



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
CENTRAL AREA PLANNING COMMITTEE
27 July 2022

MEMBERS' UPDATE

AGENDA ITEM NO.5

Application Number	21/00540/OUT
Location	Land At Blackwater Trading Estate, The Causeway, Maldon, Essex
Proposal	Outline planning permission with the matters of access, layout and scale for consideration for the erection of warehouse units (Class B8) with associated vehicle parking & servicing.
Applicant	Aquila EHS Ltd
Agent	Blenheim Consultancy Services Ltd
Target Decision Date	27.07.2022
Case Officer	Anna Tastsoglou
Parish	Maldon North
Reason for Referral to the Committee / Council	Major application

5. MAIN CONSIDERATIONS

5.1.1. Following rereferral of the application on the 29th June 2022 at Central Area Planning Committee a site visit with Members was carried out on 20th July 2022. A response from the Environmental Health Officer and a note from the Applicant have been received in relation to the matters raised at committee.

5.1.2. The main considerations that Members have deferred the application were the following:

- Provision of a noise attenuation barrier
- Impact on residential amenity due to noise
- Explore the provision of an improved footpath along Heybridge Creek
- Provision of a cycleway/footway to connect with the existing network having regard to the Central Area Master Plan.

5.1.3. A response to the above matters is provided below.

5.1 Principle of Development

5.1.4. With regard to the accessibility of the North Quay Regeneration area and in particular the application site, as noted above policy S5 requires development to maintain and encourage the wider use of walking and cycling across the area through an improved

public realm and improved linkages and connectivity between the town centre and Causeway. This is also supported in the Maldon and Heybridge Central Area Masterplan. Furthermore, policy T1 states that the provision of sustainable transport will be ensured by supporting measures which *inter alia* will 1) secure provision for sustainable transport in new development and 2) Give priority to pedestrians, wheelchairs, cyclists and public transport over private vehicles. The North Quay Regeneration Development Brief SPD points out the need for pedestrian and cycle connectivity.

- 5.1.5. One of the reasons Members have requested deferral of the application was to explore the possibility of the provision of an improved footpath along Heybridge Creek. This land is outside the Applicant's control and therefore, any contribution to assist in an improved footpath would require to be secured through a S106 agreement.
- 5.1.6. According to the PPG *"Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:*
- *necessary to make the development acceptable in planning terms;*
 - *directly related to the development; and*
 - *fairly and reasonably related in scale and kind to the development."*
- 5.1.7. Therefore, in order for a planning obligation to be considered, it should meet the above three tests. It is noted that although an informal footpath runs along Heybridge Creek, this is not a formal public right of way. The existing public right of way links Bates Road with Battle Rise, but it does not run along the southern boundary of the site. Officers have assessed this matter and consider that a planning obligation securing a contribution for improvements of the footpath along Heybridge Creek would go beyond what is reasonably related to scale and kind of the proposed development and they would not be necessary to make the development acceptable in planning terms. As a result, officers maintain their position that such obligation would be unreasonable to be sought as it would not meet the three tests of planning obligations.
- 5.1.8. However, it is considered necessary that sufficient and safe pedestrian link is provided utilising the existing network having regard to the Central Area Master Plan. Although a pedestrian/cycle connection between the existing network and the site is not shown on the off-road walking and cycling opportunities plan in the North Quay Regeneration Development Brief SPD, this is due to the unknown opportunities of the redevelopment of the site at the time of drafting the brief. It is noted that the development of the Blackwater Retail Park has realised necessity of an off-road connection for pedestrians and cyclists and a pedestrian/cycle path has been secured through approval of application 14/00861/FUL along the northern boundary of Aldi. Whilst this path appears to be fenced off and made of materials that are not pedestrian or cyclist friendly, it is noted that compliance of the development with the approved plans is secured through condition 5. The Applicant also states that there is no mechanism to secure public use of the existing path running along Aldi. However, it is noted that the Council is aware of the breach of condition and therefore, it is in its power to take enforcement action should this is considered expedient. The application site is located around 85 metres to the southeast of this path and it is considered reasonable that pedestrian/cyclist connection between the existing pedestrian/cycle path and the application site is provided. This would allow a shorter pedestrian connection of the site with the bus stops along the Causeway and it will

also link the application site with the existing safely cycle network, in accordance with the requirements of policy S5 and the guidance contained in the Maldon and Heybridge Central Area Masterplan and the North Quay Regeneration Development Brief SPD.

- 5.1.9. Although the Applicant still resists in the provision of a pedestrian link and states that it cannot be provided along this section of the estate road, no evidence demonstrating that this would be physically impossible has been submitted to the Local Planning Authority. This section of the one-way estate road appears to be wide enough to be used for dual purposes (pedestrian/cyclist link and vehicle access) and it is also approximately 2 metres wider than the other one-way roads within the industrial estate. It is therefore considered that insufficient justification as to why this section of the estate access road cannot be used as a pedestrian/cyclist link.
- 5.1.10. On the basis of the above, it is considered that a Grampian condition is imposed, as previously suggested to secure a footway/cycleway link to the existing footway/cycleway along Aldi. The condition is included in the list of conditions included in the Updated Report submitted for determination.

5.2 Impact on Residential Amenity

- 5.2.1. At the committee meeting on 29th June 2022 Members raised concerns regarding the impact of the development on residential amenity and in particular in relation to impacts caused by noise. The installation of an acoustic barrier was discussed and requested to be explored as a mitigation option. Reduction of the operational hours was also discussed during the site visit, for the proposed units adjacent to the creek (until F and G), due to the position of the loading bays and turning facilities adjacent to Heybridge Creek. Provision of noise attenuation measures on the proposed buildings were also discussed during the site visit.
- 5.2.2. Since the deferral of the application, a Note has been submitted by the Applicant reiterating the current lawful use of the site, which is open storage and distribution (B8 use class) that can lawfully operate 24/7. It is also noted that the application is accompanied by a noise report which has assessed noise impact of the development on the properties on Battle Rise and Sadds Warf. These impacts are concluded to be acceptable with reference to accepted standards. It has also been highlighted by the Applicant that the adjoining Recycling facility does have an acoustic screen but this activity has no limit on hours of operation and is much closer to Battle Rise.
- 5.2.3. The Council's Environmental Health Officer has been re-consulted following the deferral of the application and has been notified about the concerns raised by Members regarding the noise impact of the proposed development, as well as the potential mitigation measures discussed. The response received by the Environmental Health Officer is as follows:

“A noise impact assessment supporting the application, reports that noise from the intended use, using worst case scenarios, is unlikely to impact on the closest residential properties at Sadds Wharf and Battle Rise. Based on the findings of the assessment and reduction in operational hours from 24/7 to 7am – 11pm, it would not be reasonable or justifiable to require an attenuation barrier or acoustically designed units in this situation. A reduction in hours from 11pm to 10pm would be constructive however, this would intensify the use during the day time.”

- 5.2.4. Based on the response received by the Environmental Health Officer and taking into account the current lawful use of the site and lawful hours of operation, it is considered that there is no demonstrable harm arising from the proposed

development that would justify the imposition of a condition regarding installation of an acoustic barrier, or acoustically designed units. For a condition to be imposed it should meet the six tests for planning conditions (necessary, precise, enforceable, relevant to planning, relevant to the development to be permitted and reasonable in all other respects). It is therefore considered that the imposition of a condition to secure the provision of an attenuation barrier or details of acoustically designed buildings would be unreasonable and unnecessary and therefore, they would not meet the 6 tests of conditions.

- 5.2.5. With regard to the proposed further reduction of the working hours, although consideration has been given to the layout of the development, with loading bays for units F and G and lorry turning facilities being positioned adjacent to Heybridge Creek, it is noted that the site is currently used as open storage and distribution and therefore, activity in this area, is currently taking place at any time of the day. Although the proposed development, which proposes the erection of buildings to be used for storage and distribution (B8 use class) is likely to generate a moderate increase in trips, it is considered that the current use of the site can fluctuate and can be more intense at times. The fact that materials/products would be stored inside buildings would potentially reduce the impact in terms of noise. As a result, it is considered that the further restriction of the working hours would not be reasonable to be imposed.

5.3 Conclusion

- 5.2.6. For the reasons stated above, officers consider the development, subject to the imposition of conditions as set out in the officer's report, would be acceptable in terms of its impacts on residential amenity. No further conditions are considered necessary to be imposed. Furthermore, officers consider that a contribution towards improvement to the footpath along Heybridge Creek would not meet the three tests of planning obligations.