



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**CENTRAL AREA PLANNING COMMITTEE
16 MARCH 2022**

Application Number	21/01283/FUL
Location	New Lodge Dykes Chase Maldon Essex CM9 6HP
Proposal	Demolition of the existing garage and erection of a new dwelling
Applicant	Mrs Ward & Mr Titchmarsh
Agent	Andrew Ransome - ADP Ltd
Target Decision Date	14.02.2022 EOT requested
Case Officer	Hannah Bowles
Parish	MALDON NORTH
Reason for Referral to the Committee / Council	Member Call In by Councillor N G F Shaughnessy – Policies D1, D3 and H4.

1. RECOMMENDATION

APPROVE subject to a legal agreement to secure the Recreational disturbance Avoidance and Mitigation Strategy (RAMS) contribution and the conditions (as detailed in Section 8 of this report).

2. SITE MAP

Please see below.

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located to the north of Dykes Chase, which is accessed off Beeleigh Road, is within the Maldon Conservation Area and adjacent to the Chelmer and Blackwater Navigation Conservation Area (to the west of the site). The site is also within the vicinity of two listed buildings, a locally listed heritage asset and historical garden (Leech Memorial Garden); as such it is considered to be within a sensitive historic location. The front half of the site (south) falls within the settlement boundary of Maldon, whilst the rear of the site (north) falls just outside.
- 3.1.2 The site forms the western part of the residential curtilage of the dwelling 'New Lodge', which is located to the south-east of the site. The site is currently occupied by a single storey flat roof garage building and associated hard standing, which is located to the front of the site and serves the main dwelling at New Lodge. Beyond the garage building the site is laid to grass, but also contains a number of trees and thick vegetation along the western boundary. The topography of the site and the northern side of the slopes steeply downwards from south to north. There is a public right of way which runs directly along the frontage of the site.
- 3.1.3 Planning permission is sought for the sub-division of the existing residential plot which occupies the dwelling 'New Lodge', the demolition of the existing double garage associated with the dwelling and its replacement with a new two storey dwelling with a mezzanine floor within the roof space and a lower ground floor. The proposed house would benefit from an amenity space to the rear, with steps leading down into the garden via a side access which would adjoin Hillyfield, a retaining wall adjoining the shared boundary with New Lodge and parking spaces on the existing hard surfacing to the front of the site. The dwelling would provide three bedrooms.
- 3.1.4 The proposed dwelling has been designed to respond to the topography of the land. It would feature three floors of accommodation. However, the front elevation, visible from the public highway, would appear as a chalet bungalow with a gabled front elevation. The proposed dwelling would measure 9.1m wide, 12.4m deep with a rear balcony which would measure 3m deep and extends the width of the dwelling (and serves the first floor). The dwelling would have a maximum eaves height of 5.45m and maximum ridge height of approximately 10.1m. However due to the front of the site being at a higher level, when viewed from the front it would measure 2.9m high to the eaves and 7.3m in height to the highest point.
- 3.1.5 The site has previously benefited from approved planning permission 10/00767/FUL which proposed a new dwelling and replacement garage and the demolition of the existing garage. The dwelling approved under the terms of the 2010 permission is similar in terms of siting, form and scale, although the previous ridge height extended 6.5m from ground level to the front and 8.5m from the rear. This permission was not implemented and has since expired. Although 12 years have passed and the policy position has significantly change since the determination of the previous approval, it remains a material consideration in the determination of this application.
- 3.1.6 The proposed garden office shown in principle on the submitted block plan does not form part of this application, as annotated on the plan 'Proposed garden office to be considered under a separate planning application'.

3.2 Conclusion

- 3.2.1 The application site has previously been found acceptable for the development of a dwellinghouse under the terms of application reference 10/00637/FUL. The site is located in a sustainable location, within walking distance of many of the facilities and services available in Maldon town centre and is served by a range of sustainable transport options. Therefore, no concerns in respect of the principle of the development are raised.
- 3.2.2 The proposed dwelling, on balance, is considered to have an acceptable visual impact on the site, surrounding conservation area and heritage assets and would have an acceptable impact on the amenity of neighbouring occupiers. Further, New Lodge and the new proposed dwelling would be served by an acceptable level of amenity space and could accommodate the required car parking provision. Therefore, the proposed development is considered to be in compliance with the relevant policies contained within the Local Development Plan (LDP) and guidance set out within the National Planning Policy Framework (NPPF).

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2021 including paragraphs:

- 2-14 Achieving Sustainable development
- 38 Decision-making
- 47 – 50 Determining applications
- 54 – 57 Planning conditions and obligations
- 60-80 Delivering a sufficient supply of homes
- 104-113 Promoting Sustainable Transport
- 119-123 Making effective use of land
- 126-136 Achieving well-designed places
- 174-182 Conserving and enhancing the natural environment
- 184 – 202 Conserving and enhancing the historic environment

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
- D2 Climate Change & Environmental Impact of New Development
- D3 Conservation and Heritage Assets
- D5 Flood Risk and Coastal Management
- H2 Housing Mix
- N1 Green Infrastructure Network
- N2 Natural Environment and Biodiversity
- H4 Effective Use of Land
- T1 Sustainable Transport
- T2 Accessibility
- I1 Infrastructure and Services

4.3 Relevant Planning Guidance / Documents:

- Maldon Conservation Area Review and Management Plan
- Maldon District Design Guide (MDDG)
- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Planning Practice Guidance (PPG)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the NPPF require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the development plan comprises of the approved LDP.

5.1.2 As part of the drive to deliver new homes the Government has stated that there is a need for Councils to demonstrate that there are sufficient sites available to meet the housing requirements for the next five years; this is known as the Five-Year Housing Land Supply (5YHLS).

5.1.3 Where a Local Planning Authority (LPA) is unable to demonstrate that it has a 5YHLS, the presumption in favour of sustainable development will apply; this is known as the 'Tilted Balance'. This position is set out in paragraph 11d, together with its footnote 8, of the NPPF which states:

“For decision taking this means:

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

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

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

Footnote 8 – 8 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73)

5.1.4 At the heart of the NPPF is a presumption in favour of sustainable development (the 'presumption') which is central to the policy approach in the Framework, as it sets out the Government's policy in respect of housing delivery within the planning system and emphasises the need to plan positively for appropriate new development. The NPPF replaces those Local Plan policies that do not comply with the requirements of the NPPF in terms of housing delivery. In addition, leading case law assists the LPA in its application of NPPF policies applicable to conditions where the 5YHLS cannot

be demonstrated (Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC [2017] UKSC 37).

- 5.1.5 It is necessary to assess whether the proposed development is 'sustainable development' as defined in the NPPF. If the site is considered sustainable then the NPPF's 'presumption in favour of sustainable development' applies. However, where the development plan is 'absent, silent or relevant policies are out of date', planning permission should be granted 'unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or that specific policies in this Framework indicate development should be restricted'.
- 5.1.6 In judging whether a residential scheme should be granted, it is necessary to consider the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall, against the adverse impacts identified (if any) arising from the proposal in relation to the policies contained within the NPPF and relevant policies in the Local Plan.
- 5.1.7 There are three dimensions to sustainable development as defined in the NPPF. These are the economic, social and environmental roles. The LDP through Policy S1 re-iterates the requirements of the NPPF but there are no specific policies on sustainability in the current Local Plan. Policy S1 allows for new development within the defined development boundaries. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. However, because the Council cannot demonstrate an up-to-date five-year supply of deliverable housing and on the basis that sites outside of the defined development boundaries could be judged to be 'sustainable development' through the three-dimension tests of the NPPF, the LPA are obliged to exercise its judgement as to whether to grant planning permission having regard to any other relevant planning policies and merits of the scheme.
- 5.1.8 The proposed dwelling would be located within the settlement boundary for Maldon and would therefore comply with the requirements of policy S1 of the LDP which seeks to direct new residential development to within established settlements, thereby preserving the appearance and character of the countryside. Maldon is recognised as being a 'Main settlement', with a range of services and opportunities for employment, retail and education, serving a wide catchment area and containing good public transport links. On this basis the site is regarded to be within a sustainable location in terms of accessibility to service, facilities and public transport options.
- 5.1.9 Further, as set out above the site has previously benefited from approved planning permission 10/00767/FUL which proposed a new dwelling and replacement garage and the demolition of the existing garage. This permission was not implemented and has since expired and given the length of time that has lapsed since the determination of the previous application and the change in policy position, the previous application would carry limited weight. However, weight should be given to the fact the site was previously found acceptable for the provision of a dwelling and the level of built form which was found to be acceptable at the site at that time, particularly as there has been no significant changes to the site and surrounding area.
- 5.1.10 Having regard to the accessibility of the site and the planning history, it is considered that there is no objection raised to the principle of a dwelling in the proposed location.

5.2 Housing Need

- 5.2.1 Due to the Council being unable to demonstrate a five-year housing land supply at this current time, the NPPF states that Local Authorities should consider applications for new dwellings in the context of the presumption in favour of sustainable development, and the LDP policies in relation to the supply of housing should not be considered to be up to date. As a result, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted.
- 5.2.2 Whilst the LDP carries less weight at present due to the lack of a 5YHLS and consequent impact on its housing delivery policies in particular (including those policies which define settlement boundaries), the NPPF is clear that housing should be provided to meet an identified need.
- 5.2.3 The Housing Needs Assessment (2021) (HNA) is an assessment of housing need for Maldon District, as a whole, as well as sub-areas across the District which are considered alongside the housing market geography in this report. The HNA is wholly compliant with the latest NPPF and PPG, and provides the Council with a clear understanding of the local housing need in the District and demographic implications of this, the need for affordable housing, the need for older persons housing, the need for different types, tenures and sizes of housing, the housing need for specific groups and the need to provide housing for specific housing market segments such as self-build housing.
- 5.2.4 The proposed development would provide one three bed dwelling. The HNA concludes that the District has a need for smaller dwellings, specifically 2 and 3 bed dwellings. The biggest requirement is for 3 bed dwellings: specifically, 40-50% for 3 beds and 25-35% for 2-beds. Therefore, although limited positive weight can be attributed to this, due to the provision of a single dwelling, a minor benefit in this respect can be drawn from this aspect of the proposal.

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. Similar support for high quality design and the appropriate layout, scale and detailing of development is required by Policy D1 and H4 of the LDP and is found within the MDDG (2017).
- 5.3.3 In addition, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Council to pay special attention to desirability of preserving or enhancing the character or appearance of heritage assets. Similarly, policy D3 of the approved Maldon District LPD states that development proposals that affect a heritage asset must preserve or enhance its special character, appearance, setting and any features and fabric of architectural or historic interest. Where a proposed development would cause less than substantial harm to the significance of a designated heritage asset, this harm will be weighed against the public benefits of the proposal, including securing its optimum viable use.

- 5.3.4 The proposed development involves the sub-division of the existing residential plot which occupies the dwelling 'New Lodge', the demolition of the existing garage associated with the dwelling and its replacement with a new two storey dwelling with a mezzanine floor within the roof space.
- 5.3.5 As previously set out the site has benefited from approved permission 10/00767/FUL, which granted a dwelling and garage at the application site. Whilst it is noted that this permission has expired, that the previous level of development was found to be acceptable at the site is considered to carry moderate weight in the determination of this application, given that the site and surrounding area have not significantly changed.
- 5.3.6 The dwelling previously found acceptable measured approximately 12m by 9m, 6.5m in height when viewed from Dykes Chase increasing to 8.5m in height to the ridge of the rear elevation overlooking the River Blackwater. The dwelling was served by an attached garage which projected 3.24m from the front elevation and a rear facing balcony with a high level of glazing within the rear elevation.
- 5.3.7 The dwelling proposed under the terms of this application would have similar dimensions, being 9.1m wide and 12.4m deep and would also be served by a rear balcony. Further, the proposed dwelling has been sited in a similar position to the previously approved dwelling; being marginally further from the boundary with Hillyfield at 1.9m, with a separation distance ranging between 8.3m-8.6m dwelling to dwelling. The dwelling would have a separation distance ranging between 2.34m - 4.05m from the boundary with New Lodge, with a distance ranging between 5.4m - 5.9m dwelling to dwelling. The dwelling would be set back 13.2m from Dykes Chase, the previously approved dwelling was sited around 9.6m from the public highway.
- 5.3.8 The most notable differences between the two schemes is the height, which has notably increased, alongside the omission of the garage and its altered appearance.
- 5.3.9 The dwelling would have a maximum height of approximately 10.1m. However, when viewed from the front (Dykes Chase) it would appear to measure 7.5m in height. The proposed height would increase the visual impact compared to what was previously found to be acceptable at the site. However, the impact is somewhat offset by the omission of the garage building, which reduces the bulk and built form to the front of the site and results in the front elevation being set back a further 3.6m into the site. In addition, the proposed dwelling is considered more traditional in appearance.
- 5.3.10 The proposed dwelling has been designed to take advantage of the topography of the land. Whilst it would feature three floors of accommodation, the front elevation, which is visible from the public highway, would appear as a chalet bungalow with a gabled front elevation. The appearance of the dwelling from Dykes Chase would be that of a traditional chalet style bungalow, reflective of area. Whilst the proposed dwelling would extend 7.5m in height ground level to the south, and 10.1m in height from ground level to the north, the visual impact is lessened by the set back from the public highway and the topography of the land.
- 5.3.11 In terms of scale and having regard to the topography of the land and that the footprint of the proposal would not be larger than those observed within the surrounding area, it is not considered that the proposed dwelling would form an overly prominent or overbearing addition to the site or streetscene.
- 5.3.12 In terms of appearance and layout the proposed dwelling would appear to respond to the development observed within the surrounding area and regard has been had to

the sensitive historic location. With regards to materials, it is proposed to clad the walls in white weatherboarding, the windows on the front elevation are proposed to be timber and the those within the side and rear elevation would be aluminium and the roof tiles, natural slate. The Conservation Specialist has been consulted for their specialist views and has recommended conditions to ensure the materials are of an appropriate quality.

- 5.3.13 In respect of the impact of the proposal on the surrounding heritage assets which include the Maldon and Chelmer and Blackwater Navigation Conservation Areas and two protected buildings; the Council's Conservation and Heritage Specialist has been consulted for their views which are as follows:

'The land slopes steeply down northwards to the river. A key consideration of any development on this northern slope is the impact on long views of the town from the north.

I raise no objection to the proposed house. It is similar in scale and form to a previous permission. The proposal should not result in harm to the heritage assets. However, in order to respect the traditional architectural character of the area, it is important that sympathetic traditional materials are used, including painted timber weatherboarding, painted timber windows (at least on the front elevation), and natural slate on the roof.'

- 5.3.14 The Conservation Officers comments are in line with Officers' views and their recommended conditions have been set out in section 8 of this report. As such, with these conditions in place, it is considered that the proposal would not harm the significance of heritage assets within the vicinity of the site and Maldon conservation area.
- 5.3.15 Given the above assessment and having regard to the development previously accepted at the site, it is considered that the proposed dwelling would have an acceptable visual impact on the site, surrounding area and would preserve the surrounding heritage assets, in compliance with policies D1, D3 and H4 of the LDP.

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. This is supported by section C07 of the MDDG (2017).
- 5.4.2 The application site has two adjacent neighbouring properties; 'New Lodge' which is the host property located to the east and 'Hillyfield' is located to the west.
- 5.4.3 The proposed dwelling would be sited 1.9m from the side boundary with Hillyfield (to the west), with a separation distance ranging between 8.3m-8.6m dwelling to dwelling. The dwelling would have a separation distance ranging between 2.34m-4.05m from the side boundary with New Lodge (to the south-east) with a distance ranging between 5.4m-5.9m dwelling to dwelling.
- 5.4.4 The land on which the dwelling would be located slopes steeply downwards from south to north and it is pertinent to note that the dwelling has been designed to nestle into the existing landscape with a lower ground floor, ground floor and first floor mezzanine room within the roof space.

- 5.4.5 In terms of an overbearing impact and loss of light to the neighbouring occupiers, the ridge height of the proposed dwelling extends to a maximum of 10.1m. However, given separation distances, the topography of the land, the orientation of the dwellings in relation to each other and the proposed roof form, which slopes away from the neighbouring properties; it is considered that the proposed development would result in an overbearing impact or loss of light to any primary windows that would result in demonstrable harm to the neighbouring occupiers.
- 5.4.6 In terms of overlooking there are windows within the side elevations of the proposed dwelling. However, the side windows in the elevation will either be high-level windows or obscured glazed windows, which would overcome any overlooking concerns with overlooking that could result. As such, a condition has been recommended to ensure the development is carried out in accordance with these details. The front and rear facing windows are not considered to result in an unacceptable level of overlooking. The proposed rear balcony extends along the entire rear elevation of the proposed dwelling and would serve the upper ground floor. The elevation plan and details confirm that side screens to prevent any overlooking into the private rear gardens of the neighbouring properties, would be installed. In order to ensure this and thereby protect the privacy of the neighbouring occupiers, a condition in this respect has been recommended.
- 5.4.7 It is also pertinent to note that the dwelling proposed under the terms of this application would have a similar floor area to that previously approved and it is noted the previously approved dwelling was served by a rear balcony.
- 5.4.8 Given the above assessment, it is not considered that the proposed development would result in detrimental loss of amenity to the occupiers of the neighbouring dwellings.

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 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.
- 5.5.2 The Council's adopted Vehicle Parking Standards state that a three-bedroom dwelling should provide provision for two vehicle parking spaces, a parking bay is required to measure 2.9m by 5.5m. The submitted block plan demonstrates the site can accommodate two parking bays to the front of the dwelling. In addition, it has been confirmed that New Lodge would continue to be served by a parking area that could accommodate three cars and it is noted that there is space within the site.
- 5.5.3 The Local Highway Authority has been consulted and given that there are no changes to the proposed access point with London Road, no objection has been raised, although they have advised of the need to protect the users of the adjacent public footpath (No.57) by ensuring that this footpath remains free and unobstructed at all times. The applicant has been advised of this need via an informative recommended below. Given this, it is considered that no concerns are raised, and the proposal would therefore be in compliance with policy D1 and T2 in this respect.

5.6 Private Amenity Space and Landscaping

- 5.6.1 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 100m² of private amenity space for dwellings with three or more bedrooms, 50m² for smaller dwellings and 25m² for flats.
- 5.6.2 The submitted information demonstrates that both the New Lodge and the proposed new dwelling would be served by a sufficient amenity space in excess of 100sqm.
- 5.6.3 The proposed boundary treatment to demarcate the new dwelling is proposed to be a retaining brick wall, given this is the existing boundary treatment to the front of New Lodge, no concerns in this respect are raised. In addition, it is noted that the trees along the side boundaries of the site would be retained. However, a condition to ensure that full boundary treatment and landscaping details are submitted for approval has been recommended, in order to protect and enhance the verdant appearance of the area.

5.7 Ecology Impacts

- 5.7.1 Paragraph 174 of the NPPF states that 'Planning policies and decisions should contribute to and enhance the natural and local environment by; (amongst other things) minimising impacts on and providing net gains for biodiversity.'
- 5.7.2 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.
- 5.7.3 The application has been supported by an Ecological Survey prepared by John Dobson B.Sc, Essex Mammal Surveys, dated August 2021. The survey concludes '*The site is a maintained garden and has no Priority habitats.*' A number of recommendations have been set out within the report and the Ecology Consultant has raised no objection to the proposal subject to three conditions, one of which is that the development is required to be carried out in accordance with the submitted details. The advised conditions have been recommended below; given this, it is considered that no concerns in this respect are raised in this respect.

5.8 Impact on Designated Sites (RAMS)

- 5.8.1 The application site falls within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential developments could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure etc.
- 5.8.2 The development of one dwelling falls below the scale at which bespoke advice is given from Natural England. To accord with NE's requirements and standard advice an Essex Coast (RAMS) Habitat Regulation Assessment (HRA) Record has been completed to assess if the development would constitute a 'Likely Significant Effect' (LSE) to a European site in terms of increased recreational disturbance. The findings from HRA Stage 1: Screening Assessment are listed below:

HRA Stage 1: Screening Assessment – Test 1 – the significance test

Is the development within the Zone of Influence (Zol) for the Essex Coast RAMS with respect to the below sites? Yes

Does the planning application fall within the following development types? Yes – The planning application relates to one dwelling

Proceed to HRA Stage 2: Appropriate Assessment to assess recreational disturbance impacts on the above designated sites

Test 2 – the integrity test

Is the proposal for 100 houses + (or equivalent)? No

Is the proposal within or directly adjacent to one of the above European designated sites? No.

5.8.3 As the answer is no, it is advised that a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements. Provided this mitigation is secured, it can be concluded that this planning application will not have an adverse effect on the integrity of the above European sites from recreational disturbance, when considered 'in combination' with other development. Natural England does not need to be re-consulted on this Appropriate Assessment.

5.8.4 The Essex Coastal RAMS document has been adopted. This document states that the flat rate for each new dwelling has been calculated at £127.30 and thus, the developer contribution should be calculated using this figure. However, in the absence of a signed legal agreement to secure the abovementioned contribution, the impact of the development would not be able to be mitigated and thus, this would constitute a reason for refusal of the application.

5.8.5 The Applicant has indicated a willingness to provide a Unilateral Undertaking to secure this contribution. Therefore, providing a signed and correct agreement is submitted prior to the issuing of the decision, the impact of the proposal would be mitigated.

5.9 Other Material Considerations

5.9.1 Trees

5.9.1.1 The application has been supported by a Tree Survey and Arboricultural Assessment. The Tree Consultant has been consulted for their specialist views and raised no objection to the proposal in respect of its impact on the surrounding trees. They advised the following:

'I have no objection to this application. The report identifies the trees and their constraints, showing how those to be retained can be protected. The removal of Silver Birch will not have a significant impact on the wider public amenity.'

It is advised that a replacement tree is appropriately planted within the site to compensate for the loss of the silver birch, this requirement has been included within the recommended landscaping condition.

5.10 Planning Balance and Sustainability

- 5.10.1 It is important to recognise the balance between the Local Plan policies relevant to the development under consideration and the position of the NPPF in respect of the LDP policies now considered to be out of date due to the lack of a 5YHLS. The tilted balance is engaged in this case and hence the LPA must give significant weight to the NPPF and its fundamental position of sustainable development, which is the defining purpose of the planning system, as a material consideration.
- 5.10.2 The key priority within the NPPF, stated at paragraphs 7 and 8, is the provision of sustainable development. This requires any development to be considered against the three dimensions within the definition of 'sustainable development' providing for an economic, social and environmental objective as set out in the NPPF.
- 5.10.3 Notwithstanding the considerations as contained in those paragraphs, it is incumbent on the LPA, where appropriate to consider, as a matter of general planning judgment, the site specific or scheme specific reasons for refusal. However, it does mean that planning applications submitted for land, which is unallocated or located outside defined settlement boundaries, as set out in local plan policies, could no longer be refused on those grounds alone.
- 5.10.4 In judging whether a residential scheme should be granted, it is necessary to set out the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall (with reasons), against the harm identified (if any) arising from the proposed development.
- 5.10.5 With regard to the three tests of sustainability, in economic terms, it is reasonable to assume that there may be some support for local trade from the development, and the additional dwelling may support local businesses within the settlement such as shops and services. This would however be limited given the scale of the proposal for one dwelling. Equally, there is no guarantee that the construction would be undertaken by local businesses, with locally sourced materials. Limited details are provided within the application to this effect. Any economic benefits would therefore be considered nominal.
- 5.10.6 In social terms the proposal would assist in supporting a strong vibrant and healthy community, as housing would be located in an area where there is access to some local facilities without the unavoidable need for private cars as it would not be remote from day-to-day services. Further, it would provide a three-bed dwelling, contributing to the greatest identified need in terms of housing type size.
- 5.10.7 In environmental terms, the accessible location of the site could offer some environmental benefits, again, by removing the unavoidable need to use private cars for access to everyday needs and services. The availability of public transport is also favourable in environmental terms.
- 5.10.8 The scheme is considered to be policy compliant in all over respects. Therefore, overall the development is considered to be sustainable, and the development would therefore be acceptable.

6. ANY RELEVANT SITE HISTORY

- **10/00470/FUL** – Proposed new dwelling and replacement garage, demolition of existing garage. Refused.

- **10/00767/FUL** – Proposed new dwelling and replacement garage, demolition of existing garage – Approved.
- **10/00768/CON** – Proposed new dwelling and replacement garage, demolition of existing garage – Grant Conservation Area Consent.

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

Name of Parish / Town Council	Comment	Officer Response
Maldon Town Council	The Town Council recommends refusal of this application as the proposed dwelling, due to its bulk, scale and location would form an incongruous, dominant feature viewed from Dykes Chase, Lodge Road and the river and due to the impact on this area of archaeological and historical interest. The proposal would result in an unneighbourly form of development close to a building of special architectural or historic interest. The proposal is therefore contrary to policies D1 and H4 of the Maldon District Local Development Plan and the guidance contained in the National Planning Policy Framework.	Noted. Please refer to section 5.3 of this report.

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

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
County Highways	No objection subject to conditions.	Noted and added as an informative.
Natural England	RAMS required.	Noted.
Ecology	No objection subject to conditions and RAMS contribution.	Noted and conditions recommended.

7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Conservation Specialist	No objection subject to conditions.	Noted and conditions recommended.
Environmental Health	No objection subject to conditions.	Noted and conditions recommended.
Tree Consultant.	No objection.	Noted and discussed in section 5.9 of this report.

7.4 Representations received from Interested Parties (*summarised*)

7.4.1 **One** letter was received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
In 2010 I was in control of developing the scheme and its construction, we had reached an agreement with the neighbour to use part of our garden for working access, this no longer applies.	This is not a material consideration in the determination of this application.
Concerns regarding the structural requirements of the larger dwelling. It has been requested that a construction method statement condition is imposed.	It is noted that a dwelling in the same location was previously approved at the site without concerns regarding the ability to construct the dwelling. Albeit the dwelling is slightly larger, it would not result in concerns being raised at this stage. A condition in respect to the construction of the dwelling has not been recommended by the Environmental Health department nor was it imposed at the time of the previous application. It is not considered that the condition is necessary to make the development acceptable.
Tree concerns	Noted. Please see section 5.9.
The block plan is incorrect	It has not been specified how the block plan is incorrect, it appears to be correct and meets the Council's validation requirements.
The elevations do not show the dwelling in context with the 'Hillyfield' or 'New Lodge'.	A streetscene elevation has been requested.
Concerns regarding proposed boundary wall.	It is noted that full details have not been supplied and therefore a condition in this respect has been recommended. The construction of the wall and safety requirements are covered by legislation that falls outside of the remit of planning.
Concerns regarding the disturbance during construction.	An informative has been added regarding the construction.
A condition to ensure any damage occurring to the neighbouring property is carried out following the completion of	As the neighbouring property falls outside of the site area this could not therefore be conditioned. In any event,

Objection Comment	Officer Response
the dwelling.	this would not be a planning matter.
We have no objection to the principle but do object to some significant aspects of the scheme and the construction process which will harm our property and the amenity of local residents.	Noted and considered above. Conditions and informatives have been recommended in order to minimise the impact of the development.

7.4.2 **One** letter was received **in support** of the application and the reasons for support are summarised as set out in the table below:

Supporting Comment	Officer Response
The Maldon Society supports this application. The site has previously gained consent for a dwelling house and this design is more attractive and fits well in the immediate surroundings.	Noted.

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: 1189.P.001, 1189.P.002(A), 1189.P.003, 1189.P.004 and 1189. P.007.
REASON: To ensure that the development is carried out in accordance with the details as approved.
- 3 Large-scale drawings of all new windows and doors – illustrating elevations at 1:20 and sections through head, cills and glazing bars – shall be submitted for approval prior to their installation. The development shall be carried out in full accordance with the submitted details and retained as such thereafter.
REASON: To ensure the external appearance of the development is appropriate having regard to the locality and surrounding heritage assets, in accordance with policies D1 and D3 of the approved Maldon District Local Development Plan and the guidance contained in the NPPF.
- 4 Details including high quality photographs of the roof tiles and bricks to be used in the development and information on their source of origin shall be submitted for approval prior to their use, the development shall be carried out using the approved materials and retained as such thereafter.
REASON: To ensure the external appearance of the development is appropriate having regard to the locality and surrounding heritage assets, in accordance with policies D1 and D3 of the approved Maldon District Local Development Plan and the guidance contained in the NPPF.
- 5 The rooflights shall be of black-finished metal and shall not protrude above the upper surface of the roof tiles.
REASON: To ensure the external appearance of the development is appropriate having regard to the locality and surrounding heritage assets, in accordance with policies D1 and D3 of the approved Maldon District Local Development Plan and the guidance contained in the NPPF.
- 6 The weatherboarding shall be of featheredged painted timber only.
REASON: To ensure the external appearance of the development is appropriate having regard to the locality and surrounding heritage assets, in

accordance with policies D1 and D3 of the approved Maldon District Local Development Plan and the guidance contained in the NPPF.

7 The weatherboarding shall be painted white, unless otherwise agreed in writing by the LPA prior to its installation and retained as such thereafter.
REASON: To ensure the external appearance of the development is appropriate having regard to the locality and surrounding heritage assets, in accordance with policies D1 and D3 of the approved Maldon District Local Development Plan and the guidance contained in the NPPF.

8 The front windows and door and door surround shall be of painted timber only and retained as such thereafter.
REASON: To ensure the external appearance of the development is appropriate having regard to the locality and surrounding heritage assets, in accordance with policies D1 and D3 of the approved Maldon District Local Development Plan and the guidance contained in the NPPF.

9 All fascia, soffits and verges shall be of painted timber only.
REASON: To ensure the external appearance of the development is appropriate having regard to the locality and surrounding heritage assets, in accordance with policies D1 and D3 of the approved Maldon District Local Development Plan and the guidance contained in the NPPF.

10 No development above ground level shall occur until details of the development details of the foul drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.

REASON: To avoid the risk of water flooding and pollution in accordance with policy D2 and D5 of the Maldon Local Development Plan (2017).

11 No development works above ground level shall occur until details of the surface water drainage scheme to serve the development shall be submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be implemented prior to the first occupation of the development. The scheme shall ensure that for a minimum:

- 1) The development should be able to manage water on site for 1 in 100 year events plus 40% climate change allowance.
- 2) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield)

You are advised that in order to satisfy the soakaway condition the following details will be required: details of the area to be drained, infiltration rate (as determined by BRE Digest 365), proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled.

Where the Local Planning Authority accepts discharge to an adopted sewer network you will be required to provide written confirmation from the statutory undertaker that the discharge will be accepted.

REASON: To avoid the risk of water flooding and pollution in accordance with policy D2 and D5 of the Maldon Local Development Plan (2017).

12 All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Survey and

Assessment (Essex Mammal Surveys, August 2021) as submitted with the planning application. The works shall be implemented in accordance with the approved details prior to the first occupation of the dwelling and shall be retained in that manner thereafter.

REASON: To conserve and enhance the habitats of protected and priority species, in accordance with policy N2 of the Local Development Plan.

13 Prior to any works above slab level a Biodiversity Enhancement Strategy shall be submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance.

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

REASON: To conserve and enhance the habitats of protected and priority species, in accordance with policy N2 of the Local Development Plan.

14 Prior to occupation of the dwelling a lighting design scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.

REASON: In the interests of protecting priority species, in accordance with policy N2 of the Local Development Plan.

15 Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no garages, extensions or separate buildings (other than ancillary outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site without planning permission having been obtained from the Local Planning Authority.

REASON: In the interests of local amenity and the character and appearance of the area, in accordance with the requirements of policies D1, D3 and H4 of the Maldon District Local Development Plan and the provision and guidance as contained within the National Planning Policy Framework.

16 Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no development under class A (enlargement, improvement or other alteration of a dwellinghouse), class B (additions etc to the roof) or class C (porches) are hereby permitted without planning permission having been obtained from the Local Planning Authority.

REASON: In the interests of local amenity and heritage assets in accordance with the requirements of policies D1, D3 and H4 of the Maldon District Local Development Plan and the provision and guidance as contained within the National Planning Policy Framework.

- 17 Full details of the provision and subsequent retention of both hard and soft landscape works on the site shall be submitted to and approved in writing by the Local Planning Authority prior to any works occurring above ground level at the application site. These details shall include:
- 1) Details of proposed schedules of species of trees, including the tree required to replace the silver birch, and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities.
 - 2) Details of the planting scheme implementation programme, including ground protection and preparation, weed clearance, stock sizes, seeding rates, planting methods, mulching, plant protection, staking and/or other support.
 - 3) Details of the aftercare and maintenance programme.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development hereby approved unless otherwise agreed in writing by the Local Planning Authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the Local Planning Authority gives its written consent to any variation.

Hard landscape works

- 4) Details of walls with brick types, construction design and dimensions, along with full boundary treatment details.
- 5) Details of paved surfacing, with materials finishing and edgings
- 6) Details of street furniture, with designs materials and dimensions

The hard landscape works shall be carried out as approved prior to the first use / occupation of any part of the development hereby approved and retained and maintained as such thereafter.

REASON: To ensure the soft and hard landscaping is appropriate to the area and in the interest of visual amenity in accordance with policies D1 and D3 of the Maldon District Local Development Plan.

- 18 Prior to the first occupation of the dwellinghouse hereby approved, the windows proposed within the east and western side elevations shall be glazed with opaque glass and of a non- openable design with the exception of a top hung fanlight (which shall be at least 1.7m above internal floor level) and the high-level windows (as annotated on the submitted plans) and shall be retained as such thereafter.

REASON: To ensure that the development is carried out in accordance with the details as approved and to protect the amenity of the neighbouring occupiers in accordance with policies D1 of the Maldon District Local Development Plan.

- 19 A scheme for a visibility screen to the eastern and western boundaries of the rear balcony shall be submitted to and approved by the Local Planning Authority. The visibly screens shall be erected prior to the first use of the balcony hereby approved and retained in perpetuity.

REASON: To ensure that the development is carried out in accordance with the details as approved and to protect the amenity of the neighbouring

occupiers in accordance with policies D1 of the Maldon District Local Development Plan.

INFORMATIVES

- 1 The public's rights and ease of passage over public footpath 57 (Maldon) shall be maintained free and unobstructed at all times. The Public Right of Way (PROW) network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath 57 (Maldon) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.

- 2 The applicant should consult the Waste and Street Scene Team at Maldon District Council to ensure that adequate and suitable facilities for the storage and collection of domestic waste and recyclables are agreed, and that the site road is constructed to accommodate the size and weight of the Council's collection vehicles.

- 3 Should the existence of any contaminated ground or groundwater conditions and/or hazardous soil gases be found that were not previously identified or not considered in a scheme agreed in writing with Maldon District Council, the site or part thereof shall be re-assessed and a scheme to bring the site to a suitable condition shall be submitted to and agreed in writing with the Local Planning Authority. A "suitable condition" means one in that represents an acceptable risk to human health, the water environment, property and ecosystems and scheduled ancient monuments and cannot be determined as contaminated land under Part 2A of the Environmental Protection Act 1990 now or in the future.

The work will be undertaken by a competent person in accordance with the Essex Contaminated Land Consortium's Land Contamination Technical Guidance For Applicants and Developers and UK best-practice guidance.

- 4 The applicant should ensure the control of nuisances during construction works to preserve the amenity of the area and avoid nuisances to neighbours
 - i. No waste materials should be burnt on the site, instead being removed by licensed waste contractors;
 - ii. No dust emissions should leave the boundary of the site;
 - iii. Consideration should be taken to restricting the duration of noisy activities and in locating them away from the periphery of the site;
 - iv. Hours of works: works should only be undertaken between 0730 hours and 1800 hours on weekdays; between 0800 hours and 1300 hours on Saturdays and not at any time on Sundays and Public Holidays.

Where it is necessary to work outside of these recommended hours the developer and builder should consult the local residents who are likely to be affected and contact the Environmental health Team for advice as soon as the work is anticipated.

- 5 Under Section 23 of the Land Drainage Act 1991, prior written consent from the Lead Local Flood Authority (Essex County Council) is required to construct any culvert (pipe) or structure (such as a dam or weir) to control, or alter the flow of water within an ordinary watercourse. Ordinary watercourses include ditches, drains and any other networks of water which are not classed as Main River. If you believe you need to apply for consent, further information and the required application forms can be found at www.essex.gov.uk/flooding. Alternatively you can email any queries to Essex County Council via watercourse.regulation@essex.gov.uk.

Planning permission does not negate the requirement for consent, and full details of the work you propose will be required at least two months before you intend to start.

- 6 It is recommended that the developer seeks to discharge conditions at the earliest opportunity and in many respects it would be logical to do so before development commences. This is particularly the case with conditions which begin with the wording "no development works above ground level shall occur until... " because this will help to ensure that the developer does not go to the risk of incurring costs from commencing development and then finding issues which are difficult to comply with or which may then require the correction of works that have been undertaken.
- 7 When a sewage treatment plant or septic tank is installed the applicant must ensure that the plant and receiving watercourse complies with DEFRA's general binding rules. Please note that if the general binding rules cannot be complied with you may need to apply for an Environmental Permit to use the system. Please see www.gov.uk for more information on General binding rules for small sewage discharges.
- 8 The applicant must ensure that the work is undertaken in accordance with the Control of Asbestos Regulations 2012 and its Approved Code of Practice which is regulated by the Health and Safety Executive (HSE). Under this Duty holders must complete a risk assessment and an asbestos management plan prior to the commencement of the works. The risk assessment will determine whether the works are licensed, notifiable non-licensed work or non-licensed. It will also require that prior to demolition a refurbishment / demolition survey will be required to ensure that nobody will be harmed, and the works will be undertaken in the correct way. For further information please see the HSE's website.

It is also recommended that the council's Building Control department is notified of any demolition in order that requirements can be made under the Building Act 1984.