 Flood Risk and Coastal Management
- E1 Employment
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Car Parking Standards (VPS)
- Maldon District Design Guide (MDDG) SPD
- Maldon and Heybridge Central Area Masterplan

5. MAIN CONSIDERATIONS

5.1 The main issues which require considered as part of the determination of this application are the principle of the development, the impact of the development on the character and appearance of the area, the impact on the amenity of local residents, highway safety/access/parking, flood risk and drainage, and the impact of the development on nature conservation.

5.2 Principle of Development

5.2.1 Policy S1 refers to the NPPF's presumption in favour of sustainable development and makes specific reference to the local economy, housing growth, effective use of land,

prioritising development on previously developed land, design, the environment, sustainable communities, the effects of climate change, avoiding flood risk areas, the historic environment, local infrastructure and services, character and appearance, and minimising need to travel. One of the aims of this Policy is to ensure a healthy and competitive local economy by providing sufficient space, flexibility and training opportunities for both existing and potential businesses in line with the needs and aspirations of the District.

- 5.2.2 Policy E1 states that the Council will encourage employment generating developments and investments in the District which would include the regeneration, modernisation and expansion of existing employment sites, especially where this supports the retention of existing businesses and/or provides employment space that meets the current needs of local businesses in the District. Outside designated employment allocations, new provision for high quality employment space or the expansion of existing employment areas will be considered favourably subject to design, environment and infrastructure considerations.
- 5.2.3 The site is within the development boundary for Maldon but in an area of no annotation within the approved LDP. The site is within the area covered by the Maldon and Heybridge Central Area Masterplan as part of which the site is identified as within an area of Local Ecological Importance. The means of access to the site is through a designated employment area Quayside Industrial Estate associated with Bates Road to the south.
- 5.2.4 Notwithstanding being identified as an area of Local Ecological Importance (the issue of ecology is discussed in section 5.7 below), the site is adjacent to and would be accessed through an adjacent, allocated industrial estate. Therefore, whilst Policy E1 aims to create new employment areas primarily through site allocations, it is considered that the proposal could be considered as an expansion of the existing employment site. Furthermore, the development of this site for employment purposes has previously been found to be acceptable (reference 11/01100/FUL) and there is an extant planning permission for the development of the site as a car park associated with a neighbouring industrial unit (reference 96/00615/FUL). On this basis, but subject to an assessment of the proposal against all other material planning considerations, no objection is raised to the principle of the development of the site for employment purposes. The proposed development of the site for a business use would create employment opportunities and benefit the area economically both during construction and when the use is in operation. This issue weighs in favour of the development proposed, albeit to a limited degree as the use is only expected to generate full-time equivalent employment for 10 people.

5.3 Design and Impact on the Character of the Area

- 5.3.1 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.
- 5.3.2 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”.

5.3.3 This principle has been reflected to the approved LDP. 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:-

- a) Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
- b) Height, size, scale, form, massing and proportion;
- c) Landscape setting, townscape setting and skylines;
- d) Layout, orientation, and density;
- e) Historic environment particularly in relation to designated and non-designated heritage assets;
- f) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
- g) Energy and resource efficiency.

5.3.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG (2017).

5.3.5 The site, whilst being to the rear of buildings which front Bates Road to the south, is in a highly visible and prominent location as a result of the public footpath which runs along the south-eastern and the southern half of the eastern boundary of the site and an elevated public footpath which is located within the site and which runs along its south-western boundary.

5.3.6 The building proposed would be substantial in size but would be adjacent to and viewed in the context of an existing industrial estate. The appearance and height of the building would be comparable to the industrial buildings which already exist in the vicinity of the site and, therefore, it is considered that the development would not appear incongruous or out-of-keeping with its surroundings. The height and design of the acoustic fence proposed has not been provided as part of the application, but it is not anticipated that an acoustic fence in the position proposed would cause visual harm given the industrial context of the site and further details of the acoustic fence could be required by condition if planning permission were to be granted.

5.3.7 As part of the Arboricultural Impact Assessment, there were 27 trees surveyed – 8 were B category and the rest were C category. The Assessment concludes that 12 (Category C) oak trees could be transplanted to the north and north eastern corner of the site and the trees to be retained in situ can be protected during construction but 3 (Category B) sycamore trees which would require removal to facilitate the

development are too large to transplant. Therefore, there would be limited loss of trees as a result of the proposal and new planting could be required if planning permission were to be granted, including the addition of a native species hedgerows to the inside of the fence line proposed.

- 5.3.8 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Council must have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Similarly, Policy D3 of the approved LDP states that development proposals that affect a heritage asset must preserve or enhance its special character, appearance, setting and including its streetscape and landscape value.
- 5.3.9 There is a grade II listed building (Heybridge Inn) located approximately 20m to the north of the application site and the development also has the potential to affect the setting of grade II listed Bentall's Warehouse.
- 5.3.10 The Heybridge Inn forms part of the group of Victorian buildings on the south side of The Street, originally known as The Queen's Head. It is constructed of brick, has sash windows, slate roofs and a carriage arch through the 3-storey part. It is a well-preserved and attractive element of the street scene. The 3-storey part also features quite prominently in views from the application site and the sea wall footpath to the south of the application site.
- 5.3.11 Bentall's Warehouse is a remarkable monument to Heybridge's industrial heritage. At 4 storeys in height and 17 bays in length, it is a landmark which can be seen for miles. It is constructed of distinctive yellow brick. The verges of its slate roof project forward of the gable ends in the form of broken pediments. The form of the building is reminiscent of a giant classical temple.
- 5.3.12 However, the Specialist – Conservation and Heritage raises no objection to the proposal, advising as follows: *'Views of the rear of the Heybridge Inn and of Bentall's Warehouse from particular points on the sea wall footpath will be obscured by the development. However, these views are, in my view, not important to an appreciation of the significance of these listed buildings, and the buildings will remain prominently visible from many other locations.'*
- 5.3.13 Based on this advice and, whilst there is a degree of inter-visibility between the application site and the rear of the Heybridge Inn, as stated above, the development would visually form part of the existing industrial area which adjoins the site and the listed building is not in close proximity to the site. Therefore, it is not considered that the development would have a materially adverse impact on the setting of the listed buildings.
- 5.3.14 Based on the above, it is concluded that the development would not cause material harm to the character and appearance of the area or the setting of the nearby listed buildings.

5.4 Impact on Residential Amenity

- 5.4.1 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. One of the requirements of Policy D2 is to minimise all forms of possible pollution including air, land, water, odour, noise and light. The Policy states that 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.

- 5.4.2 An Environmental Noise Assessment has been submitted with the application which advises that it is likely that initially the site will be used for the storage of domestic waste bins and is proposed to operate weekdays (07:00-17:00) and Saturday morning (07:00-12:00). As part of the Assessment it is stated that, assuming a worst-case scenario of one HGV visit per hour and one LPG fork lift truck working on site for 15 minutes per hour, the noise from site is predicted to have a “significant adverse impact” on neighbouring residents, using terminology from BS4142, but it is predicted that this could be reduced to an “adverse impact” if recommendations are followed. It is stated that this would generally be regarded as acceptable for a “worst-case” assessment in a mixed use residential/industrial area. The recommendations are for the construction of an acoustic fence (of an unspecified height) along the whole of the north-eastern boundary returning along the majority of the north-western boundary of the site and the use of LPG or electric fork lift trucks as they are significantly quieter than diesel. If gaps in the acoustic barrier are needed for flood water, sections of overlap would be required to retain the benefits of the barrier.
- 5.4.3 The nearest residential property is 10m from the site and around 20m from the building proposed. This separation distance would ensure that the development did not cause harm to the amenity of the occupiers of any neighbouring residential property by reason of dominance, loss of sunlight or loss of daylight. Furthermore, whilst the building would be visible from the neighbouring residential properties, it would be seen in the context of the adjacent industrial estate and would not be close enough to result in harm through visual impact, loss of outlook or, due to the nature of the use and as no first-floor accommodation is proposed, a loss of privacy.
- 5.4.4 However, the Specialist – Environmental Health previously raised concerns regarding the potential impact of the use of the site/building on neighbouring occupiers by reason of, in particular, noise. The main source of noise would be from the loading and unloading of vehicles. However, as part of the application it is stated that there would be no odour producing activities within the site and no uses/activities which would result in vibration issues arising. The part of the site closest to neighbouring residential properties would be landscaped and so not in active use as part of the storage and distribution use proposed and no objection was raised on noise impact grounds to the same proposal previously (reference 10/01100/FUL). However, that previous decision was taken a number of years ago and planning policy has materially changed since (the Government has issued the NPPF and NPPGs, the MDLDP has been approved and the MDDG Supplementary Planning Documents (SPD), which includes a technical document ‘Planning and Noise’, has been adopted).
- 5.4.5 Having assessed the proposal in light of current policy and guidance, it is considered that the development (which consists of a large, open-sided building to be used for storage and distribution purposes only 10m from the curtilage of a dwellinghouse) has the potential to cause harm to the occupiers of existing, residential properties, particularly due to noise disturbance. It is not considered that the imposition of the conditions as recommended by the Specialist – Environmental Health (relating to

hours of operation and deliveries, a construction management plan being approved, details of plant and machinery being approved, and an acoustic barrier being provided) would be sufficient to limit this harm to an acceptable degree. As a result, the current proposal has not overcome the fourth reason why the previous application was refused.

5.5 Access, Parking and Highway Safety

- 5.5.1 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 maximising 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.
- 5.5.2 The Council's adopted VPS SPD contains the parking standards which are expressed as minimum standards. This takes into account Government guidance which recognises that car usage will not be reduced by arbitrarily restricting off street parking spaces. Therefore, whilst the Council maintains an emphasis of promoting sustainable modes of transport and widening the choice, it is recognised that the Maldon District is predominantly rural in nature and there is a higher than average car ownership. Therefore, the minimum parking standards seek to reduce the negative impact unplanned on-street parking can have on the townscape and safety and take into account the availability of public transport and residents' reliance on the car for accessing, employment, everyday services and leisure. The key objectives of the standards are to help create functional developments, whilst maximising opportunities for use of sustainable modes of transport. This will enable people to sustainably and easily carry out their daily travel requirements without an unacceptable detrimental impact on the local road network, or the visual appearance of the development, from excessive and inconsiderate on street parking.
- 5.5.3 The Transport Statement submitted concludes that the additional vehicular trips generated by the proposal would not amount to a significant intensification of use of Bates Road and would not be considered material in terms of traffic impact. The Statement also states that the proposals incorporate a suitable turning area to accommodate the manoeuvring requirements for service and delivery vehicles and parking is proposed in accordance with current Essex County Council (ECC) parking standards.
- 5.5.4 The Council's adopted parking standards for the storage and distribution (Class B8) use proposed are as follows:-
- 1 parking space per 100sq.m.
 - Cycle parking: 1 / 500m² for staff; 1 / 1000m² for visitors
 - 1 lorry space per 200sq.m.
- 5.5.5 On the basis of the 1,139sq.m. of floorspace proposed, this equates to a need to provide a minimum of 12 car parking spaces, 5 bicycle parking spaces and 7 lorry parking spaces on site. The number of parking spaces for cars and lorries proposed would comply with the minimum standards. Only an area for cycle parking has been

proposed but further details could be required by condition if planning permission were to be granted. Whilst the lorry parking spaces are not of sufficient width to comply with the minimum of 4m required for rigid lorries, 8 spaces are proposed and so there would be sufficient space for 7 lorry parking spaces of the requisite width to be provided which could be required by condition if planning permission were to be granted.

- 5.5.6 Based on the above, no objections are raised to the proposal in relation to the parking provision proposed and it is considered that the second reason why the previous application (reference 20/00388/FUL) was refused has been overcome, the development now complying with Policies T2, E1 and D1 of the Approved MDLDP. Furthermore, no objection to the development is raised by ECC Highways (subject to the imposition of conditions).

5.6 Flood Risk and Drainage

- 5.6.1 The site is located within Flood Zone 3b (the functional flood plain) i.e. land where water has to flow or be stored in times of flood.
- 5.6.2 NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. To assess that, a Sequential Test should be applied.

“The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”

- 5.6.3 Policy D5 of the LDP states that the Council’s approach is to direct strategic growth towards lower flood risk areas, such as Flood Zone 1 as identified by the Environment Agency. Where development is not located in Flood Zone 1 and in order to minimise the risk of flooding, it should be demonstrated that the Sequential and Exception Tests, where necessary, have been satisfactorily undertaken in accordance with national planning policy. The Policy also requires that all development must not increase flood risk (including fluvial, surface and coastal) on site and elsewhere.
- 5.6.4 Following the application of the Sequential Test, if it is not possible for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied. In accordance with the NPPF in order for the Exception Test to be passed the following should be demonstrated:
- it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
 - a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

5.6.5 A site-specific Flood Risk Assessment (FRA) has been submitted with the application. It is stated that industrial schemes are suitable within Flood Zone 3 (NPPF) and that the type of development proposed is ‘less vulnerable’ in terms of flood risk which is appropriate development for Flood Zone 3a. As part of the Assessment it is stated that the site is protected for all events up to and including the 1:1,000-year tidal event but that the site would experience tidal floodwater inundation in a 1:200 year (plus climate change) extreme event with depths of potentially 2m on-site. It is also noted that the site is susceptible to a breach of a nearby reservoir and there is also a small area susceptible to localised pluvial/surface water flooding although for the medium-risk (1:100-year) scenario and ground water flooding is not anticipated to be an issue. The Assessment concludes that the scheme is not at risk of flooding from groundwater or pluvial/surface water and is adequately protected from fluvial and tidal sources or the breach of a nearby reservoir at present. The Assessment also concludes that mitigation is required to ensure that the development and its occupants are safe for the lifetime of the scheme, as follows: site to be registered with the Environment Agency’s ‘Floodline’ service, a flood warning and evacuation plan is to be agreed with the Council’s Emergency Planner and the building is to be designed for flood resilience (which could include the ground floor structure being able to withstand hydro-static and hydrodynamic forces as a result of any breach, and the strategic positioning of fuse boxes above the design floodwater level, sealed systems etc. to reduce the risk of losing electrical power). However, flood compensation measures are not deemed necessary and, as the building would be open-sided, there will be no net loss of functional floodplain. The FRA concludes that

- i. The redevelopment scheme and its occupants will not be at an increased risk of flooding;
- ii. The redevelopment scheme will not increase the risk of flooding elsewhere; and
- iii. A sustainable drainage scheme can be implemented.

5.6.6 Sequential Test

5.6.7 The Council has identified existing and new employment land within the approved LDP. Whilst there are no new sites identified in Heybridge, there are existing sites for Class B8 uses in Maldon and Heybridge (43.6ha at The Causeway – site E1(l) and 4.03ha at Wycke Hill Business Park, Maldon – site E1(o)) and new sites have been identified within the District as a whole including nearby in Maldon (4.5ha at Wycke Hill (south) – site E1(r)). Therefore, there are sites available in the District as a whole where land falls outside the highest risk Flood Zone and where permission could be obtained for Class B8 employment development. In this respect, the applicant has failed to meet the requirements of the Sequential Test, contrary to Policy S1 and D5 of the Approved MDLDP and the NPPF. A document entitled ‘Sequential Test’ has been submitted which sets out the results of a search for alternative sites for the development proposed but this was very limited relating to the Maldon and Heybridge area only. The NPPG does refer to the area to apply the Sequential Test across being defined by ‘*local circumstances relating to the catchment area for the type of development proposed*’ and that ‘*a specific area identified for regeneration*’ could be a Sequential Test area. However, the PPG also states that this approach applies where ‘*there has been no sequential testing of the allocations in the development plan*’ and so does not apply in this case.

- 5.6.8 It is noted that the Environment Agency objects to the proposal in principle because the proposed development falls into a flood risk vulnerability category that is inappropriate to the flood zone in which the site is located.
- 5.6.9 As a result of the failure of the proposal to satisfy the Sequential Test, the proposed development would not be acceptable from a flood risk perspective and the first reason why the previous scheme was refused planning permission has not been overcome. The application is recommended for refusal on this basis.
- 5.6.10 Exceptions Test
- 5.6.11 Given the result of the above, the local planning authority does not need to go on to determine whether or not the proposal meets the Exceptions Test.
- 5.6.12 Other Drainage Issues
- 5.6.13 Part of the FRA refers to surface water drainage and is based on an impermeable area of 0.22ha. It states that agreement would be sought from the Environment Agency to discharge surface water run-off into the adjacent main river once planning permission is secured, a means of attenuation would be required (estimated to be in the region of 126cu.m. to 170cu.m. of storage (including an additional 20% as an allowance for climate change impact)) and, due to the type of use proposed, mitigation to ensure pollution does not occur as a result of surface water drainage from the site, would be required. The maintenance of the external drainage system would be carried-out by a maintenance company.
- 5.6.14 However, a Drainage Strategy Report states that surface water would discharge via an existing surface water main which has a raised chamber on site. This is based on a proposed area of approximately 3755m² (which includes the building and the yard area) and which is calculated as requiring 196m³ of storage to collect surface water run-off. The outflow from the site could be limited to 5 l/s via a flow restriction device. There is no foul water disposal on this site.
- 5.6.15 The Specialist – Environmental Health has raised no objection to the proposal in relation to drainage. Anglian Water Services have no comments to make. A consultation response from Essex and Suffolk Water has not been received.
- 5.6.16 However, the Sustainable Urban Drainage Systems (SuDS) team at ECC has objected to the proposal on the basis that there are two different drainage strategies referred to and it is unclear which one is proposed. As part of the previous application (20/00388/FUL), the applicant confirmed that the strategy within the Drainage Strategy Report was the one proposed, but the SuDS Team continued to object. The applicant has been provided with an opportunity to address the concerns raised by the SuDS Team in relation to the current application, but the following objections remain:
- The drainage strategy report, accompanying calculations and drainage layout need to be updated to show a discharge rate of 1l/s with a minimum outfall diameter of 50mm for all storm events up to and including the 1 in 100 plus climate change storm event.
 - The Davies Burton Sweetlove Ltd report should have greenfield rate calculations highlighted within it.

- The drainage layout should highlight where the flow control device is.
- The surface water treatment strategy should be shown to be in line with the Simple Index Approach found within the CIRIA SuDS Manual C753. In addition to this the swale and downstream defender may not be providing enough treatment as the site has a high pollution hazard level. Further treatment should be provided upstream of the attenuation tank to ensure the attenuation tank does not lose capacity over time.
- It is unclear if the drainage hierarchy is being adhered to.

5.6.17 Taking into account the advice received from the statutory consultees, it is considered that issues relating to surface water drainage have not been addressed satisfactorily and, therefore, that there is the potential for the development to result in an increased risk of flooding. It is recommended that planning permission is refused for this reason. The development was previously assessed as being acceptable from a flood risk and drainage perspective as part of the previous application (reference 11/01100/FUL) but national and local planning policies have materially changed since that time leading to a different conclusion being reached.

5.6.18 Therefore, the current proposal has not overcome the third reason why the previous application was refused.

5.7 Nature Conservation

5.7.1 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.

5.7.2 Policy D1 requires that, amongst other things, all development must respect and enhance the character and local context and make a positive contribution in terms of the natural environment particularly in relation to designated and non-designated sites of biodiversity/geodiversity value (criterion f).

5.7.3 Policy N1 states that open spaces and areas of significant biodiversity or historic interest will be protected. There will be a presumption against any development which may lead to the loss, degradation, fragmentation and/or isolation of existing or proposed green infrastructure.

5.7.4 Policy N2 states that, any development which could have an adverse impact on sites with designated features, priority habitats and/or protected or priority species, either individually or cumulatively, will require an assessment as required by the relevant legislation or national planning guidance. Where any potential adverse effects to the conservation value or biodiversity value of designated sites are identified, the proposal will not normally be permitted.

5.7.5 In terms of nature conservation, the impact of the development needs to be assessed in terms of on-site and off-site effects as the Blackwater Estuary Ramsar site, Special Protection Area (SPA), Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) are located around 400m to the south east of the site.

5.7.6 A Preliminary Ecological Appraisal has been submitted with the application which is based on surveys of the site carried-out in February and March 2020. The Appraisal concludes that:

- The development is unlikely to pose a direct risk of impact to designated sites, protected habitats or legally protected species and that reptiles are likely to have dispersed off site when the site was cleared in March 2020.
- Pollution control measures are required to minimise the risk of impact to the Blackwater Estuary and associated riparian habitats.
- A habitat offset is required since the recent clearance has resulted in the loss of 0.63 hectares of grassland/scrub habitat, proven to support a reptile population, which could be secured as a condition of consent.
- A management plan is recommended to secure the recommended enhancement measures to the northern and southern boundaries – reference is made to habitat being created within the 10m wide buffer proposed along the northern edge of the site and the 7m wide southern boundary bank.

5.7.7 With respect to off-site impacts, Natural England (NE) have advised that they have no comments to make on the proposal but have provided advice in relation to foul drainage. With respect to the impact of the development on nature conservation interests within the site, ECC Ecology has raised no objections subject to the imposition of conditions requiring biodiversity mitigation and enhancement measures. Based on this and the conclusions of the Appraisal submitted, it is not anticipated that the proposed development would be unacceptable from an ecological point of view. Pollution control measures and ecological enhancement measures, along with a management plan, as recommended in the submitted Appraisal and by ECC Ecology, could be required by condition. However, there are no current Policies which would justify the imposition of a condition requiring the habitat off-set recommended in the Appraisal in this case as the site is not formally designated for its ecological value and given the limited current ecological value of the site. Therefore, no objections to the proposal are raised in relation to nature conservation.

5.8 Other Material Considerations

5.8.1 Archaeology – Policy D3 states that an appropriate assessment should be carried out where development might affect geological deposits, archaeology or standing archaeology. ECC Archaeology have advised that the application site has the potential to impact on archaeological remains. It is located on the former shore of the River Blackwater, between the current course of the River and one of its former routes which is still an earthwork feature (EHER 40168). The River Blackwater has been a focus for activity from the prehistoric period onwards and there is potential for archaeological deposits related to the use of the estuary such as salterns, hulks, revetments and wharfs. In addition, it is probable that paleoenvironmental deposits will be present. Archaeological deposits are both fragile and irreplaceable and any permitted development on site should therefore be preceded by a programme of archaeological investigation which should be secured by an appropriate condition attached to any forthcoming planning consent. Based on this advice, it is considered that the matter of archaeology could be adequately addressed through the imposition of conditions if planning permission were to be granted.

5.9 Other Matters

- 5.9.1 Reference is made to Policy H4 in the reasons for referral, but this Policy is not relevant to the assessment of the proposal as it relates to housing proposals. The proposal has been assessed above in relation to the other Policies referred to.

6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/96/00615** – Erection of new industrial unit in two phases including associated site works and parking areas. Approved 12.12.1996.

This 1996 permission, which was for a larger site including the Keltek building along Bates Road, identified the current application site as a car park. As the 1996 permission was implemented, planning permission for this car park area remains extant.

- **10/00602/FUL** - Proposed open sided storage (Dutch) barn. Refused 19.10.2010
- **10/01100/FUL** - Proposed open sided (Dutch) barn. Approved 15.04.2011.

The location, size and height of the building currently proposed is the same as that the subject of this application but the building proposed was to be used for the storage of inert building materials.

- **14/00576/FUL** - Proposed mixed use development comprising offices, education centre and storage and distribution warehousing. Refused 09.09.2014
- **20/0388/FUL** - Construction of open sided storage barn – Refused 21.08.2020

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Maldon Town Council	Recommends approval.	Noted.
Heybridge Parish Council	No objection – pleased to see the reduction in the size and the amendment is in keeping with the nature of the site.	Noted.

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Natural England	Provides advice regarding foul drainage in relation to the nearby Blackwater SSSI	Noted – refer to section 5.7 of report.
Environment Agency	Objects in principle because the proposed development falls into a flood risk	Noted – refer to section 5.6 of report.

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
	vulnerability category that is inappropriate to the flood zone in which the site is located.	
ECC SuDS Team	Holding objection.	Noted – refer to section 5.6 of report.
ECC Archaeology	No objections subject to the imposition of conditions.	Noted – refer to section 5.8 of report.
ECC Ecology	No objections subject to securing biodiversity mitigation and enhancement measures.	Noted – refer to section 5.7 of report.
ECC Highways	No objection subject to the imposition of conditions requiring all loading / unloading / reception and storage of building materials and the manoeuvring of all vehicles, including construction traffic being undertaken within the application site, clear of the public highway, and that the public's rights and ease of passage over footpath number 45 in Maldon are maintained free and unobstructed at all times.	Noted – refer to section 5.5 of report.
Anglian Water Services	No comments.	Noted.
Essex and Suffolk Water	No response.	

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Specialist – Environmental Health	No response.	
Specialist – Heritage and Conservation	No objection – the development would not harm the significance of the nearby listed buildings.	Noted – refer to section 5.3 of report.
Tree Consultant	No response.	

7.4 Representations received from Interested Parties

7.4.1 10 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
Noise nuisance to property which is less than 10m from the proposed development – acoustic barrier falls short of rear of their property	Noted – refer to section 5.4 of report.
Would impact on wildlife – wildlife already impacted when site cleared	Noted – refer to section 5.7 of report.
Unclear what would be stored on site – concern regarding odours and vermin if to be waste	Noted – refer to section 5.4 of report.
Concern regarding light pollution and nuisance	Noted – refer to section 5.4 of report.
Within high flood risk area and flood plain	Noted – refer to section 5.6 of report.
Pollution and vibration from heavy vehicles/plant movements	Noted – refer to section 5.4 of report.
Would exacerbate traffic congestion in and around Bates Road	Noted – refer to section 5.5 of report.
Would devalue properties	This is not a material planning consideration.
Would affect outlook and light to rear of property	Noted – refer to section 5.4 of report.
Potential pollution of brook from run-off	Noted – refer to section 5.6 of report.

8. PROPOSED REASONS FOR REFUSAL

- 1 The applicant has failed to meet the requirements of the flood risk Sequential Test and, therefore, the proposal is unacceptable on flood risk grounds, contrary to Policies S1 and D5 of the approved Maldon District Local Development Plan and the NPPF.
- 2 It has not been demonstrated to the satisfaction of the local planning authority that an adequate means of surface water drainage would be provided and that the development would not result in an increase in flood risk, contrary to Policy D5 of the approved Maldon District Local Development Plan and the NPPF.
- 3 The development (which consists of a large, open-sided building to be used for storage and distribution purposes, given its proximity to the curtilage of a dwellinghouse) has the potential to cause harm to the occupiers of existing, residential properties, particularly due to noise disturbance, contrary to Policies D1 and D2 of the Maldon District Approved Local Development Plan, the NPPF and the Maldon District Design Guide SPD.