



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

---

to  
**DISTRICT PLANNING COMMITTEE  
9 JUNE 2021**

<b>Application Number</b>	<b>21/00198/VAR</b>
<b>Location</b>	Land North Of Marsh Road, Burnham-On-Crouch, Essex
<b>Proposal</b>	Removal of condition 36 (affordable housing to NDSS) on approved planning permission 19/01208/FUL (Residential development comprising the construction of 90 residential dwellings (Use Class C3), public open space, landscaping and associated infrastructure.)
<b>Applicant</b>	Taylor Wimpey (East London)
<b>Agent</b>	Mr Oli Milne – Savills
<b>Target Decision Date</b>	07.06.2021
<b>Case Officer</b>	Kathryn Mathews
<b>Parish</b>	<b>Burnham Town Council</b>
<b>Reason for Referral to the Committee / Council</b>	Major application

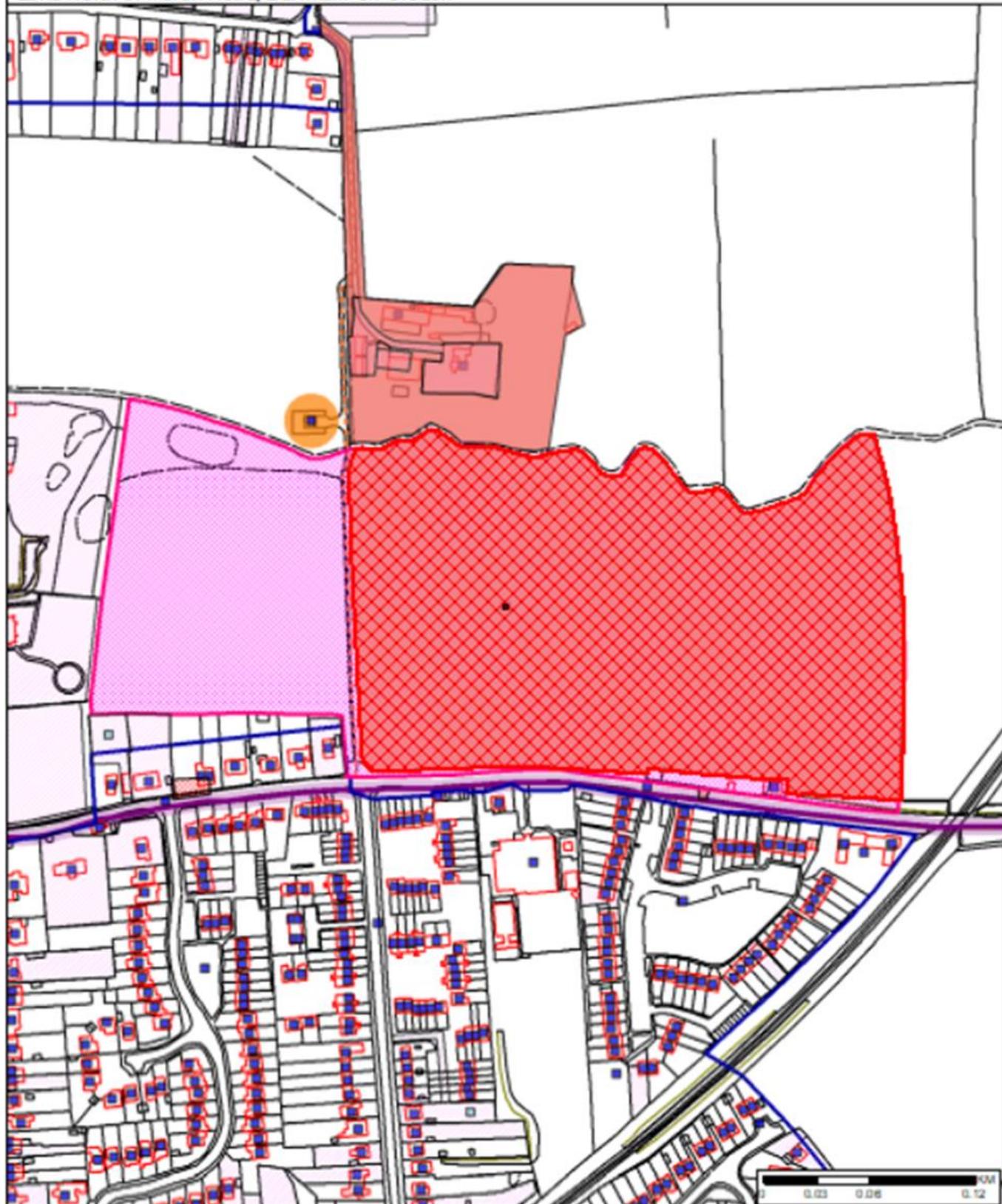
1. **RECOMMENDATION**

**REFUSE** for the reason as detailed in Section 8.

2. **SITE MAP**

Please see overleaf.

Land North of Marsh Road, Burnham-on-Crouch



**Copyright**

For reference purposes only.  
No further copies may be made.  
This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright.  
Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.  
Maldon District Council 100018588 2014



MALDON DISTRICT COUNCIL

[www.maldon.gov.uk](http://www.maldon.gov.uk)

Scale: 1:3,000

Organisation: Maldon District Council

Department: Department

Comments: District Committee

Date: 05/05/2020

MSA Number: 100018588

### 3. **SUMMARY**

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

- 3.1.1 The site is one of the allocated sites in Burnham-on-Crouch, known as S2(k), which is located to the north of Marsh Road, east of St Mary's Church and west of the railway line which links Southminster and Burnham-on-Crouch. The site is allocated for a minimum of 90 dwellings within the Local Development Plan (LDP).
- 3.1.2 The site was arable land bounded by hedgerows along most of the boundaries. A public footpath runs along the western boundary of the site. The northern part of the application site, along Pannel's Brook, is located within Flood Zones 2 and 3. Topographically the area is relatively flat with a slight fall from the south-western corner to the north-eastern corner.
- 3.1.3 The area is mainly in residential use to the south-west, whilst to the north and east is open countryside. To the west, further along Marsh Road, there are a number of residential properties fronting Marsh Road beyond which is the site is St Mary's Church, a Grade II\* listed building. St Mary's Primary School is located to the south of the site on the opposite side of Marsh Road which is surrounded by residential properties. A dwelling, known as The Vines, is located along the southern boundary of the site in an unusually long and narrow parcel of land along Marsh Road.
- 3.1.4 Planning permission was granted for 90 dwellings on the site on 21 December 2020 subject to conditions and following the completion of a Section 106 Agreement (19/01208/FUL). The current application seeks the removal of condition 36 attached to the planning permission which requires the following:

*Notwithstanding the plans as submitted no development works above ground level shall occur until plans showing how the affordable housing units will meet the Nationally Described Space Standards have been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the plans and details as approved.*

*REASON: To ensure that the affordable housing units would meet the Nationally Described Space Standards and meet the Council's identified need for affordable housing in accordance with Policies H1 and H2 of the Maldon District Local Development Plan.*

- 3.1.5 As part of the completed Section 106 Agreement, the following is included in the Second Schedule (Relating to Affordable Housing) which is relevant to the consideration of the current application:

1.3 *The Affordable Housing shall be provided in accordance with the Affordable Housing Scheme with the Affordable Housing Units:*

*6 x 1 bedroom 2 person flats;  
5 x 1 bedroom 2 person bungalows;  
18 x 2 bedroom 4 person houses;  
7 x 3 bedroom 5 person houses;*

*with minimum room sizes as defined in the current National Described Space Standards. Any change to it must be agreed beforehand in writing by the Council.*

3.1.6 Furthermore, the details submitted as part of the current application 21/05013/DET relating to condition 36 comply with the Nationally Described Space Standards (NDSS).

3.1.7 The approved development proposed the following affordable housing mix:

Dwelling Size	Affordable Housing Units	% of Affordable Housing
1 Bed Flat	6	17%
1 Bed Bungalow	5	14%
2 Bed House	18	50%
3 Bed House	7	19%
Total	36	100%

3.1.7.1 With 70% of the affordable housing falling within affordable rent and 30% shared ownership.

3.1.8 In support of the current application, the applicant's agent refers to an appeal decision which, in their view, *'confirmed that such a requirement [to comply with the NDSS] is unjustified in planning policy terms'*. The agent argues that the condition is not 'necessary' or 'reasonable in all other respects'.

## 3.2 Conclusion

3.2.1 The condition is necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. On this basis, it is recommended below that the application is refused.

3.2.2 The requested removal of condition 36 would be in conflict with the requirements of the completed Section 106 Agreement and the applicant did not object to the imposition of the condition. If the affordable housing units are not constructed to meet the Nationally Described Space Standards, as currently required, it could not be ensured that all of the affordable units would meet the greatest current housing needs of the District.

## 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
- 91-101 Promoting healthy and safe communities
- 124-132 Achieving well-designed places

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

- S1 Sustainable Development
- S2 Strategic Growth
- S3 Place Shaping
- S8 Settlement Boundaries and the Countryside
- S6 Burnham-on-Crouch Strategic Growth
- D1 Design Quality and the Built Environment
- H1 Affordable Housing
- H2 Housing Mix
- H4 Effective Use of Land

#### **4.3 Adopted Burnham-on-Crouch Neighbourhood Plan (BOCNP):**

- Policy S1 – Strategic Housing Growth
- Policy HO.1 – New Residential Development
- Policy HO.2 – Range and Type of New Residential Development
- Policy HO.4 – Affordable Market Housing
- Policy HO.7 - Land at Burnham North (East)
- Policy HO.8 – Housing Design Principles

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

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Maldon District Design Guide Supplementary Planning Document (SPD) (2017) (MDDG)
- Maldon District Affordable Housing and Viability SPD (December 2019)

### **5. MAIN CONSIDERATIONS**

#### **5.1 The Six Tests**

5.1.1 It is necessary to assess the condition against the six tests that planning conditions are expected 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;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects

The condition is assessed below against these tests in turn below.

## 5.1.2 Necessary

5.1.2.1 Policy H1 requires that “Affordable housing should be provided on-site, either through free serviced land provided to a registered provider or constructed affordable dwellings to be sold to a registered provider upon completion to provide the number, size, type and tenure of affordable homes required by the Council’s policies having regard to the Strategic Housing Market Assessment (SHMA), the Council’s adopted Affordable Housing Guide, and the Council’s Housing Strategy.”

5.1.2.2 Policy H2 requires that “All developments will be expected to provide a suitable mix and range of housing in terms of size, type and tenure to reflect local housing need and demand in both the market and affordable sector, particularly the need for an ageing population.

*Wherever possible affordable housing should be located in a way that ensures the homes are integrated with the rest of the development; in most cases this will mean in clusters of no more than 15 to 25 homes in one part of a development. The design and appearance of affordable housing should also be indistinguishable from those built for the open market, meet standards detailed in the Maldon District Strategic Housing SPD, and be of a tenure recognised by the National Planning Policy Framework.”*

5.1.2.3 The Council has not adopted a ‘Maldon District Strategic Housing SPD’ referred to in Policy H2 but pursued the now adopted ‘Affordable Housing and Viability SPD’ instead.

5.1.2.4 Within the Council’s Affordable Housing and Viability SPD paragraph 5.7 states that:

*“As a guide, all 2 bed properties should be designed for 4 people. This ensures that 2 bed properties can be let to 2, 3 or 4 person households. All properties with 3 or more bedrooms should include one double and one twin room to maximise the property’s potential use. All one bed properties must be designed for 2 people (i.e. have a double room). Therefore, the upper limits of the Nationally Described Space Standard will be the starting point for discussion.”*

5.1.2.5 It is acknowledged that Paragraph 018 of the PPG on Housing: Optional Technical Standards states that:

*“Where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the nationally described space standard.”*

and that the Written Ministerial Statement of 25th March 2015, referred to by the applicant’s agent, states that decisions should only require compliance with the NDSS where there is a relevant current Local Plan policy.

5.1.2.6 However, the NPPF at paragraph 127 states that planning policies and decision should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. At footnote 46 it states that planning policies for housing may make use of the NDSS “...where the need for an internal space standard can be justified”.

5.1.2.7 Furthermore, whilst a requirement for affordable housing to meet the NDSS is not stated within the relevant adopted Policies H1 and H2, it is explicitly referred to as part of the approved Affordable Housing and Viability SPD. The SPD provides

additional information about the way approved Local Development Plan policies H1 and H2 are to be implemented. This SPD is a material planning consideration and, having been recently adopted, should be afforded significant weight in the determination of this application.

5.1.2.8 In this respect, it is noted the Inspector in his appeal decision allowed on 16 December 2020 relating to land between Chandlers and Creeksea Lane, Maldon Road, Burnham-on-Crouch (part of strategic housing allocation S2(i)) (19/01257/FUL) highlights, at section 33, that (SPD's) are; capable of being a material consideration, in his summation of the relevant section of the Planning Practice Guidance (PPG). He also states, in continuing this point 'Although the affordable housing tenure plan shows that overall, some of the affordable units are below the NDSS, the Council has not demonstrated how this would make the dwellings unsuitable for this number of occupants and therefore not be able to meet this need'. The Council, therefore demonstrates in the following sections, the adverse effects of failing to meet the NDSS in delivering the affordable housing.

5.1.2.9 The Council's Affordable Housing and Viability SPD does not explicitly require compliance with NDSS but compliance with the NDSS is clearly an expectation and no reasons have been put forward as part of the current application to explain why the Standards could not be met and why an exception could be justified in this case. If the affordable housing units did not comply with the NDSS, the following adverse issues, as advised by the Councils Housing Specialist, arise:

- Smaller units are likely to be developed for example 2 bed 3 person houses as opposed to 2 bed 4 person houses. As a result, the Council is able to assist less families on the Housing Register as there are a larger number of families with two children that could not be accommodated in a 2 bed 3 person property.
- With respect to 2 bed 3 person properties, if the family have another child they could be classed as overcrowded and receive a high Band / Award on the Register to be moved to a 2 bed 4 person property. However, if a 2 bed 4 person property is not available then the family will have to be considered for a 3 bed property which reduces the number of 3 bed properties available.
- When the Registered Provider (RP) registers the properties with Homes England, if the properties are below NDSS, Homes England may require the RP to set Social Rents as opposed to Affordable Rents and therefore the Housing Association may receive a lower rent than they had anticipated for the duration of the loans they had secured against the properties.
- A further risk is that where RPs compete through bids to developers for the affordable units on a scheme, as available funding from Government to RPs towards Affordable Housing is reducing, if the smaller units are below NDSS, RPs may not make bids on new build schemes.

5.1.2.10 Therefore, in the absence of a requirement to comply with the NDSS, the local planning authority could not ensure that the affordable housing proposed meet the greatest housing needs of the District. This would be contrary to Policies H1 and H2 of the approved Maldon District Local Development Plan, the Affordable Housing and Viability SPD and the NPPF. The condition is, therefore, necessary.

5.1.2.11 The applicant's agent also makes reference to the said appeal above which was allowed on 16 December 2020 relating to land between Chandlers and Creeksea Lane, Maldon Road, Burnham-on-Crouch (part of strategic housing allocation S2(i)) (19/01257/FUL) which is located approximately 1.4km to the west of the current application site. That application was for the erection of an additional 36 dwellings on

land previously identified for public open space, with associated off-street parking, public open space and landscaping.

5.1.2.12 In considering the issue of requiring compliance with the NDSS, the Inspector made a number of points which the applicant's agent considers are relevant to this application:

- SPDs cannot introduce new planning policies such as compliance with the NDSS;
- the Council has not incorporated the NDSS into the development plan as required by Written Ministerial Statement (WMS) and the PPG;
- the Council has not justified the use of the NDSS through the collection of evidence; and
- the Council's Affordable Housing and Viability SPD does not require compliance with the NDSS.
- the primary policy consideration for the decision maker was whether the proposed affordable units would give rise to unacceptable living conditions for future occupiers in accordance with Policy H1 of the Local Development Plan.

5.1.2.13 It is acknowledged that the appeal decision is a material consideration and the local planning authority did not seek to legally challenge the appeal decision. However, Officers do not consider that the SPD is introducing a new planning policy. Furthermore, the Inspector was not aware of the adverse issues set out above when determining the appeal (focusing purely on the issue of the living conditions of the occupiers of the affordable units proposed) and may have reached a different conclusion if they had. Therefore, it is considered that limited weight can be afforded to this appeal decision in the determination of the current application.

### 5.1.3 Relevant to Planning

5.1.3.1 The condition relates to planning objectives and is within the scope of the permission to which the condition is attached. Therefore, the existing condition is relevant to planning.

### 5.1.4 Relevant to the Development to be Permitted

5.1.4.1 The condition is relevant to the development as it relates to the affordable housing units to be provided as part of the development.

### 5.1.5 Enforceable

5.1.5.1 Unenforceable conditions include those where non-compliance with the condition would not be possible to detect or remedy any breach or those concerned with matters over which the applicant has no control. The condition is considered to be enforceable as non-compliance with the condition would be possible to detect and any breach could be remedied. The condition is also concerned with a matter over which the applicant has control. Therefore, the existing condition is considered to be enforceable.

### 5.1.6 Precise

5.1.6.1 The condition is considered to be precise and clear.

### 5.1.7 Reasonable in all other respects

5.1.7.1 The condition is considered to be reasonable in all other respects as the requirements of the condition would not place an unjustified or disproportionate burden on the applicant who agreed to the condition being imposed and willingly entering into a Section 106 Agreement containing the same requirement.

## 6. ANY RELEVANT SITE HISTORY

- **19/01208/FUL** - Residential development comprising the construction of 90 residential dwellings (Use Class C3), public open space, landscaping and associated infrastructure. – Approved 21.12.2020 following completion of a Section 106 Agreement.
- **21/05013/DET** - Compliance with conditions notification 19/01208/FUL (Residential development comprising the construction of 90 residential dwellings (Use Class C3), public open space, landscaping and associated infrastructure.) Condition 3 - Materials. Condition 6 - Hard landscaping. Condition 7 - Boundary treatment. Condition 10 - Construction method statement. Condition 11 - Construction environmental management plan. Condition 12 - Surface water drainage. Condition 13 - Flood plan. Condition 16 - Foul drainage scheme. Condition 17 - Vehicle parking. Condition 18 - Cycle parking. Condition 20 - Ecology impact assessment. Condition 21 - Biodiversity enhancement strategy. Condition 24 - External lighting. Condition 26 - Waste. Condition 27 - Air pollution. Condition 28 - Archaeological works. Condition 34 - Flood risk assessment. Condition 36 - Affordable housing. – Pending consideration.

## 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>
Burnham-on-Crouch Town Council	Raises no objection – Councillors noted the application.	Noted

### 7.2 Internal Consultees

<b>Name of Internal Consultee</b>	<b>Comment</b>	<b>Officer Response</b>
Specialist – Housing Manager	None compliance with the NDSS can cause a number of adverse issues in relation to meeting the affordable housing needs within the District.	Noted - refer to section 5.1 of report.

### 7.3 Representations received from Interested Parties

7.3.1 No letters of representation were received.

**8. REASON FOR REFUSAL**

- 1 Condition 36 of planning permission reference 19/01208/FUL is necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. In the absence of a requirement for the affordable housing units to comply with the Nationally Described Internal Space Standards, the local planning authority could not ensure that the affordable housing proposed meet the greatest housing needs of the District, contrary to Policies H1 and H2 of the approved Maldon District Local Development Plan, the Affordable Housing and Viability SPD and the NPPF.