



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
6 APRIL 2022**

Application Number	21/01240/VAR
Location	Paton Place, Nipsells Chase, Mayland, Essex, CM3 6EJ
Proposal	Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)
Applicant	Mr & Mrs Kenny Paton
Target Decision Date	15/02/2022
Case Officer	Nicola Ward
Parish	MAYLAND
Reason for Referral to the Committee / Council	Councillor / Member of Staff

1. **RECOMMENDATION**

APPROVE subject to the conditions (as detailed in Section 8 of this report).

2. **SITE MAP**

Please see overleaf.

Paton Place, Nipsells Chase, Mayland
21/01240/VAR



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Maldon District Council 100018588 2014



MALDON DISTRICT COUNCIL

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Scale:	1:5,000
Organisation:	Maldon District Council
Department:	Department
Comments:	SE Area Planning Committee
Date:	28/03/2022
MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 Planning permission is sought for the variation of condition 2 and the removal of condition 8 on approved planning permission 21/00628/FUL which approved the construction of a single storey self build live/work dwelling.

Condition 2 states:

The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1056/03 Rev A, 1056/04, 1056/05, 1056/06, 1056/07, Arboricultural Method Statement 27 September 2021.

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

- 3.1.2 The proposed amendments to the approved scheme are as follows:

- Enlargement of the veranda to the front elevation
- New window opening to serve the office
- New door opening to serve the utility room
- The blocking up of the existing garage door and create a window and door openings to serve the utility room

Condition 8 states:

The garage hereby permitted shall not be used other than for the accommodation of private motor vehicles or for any other purpose incidental to the enjoyment of the dwellinghouse as such and shall not at any time be converted or used as habitable space/living accommodation.

REASON - To ensure suitable parking is provided and in the interests of the amenity of the site, in accordance with policies D1 and T2 of the Maldon District Local Development Plan.

3.2 Conclusion

- 3.2.1 Overall, the amendments to the scheme are relatively minor, affecting only the elevations and fenestration, and as such would not detract from the design of the scheme as approved. There is no increase in the size or scale of the building or any part thereof. The removal of condition 8, for use of the purposes proposed, would not impact on the use of the garage for purposes incidental to the dwellinghouse. The proposal is therefore in accordance with policies D1, D3, D5 and H4 of the LDP and the guidance contained within the 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:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications

- 54-58 Planning Conditions and Obligations
- 104-113 Promoting sustainable transport
- 119-123 Making effective use of land
- 126-136 Achieving well-designed places
- 152 – 169 Meeting the challenge of climate change, flooding and coastal change

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
- D5 Flood Risk and Coastal Management
- H1 Affordable Housing
- H4 Effective Use of Land
- N2 Natural Environment and Biodiversity
- I1 Infrastructure and Services
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- Car Parking Standards
- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Maldon District Design Guide (MDDG)

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 Planning permission is sought for the variation of condition 2 and the removal of condition 8 on approved planning permission 21/00628/FUL which granted permission for the construction of a single storey self build live/work dwelling.

5.1.3 The principle of a live/work dwelling at the application site was established under the terms of application 21/00628/FUL. The determining factors in the assessment of this application are whether the proposed alterations are acceptable in terms of the visual impact on the character and appearance of the area and site, and any resulting impacts on the neighbouring properties and the provision of car parking.

5.1.4 Whilst it is noted that this application is a variation of conditions application and additional accommodation and design features are proposed, it is not considered the proposed amendments result in development deviating from the original description.

5.1.5 Given the above assessment it is considered that the variation to the development, previously approved under the terms of 21/00628/FUL, is acceptable in principle subject to the material considerations detailed below.

5.2 Design and Impact on the Character of the Area

5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.

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

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

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

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

- 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.

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

5.2.5 In addition, policy H4 requires all development to be design-led and to seek to optimise the use of land having regard, among others, to the location and the setting of the site, and the existing character and density of the surrounding area. The policy also seeks to promote development which maintains, and where possible enhances, the character and sustainability of the original building and the surrounding area; is of an appropriate scale and design that makes a positive contribution to the character of the original building and the surrounding area.

5.2.6 The proposed amendments to the scheme include the addition of one window within the north elevation to serve the proposed office, one new door opening within the south elevation to serve the proposed utility room, enlargement of the proposed veranda to the front elevation, blocking up the garage door and inserting one window opening and one door opening within the north elevation.

5.2.7 It is considered that the external changes to the garage are minor and the outlook of the proposed window and door openings would match the appearance of the other

window and door opening that have been approved under 21/00628/FUL. Therefore it is considered that the proposed garage amendments will not have an adverse impact of the appearance of the dwellinghouse or the locality.

- 5.2.8 The enlargement of the veranda would result in an additional projection of 1m, taking the depth of the veranda from 4 m to 5 m. The overall outlook of the veranda would not change therefore, it is not considered that the proposed additional projection would result in demonstrable harm to the character and appearance of the dwellinghouse or the locality.
- 5.2.9 Both the insertion of one window within the north elevation to serve the office and one new door opening within the south elevation are minor in detail and would not affect the character and appearance of the dwellinghouse. Therefore, the additional openings are considered to be acceptable. The removal of Condition 8 would not result in the use of that part of the dwelling in a manner that would not be an incidental use, or not inconsistent with the residential use of the dwelling. A utility room is normally part and parcel of dwelling use. Furthermore, parking can be comfortably accommodated within the site and the applicant has indicated that additional exterior parking space in lieu of the garage will be created.
- 5.2.10 Overall, it is considered that the amendments to the previously approved development under the terms of application 21/00628/FUL, by reasons of the scale, design and appearance would not result in a demonstrable harm to the character and appearance of the site or the locality in accordance with policies D1 and H4 of the LDP.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG.
- 5.3.2 There were no concerns raised in terms of the impact of the proposal on residential amenity at the time of the previous application.
- 5.3.3 The dwelling known as Riversleigh lies over 40m to the south of the site and the dwelling known as Orchard House lies over 80m to the north of the site. Whilst it is noted that the amendments include provision for additional openings, due to the significant separation distance, it is not considered that the proposed amendments would result in an impact on the residential amenity of neighbouring sites by way of a loss of light or a loss of privacy.

5.4 Access, Parking and Highway Safety

- 5.4.1 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.
- 5.4.2 The proposed in parking standards require a single garage to measure 3m wide and 6.7m deep internally. The existing garage which measures 5.9m and 6.7m therefore, it marginally does not meet the standards contained within the Councils parking

standards. However, it is considered that the garage could accommodate a reasonable size car.

- 5.4.3 The proposed dwelling has two bedrooms, and therefore two parking spaces are required. Whilst the proposal includes the loss of a garage there is a parking area to the north which could accommodate at least 2 car parking spaces. In addition, a condition requiring two parking spaces measuring 2.9m wide and 5.5m deep to be provided at the site as well as a suitable 6m turning area. These spaces are required to remain available for the parking of cars in perpetuity.
- 5.4.4 There are no alterations proposed to the approved vehicular access point or track and therefore, no concerns in respect to highway safety are raised. Therefore, the proposed amendments are considered to be acceptable.

5.5 Use of Planning Conditions – The Six Tests

- 5.5.1 The PPG (Use of Planning Conditions) states that conditions can enhance the quality of a development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The NPPF and PPG make it clear that planning conditions should satisfy the following six tests; (1) necessary, (2) relevant to planning, (3) relevant to the development, (4) enforceable, (5) precise and (6) reasonable in all other respects.
- 5.5.2 From the justification provided by the applicant, and considering the above tests, it would appear that the argument is whether the condition fails the first test, e.g. whether it is necessary or not. Given the above assessment, it has been demonstrated that condition 8 is not considered necessary for the development to be acceptable and proceed. The condition is relevant to planning and to the development and therefore meets the second and third tests. The condition is enforceable, and therefore meets the fourth test. The condition is precise and, had the condition continued to be considered necessary, it is reasonable in all other respects.
- 5.5.3 Therefore, Condition 8 fails the first test in its current form, and it is considered justified that the condition should be removed on the basis of the reasons set out in 5.2.9 above.

6. ANY RELEVANT SITE HISTORY

- **17/00736/FUL** - Proposed construction of a new detached single storey dwelling – Withdrawn.
- **17/01043/AGR** - Prior notification for permeable hardstanding, with edging stones. – Refused.
- **17/01060/DD** - T1 - Elm - Fell. T2 - Wild Pear - Fell. T3 - Wild Pear - Fell. Can works proceed under 5-day D&D **5 Day Notice** - Approved.
- **18/00816/HRN** - Hedgerow removal notice for clearance either side of entrance. Area 1 (Southern side) - 2.5m. Area 2 (Northern side) - 3m. – Allow.
- **21/00102/FUL** - Construction of a single storey dwelling – withdrawn.

Applications within the wider site:

- **18/00280/FUL** - Construction of an apple storage barn – Approved.
- **18/00839/FUL** - Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses – Approved.
- **20/00345/FUL** - Variation of condition 2 and 8 on approved planning permission 18/00839/FUL (Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses) – Approved.
- **20/00733/FUL** - An equestrian arena to ride in the wet winter months. The arena is to be made of an equestrian sand mix. – Approved.
- **21/00628/FUL** - Proposed construction of a single storey self build live/work dwelling – Approved.

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Mayland Parish Council	No response.	N/A

8. **PROPOSED CONDITIONS**

- 1 The development hereby permitted shall be begun before three years from the 15 October 2021.
REASON - To comply with Section 91(1) The Town & Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1056/03 Rev B, 1056/04A, 1056/05, 1056/06A, 1056/07A, Arboricultural Method Statement 27 September 2021.
REASON - To ensure that the development is carried out in accordance with the details as approved.
- 3 Prior to their use in the development hereby approved, written details and photographs of the materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as approved.
REASON - In the interest of the character and appearance of the area in accordance with policy D1 of the approved Local Development Plan and guidance contained within the National Planning Policy Framework.
- 4 Full details of both hard and soft landscape works 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, for example:
 - i. Proposes finished levels contours;
 - ii. Means of enclosure;
 - iii. Car parking layouts;

- iv. Other vehicle and pedestrian access and circulation areas;
- v. Hard surfacing materials;
- vi. Minor artefacts and structures (e.g furniture, refuse or other storage units, lighting);
- vii. Proposed and existing functional services above and below ground (e.g drainage power, communications cables, pipelines etc, indicating lines, manholes, supports);
- viii. Soft landscaping - Details of proposed schedules of species of trees and shrubs to be planted and planting layouts.

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.

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

REASON - In the interest of the character and appearance of the area, in accordance with policies S8, D1 and H4 of the approved Maldon District Local Development Plan and the National Planning Policy Framework.

- 5 No works above ground level shall take place until details of the siting, height, design and materials of the treatment of all boundaries including existing hedging, gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first occupation of the development to which it relates and be retained as such thereafter.

REASON - In the interest of local amenity and in accordance with policies, S8, D1 and H4 of the Maldon District Local Development Plan and the National Planning Policy Framework.

- 6 Prior to occupation of the development, details of cycle parking shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the development.

REASON - To ensure appropriate facilities are provided at the site to encourage alternative modes of transport, in accordance with policies D1 and T2 of the Maldon District Local Development Plan and the National Planning Policy Framework.

- 7 Prior to the first occupation of the development hereby approved, two parking spaces measuring 2.9m wide and 5.5m deep shall be provided at the site as well as a suitable 6m turning area. Furthermore, a fast-charging point shall be provided adjacent to at least one parking space. These spaces shall remain available for the parking of cars in perpetuity.

REASON - To ensure suitable parking is provided, in the interests of parking and highway safety, in accordance with Policy T2 of the Maldon District Local Development Plan.

- 8 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:
- i. The development should be able to manage water on site for 1 in 100-year events plus 40% climate change allowance.
 - ii. 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 - In the interests of protecting against pollution and contamination and ensuring appropriate drainage, in accordance with policy D2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.

- 9 No development works above ground level shall occur until 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 - In the interests of protecting against pollution and contamination and ensuring appropriate drainage, in accordance with policy D2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.

- 10 The public's rights and ease of passage over public footpath No.17 (Mayland) shall be maintained free and unobstructed at all times.

REASON - In the interests of highway and pedestrian safety, in accordance with policies D1 and T2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.

- 11 All loading/unloading/reception and storage of all building materials and the manoeuvring of all vehicles, including construction traffic shall be undertaken within the application site, clear of the public highway.

REASON - To ensure appropriate parking is retained at the site in accordance with the Maldon District Vehicle Parking Standards SPD, policies

D1 and T2 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.

- 12 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 incidental outbuildings not exceeding 10 cubic m in volume) shall be erected within the site without planning permission having been obtained from the local planning authority.
REASON - To protect the character and appearance of the site and the surrounding area, in accordance with policies S8, D1 and H4 of the approved Maldon District Local Development Plan and the National Planning Policy Framework.

- 13 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 dormer window or other form of addition or opening shall be constructed in the roof of the building hereby permitted without planning permission having been obtained from the local planning authority.
REASON - To protect the character and appearance of the area, in accordance with policies, S8, D1 and H4 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.

- 14 All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Extended Phase 1 Ecological Habitat Survey Report (Hone Ecology, July 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

REASON - In the interests of ecology and preserving protected species, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.

- 15 Prior to works above ground level, a Biodiversity Enhancement Strategy for Protected and Priority species 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 (where relevant).

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

REASON - In the interests of ecology and preserving protected species, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.

- 16 Prior to the installation of any external lighting, 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 (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) 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 ecology and preserving protected species, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.

- 17 All tree works, including tree protection shall be carried out in accordance with the Arboricultural Method Statement dated 27 September 2021, including the identified schedule of supervision visits to ensure protection measures are in place and are being maintained and adhered to.

REASON - In the interests of the protection of the trees on the site, in accordance with policies D1 and N2 of the Maldon District Local Development Plan.