



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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to  
**NORTH WESTERN AREA PLANNING COMMITTEE  
5 OCTOBER 2022**

<b>Application Number</b>	<b>22/00482/OUT</b>
<b>Location</b>	Golf Driving Range, Burnham Road, Woodham Mortimer
<b>Proposal</b>	Outline application with all matters reserved for up to 18 dwellings with a provision for affordable housing.
<b>Applicant</b>	Mr Ian Moss
<b>Agent</b>	Mr OToole – Elegant Architectural Ltd
<b>Target Decision Date</b>	12.10.2022
<b>Case Officer</b>	Devan Hearnah
<b>Parish</b>	<b>WOODHAM MORTIMER</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call in by Councillor M F L Durham Policies H5 (para 5.37) and H4

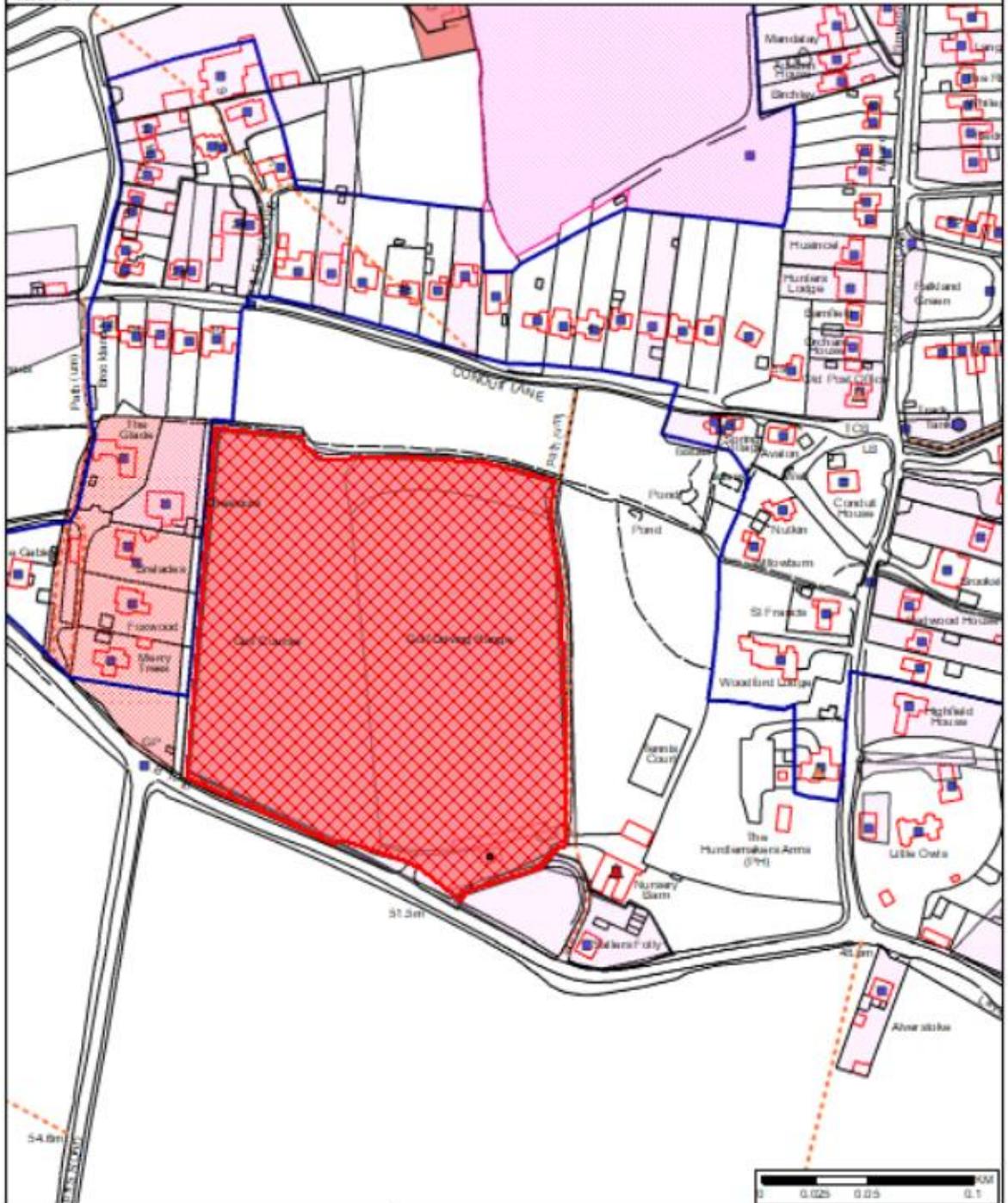
1. **RECOMMENDATION**

**REFUSE** subject to the reasons set out in section 8.

2. **SITE MAP**

Please see below.

22/00482/OUT  
NWAC



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	<p>Organisation: Maldon District Council</p>	<p>Department: Department</p>
	<p>Comments: Not Set</p>	<p>Date: 13/09/2022</p>
	<p>MSA Number: 100018588</p>	

### **3. SUMMARY**

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

##### Application site

- 3.1.1 The application site is a parcel of land amounting to 3.4 hectares in size. The site is currently used as a golf driving range, pitch, and putt course, together with the sales of bottled gas. A single storey building occupies the site, which is used as a reception area and for the sale of the gas bottles, and thirteen covered driving bays. The remainder of the site is laid to grass and is surrounded by netting, trees, and hedgerow.
- 3.1.2 The site is located on the northern side of Burnham Road in a rural location outside but adjacent to the settlement boundary of Woodham Mortimer. The east and western boundaries of the site abut residential development and open and undeveloped land lie to the north and south (opposite) of the site. A public footpath, which runs in a north to south direction, is located along the entire eastern boundary of the site.
- 3.1.3 The application site is accessed via Burnham Road. The access to the site serves two existing dwellings to the east of the site 'Nursery Barn' and 'Salters Folly', which is a grade II\* listed building.

##### Proposal

- 3.1.4 Outline planning permission with all matters reserved is sought for the demolition of the building and replacement of the driving range and pitch and putt with eighteen new detached dwellings with garages and parking. The housing mix is stated to form a consideration for Reserved Matters, but the Design and Access Statement (DAS) states that there will be a mix of two, three and four-bedroom dwellings, with eight of the eighteen to be provided as affordable units (44.4%).
- 3.1.5 Although outline in nature, an indicative layout plan has been submitted with the application. The plan shows the residential development sited predominantly on the western side of the site, with some dwellings located within the northeast and an area of public open space sited within the south/southeast. The dwellings are shown in a ribbon style of development along three access roads, with the exception of two of the plots (4 and 5) which would be accessed off of private driveways on the western side of the access road, within the southern part of the site, facing south. Three more dwellings would be located further north on the western side of the access route. Plots 6-11 would be sited within the most western part of the site and plots 12 to 18 would face south within the most northerly section of the site. To the rear of those would be a Sustainable Drainage feature (SuDS). Within the northwest corner of the site would be a Treatment Plant.
- 3.1.6 The indicative layout plan shows that additional tree planting will be provided to the boundaries of the site and there is planting proposed within the site itself, including within the public open space. However, the Tree Constraints Plan shows that a number of trees and tree groups will be required to be removed from within the site itself, particularly within the western parcel.
- 3.1.7 The application is supported by a Planning Statement, stating that 40% of the proposed development would be affordable housing (amounting to 10 dwellings) or

alternatively a commuted sum (developer contribution) of an amount to be agreed for any proportion or for the entire amount of affordable housing.

#### Background Information

- 3.1.8 The application forms a resubmission following the refusal of application reference 21/00693/OUT, which proposed outline planning permission with the matter of access for consideration or the demolition of the building and replacement of the driving range and pitch & putt with up to 25 new one and two-bedroom single storey dwellings and public open space with an equipped play area. The application was refused for the following reasons:
1. The application site is in an unsustainable and rural location and remote from essential support facilities and community services; is inaccessible by a range of transport modes and is located where the need to travel would be maximised and the use of sustainable transport modes would be minimised and would therefore represent an unsustainable form of development, failing in relation to the social strand of sustainability. Therefore, the proposal conflicts with the National Planning Policy Framework's "presumption of sustainable development" and policies S1, S8 and T2 of the Maldon District Local Development Plan.
  2. The proposed development would fundamentally alter the open character of the south western edge of the village. The provision of twenty-five unjustified residential dwellings on this site currently used as golf driving range / pitch and putt would fail to provide visual enhancement to the wider rural locality, representing the encroachment of built form into the rural site and sprawl of development into the countryside. The layout of the access road is in stark contrast to the existing development within Woodham Mortimer and is considered to contribute to the harm of the proposal. Therefore, the proposal fails on the environmental stand of sustainability, in conflict the National Planning Policy Framework's "presumption of sustainable development" and policies S1, S8, D1, and H4 of the Maldon District Local Development Plan and guidance contained within the National Planning Policy Framework
  3. The proposed residential development would result in the unjustified loss of an employment use, community facility, tourism facility and sports and leisure facility. It has not been satisfactorily justified or evidenced that the sites present use significantly harms the character and amenity of the area, the proposed use would be a greater benefit to the community, or that the site has been marketed for sale or rent and that there is a confirmed lack of interest. Further, it has not been demonstrated that the existing use is no longer viable, that there will be no significant loss of tourism facilities or that the land is surplus to requirements to meet local need or that alternative provision in the locality can meet the needs. Therefore, the proposal conflicts with policies E1, E3, E5 and N3 of the Maldon District Local Development Plan and guidance contained within the National Planning Policy Framework.
  4. In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990, the development makes no contribution for affordable housing to meet the identified need in the locality, the necessary financial contribution towards Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy and NHS services, the management and maintenance of the public open space and would fail to secure the provision of residential travel packs for sustainable modes of transport, required for the future occupiers of the site contrary to Policies S1, D1, H1 and I1 of the Maldon District Local Development Plan and Government advice contained within the National Planning Policy Framework.

3.1.9 It is also relevant to note that there was an application which was also refused, prior to the previous submission (20/00675/OUT), which was refused for similar reasons to the above. Prior to this application 17/00286/OUT was also refused in June 2017. That application proposed to demolish the existing building, cease the driving range and pitch and putt uses and erect eight two-storey detached dwellinghouses across the site. The application was refused for two reasons and was decided at a time when the current Local Development Plan (LDP) was at a draft stage, prior to its approval. The two reasons for refusal in respect of that application were:

1. *'The application site is in a rural location outside of the defined settlement boundary for Woodham Mortimer where policies of restraint apply. The Council can demonstrate a five-year housing land supply to accord with the requirements of the National Planning Policy Framework. The site has not been identified by the Council for development to meet future needs for the District and does not fall within either a Garden Suburb or Strategic Allocation for growth identified within the Local Development Plan to meet the objectively assessed needs for housing in the District. The proposed development would fundamentally alter the open character of the south western edge of the village. The provision of eight residential dwellings on this site currently used as golf driving range / pitch and putt would fail to protect or enhance the tranquillity, amenity, and traditional quality of the rural area by introducing unacceptable built form into a site that currently contributes to, the rural quality of the area. Further, the site is located in an unsustainable location and therefore, the construction of new dwellings located some distance away from community services and essential support facilities, and inaccessible by a range of transport would mean that the future occupiers of the site would be heavily reliant on the use of private cars. The proposal would be contrary to policies S1, H1, T1, T2, BE1, CC6 of the adopted Maldon District Replacement Local Plan; policies S1, S8, T1, T2, D1, H4 of the Maldon District Local Development Plan; and the core planning principles and Government advice contained within the National Planning Policy Framework.'*
2. *The proposed residential development would result in the loss of employment land and tourism provision which is currently in use. No justification or evidence has been provided for the loss of this land by way of evidence that the existing use demonstrably harms the character and appearance of the area, the proposed use would be of greater benefit to the community, or that the site has been marketed for sale or rent and that there is a confirmed lack of interest. The development proposal would therefore have an adverse impact on the limited supply of employment generating land, contrary to policy e6 of the adopted Maldon district replacement local plan, policies e1 and e5 of the Maldon district local development plan, and government.'*

3.1.10 The main changes to the scheme when compared to the previously refused scheme (21/00693/OUT) are as follows:

- The number of dwellings proposed has reduced from 25 to 18.
- Access no longer forms a matter for consideration
- The indicative layout has been amended.
- An updated Planning Statement has been submitted, the content of which is discussed in this report.
- The proposal no longer provides specific reference to bungalows.

## **3.2 Conclusion**

- 3.2.1 This application represents a re-submission following the refusal of application 21/00693/OUT. The amendments to the scheme are detailed within paragraph 3.1.10. Having taken all the material planning considerations into account, it is not considered that the changes to the scheme have overcome the previous concerns raised.
- 3.2.2 The application site is located in an unsustainable location where future occupiers of the proposed dwellings would be heavily reliant on motor vehicle transport, contrary to the National Planning Policy Framework's (NPPF) "presumption of sustainable development" and policies S1, S8 and T2 of the LDP.
- 3.2.3 Further to the above, the proposed development would fundamentally alter the open character of the south western edge of the village. The provision of eighteen unjustified residential dwellings on this site currently used as a golf driving range / pitch and putt would fail to provide visual enhancement to the wider rural locality, representing the encroachment of built form into the rural site and sprawl of development into the open countryside. The layout of the access road is in stark contrast to the existing development within Woodham Mortimer and is considered to contribute to the harm of the proposal. Therefore, the proposal would fail to comply with policies S8, D1 and H4 of the Maldon District Local Development Plan (MDLDP).
- 3.2.4 The proposed residential development would also result in the unjustified loss of an employment use, community facility, tourism facility and sports and leisure facility. It has not been satisfactorily justified or evidenced that the loss of the important and beneficial current use complies with the criteria set out in policies E1, E3, E5 and N3 of the MDLDP.
- 3.2.5 Lastly, in the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 the development makes no contribution for affordable housing, the necessary financial contribution towards Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) and National Health Services, the management and maintenance of the public open space and would fail to secure the provision of residential travel packs for sustainable modes of transport, required for future occupiers of the site.
- 3.2.6 Whilst it is noted that there are some benefits arising from the scheme, it is not considered that those benefits would be sufficient to outweigh objections highlighted above.

## **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
- 84- 85 Supporting a prosperous rural economy
- 92 – 103 Promoting healthy and safe communities
- 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
- 174-188 Conserving and enhancing the natural environment

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

- S1 Sustainable Development
- S2 Strategic Growth
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change and Environmental Impact of New Development
- D5 Flood Risk and Coastal Management
- E1 Employment
- E2 Retail Provision
- E3 Community Services and Facilities
- E5 Tourism
- H1 Affordable Housing
- H2 Housing Mix
- H4 Effective Use of Land
- N2 Natural Environment and Biodiversity
- N3 Open Space
- I1 Infrastructure and Services
- T1 Sustainable Transport
- T2 Accessibility

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

- National Planning Policy Framework (NPPF)
- Maldon District Design Guide SPD (MDDG) (2017)
- Maldon District Vehicle Parking Standards SPD (VPS)

### **5. MAIN CONSIDERATIONS**

#### **5.1 Principle of Development**

- 5.1.1 The Council is required to determine planning applications in accordance with its adopted Development Plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) and Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990).
- 5.1.2 The previously refused applications 21/00693/OUT, 20/00675/OUT and 17/00286/OUT were refused in part based on the unsustainable location of the site which would result in the future occupiers of the dwelling being heavily reliant on the use of private cars. When the most recent previous application was refused the Council could not demonstrate a Five-Year Housing Land Supply. This still remains the case in the consideration of this application.
- 5.1.3 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).

- 5.1.4 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 - 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 74)*

- 5.1.5 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 5-year housing land supply cannot be demonstrated (*Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC* [2017] UKSC 37).
- 5.1.6 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'.
- 5.1.7 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.
- 5.1.8 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 is 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.

5.1.9 Paragraph 79 of the NPPF states that:

*'To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.'*

5.1.10 Planning permission is sought for the construction of eighteen dwellings outside of the settlement boundary of Woodham Mortimer. Woodham Mortimer is a village classified as a 'Smaller Village' within the district which is described within policy S8 of the LDP as a 'defined settlements containing few or no services and facilities, with limited or no access to public transport, very limited or no employment opportunities.'

5.1.11 As part of the previous application, it was considered that in social terms, the development should assist in supporting a strong vibrant and healthy community. Whilst the site is in close proximity to the development boundary, it was not considered to be within an accessible location and strong concerns were raised in this respect.

5.1.12 It was noted that there are no shops, services or bus stops readily available within the immediate surrounding area. The closest bus stop was noted to be around 0.4 miles from the application site walking via the public footpath, which was found to be the only safe route from the application site. The bus stop, which is located on Conduit Lane is serviced by the D1 and D2 buses said to provide an extremely limited service to Maldon and Mayland. Whilst regard was had to the public footpath along the eastern boundary of the site which links to the village, it was noted that Woodham Mortimer provides an extremely limited level of facilities and services. Therefore, it was considered that the proposed development was located away from community services and essential support facilities, and inaccessible by a range of transport resulting in the future occupiers of the site being heavily reliant on the use of private cars. The accessibility credentials of the site were considered to weigh heavily against the proposal.

5.1.13 The Planning Statement submitted as part of that application highlighted that the site is located adjacent to the defined settlement boundary of Woodham Mortimer. However, this was not considered to carry significant weight given the assessment above, which set out the poor accessibility credentials of the site and that the Council's approved policies carry less weight at present due to the lack of a 5YHLS, including policy S8 'Settlement Boundaries and Countryside', a full assessment had been carried out in respect of the accessibility credentials of the site and the fact it is in close proximity to the settlement boundary carried limited weight. The Statement went on to highlight that Danbury is located 2km away and is accessible by bus. However, it was considered that the site is removed from public transport options and a distant and unsafe walk from the bus stops in the area.

5.1.14 The report had regard to paragraph 105 of the NPPF which states that "The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes." Overall, it was considered that the future occupiers would be

heavily reliant on the use of private motor vehicles and the proposal would also fail to accord with Policy T2 of the LDP or the presumption in favour of sustainable development contained within the NPPF.

- 5.1.15 As part of this application an updated Planning Statement titled as the Design and Access Statement has been submitted, trying to address these concerns raised. Firstly, it is important to note that the DAS suggests that as part of the historic applications the Council could demonstrate a 5YHLS and therefore there has been a material shift in policy since the determination of the previous application. However, this fails to acknowledge that as part of the previous application the Council could also not demonstrate a sufficient supply of housing and as part of that application it was still considered that despite this the proposal conflicts with the NPPF's 'presumption in favour of sustainable development'. Therefore, in that respect it is not considered that there has been a material change to the considerations of the application.
- 5.1.16 In respect of the 2014 Strategic Housing Land Availability Assessment (SHLAA), the DAS notes that the site was considered suitable for development subject to planning protocol as part of that assessment. However, the Council has recently undertaken a Call for Sites exercise where the site has been found to be unsuitable for housing. That assessment states that:

*'On balance it is considered that development of the site would be unsuitable. The site lies on two rural unpaved lanes and the shoppers bus stop cannot be accessed safely without walking on a roadway and a lane. To access most services and facilities residents could require the use of a car to higher order settlement. Whilst the site does fit into the townscape and the impact on the wider landscape could be minimal, it could not outweigh the unsustainability of the location of the site and is therefore not suitable.'*

Considering the above it is not considered that the now outdated SHLAA carries any weight in the determination of this application.

- 5.1.17 The DAS also discusses the contribution the provision of eighteen dwellings would make to the Council's 5YHLS. However, the provision of eighteen units would not make a sufficient contribution to the Council's 5YHLS figure and would not provide benefits which significantly and demonstrably outweigh the harm that has been discussed above and throughout the remainder of the report. The same is considered to apply in respect of the Affordable housing requirement, although this will be discussed in greater detail as part of the relevant section below.
- 5.1.18 An argument is also made in the DAS statement that because the site lies adjacent to the settlement boundary. Whilst it is noted that the site is adjacent to the development boundary, it is as a matter of fact it is outside of the settlement boundary. The boundaries were fairly recently confirmed as a result of the approval of the LDP in 2017 and therefore, it must be deemed that the boundary was deemed to be in the appropriate location, balancing the needs of housing provision and environmental/landscape protection. If the application site was deemed to be sustainable it is arguable that it would have been included within the settlement boundary.
- 5.1.19 The DAS also addresses the issues of accessibility providing reliance on the public footpath that runs along the eastern boundary of the site to Conduit Lane and then to the bus stop on Bryant's Lane. The provision of the closest bus stops was addressed as part of the previous Officer's Report and it is not considered that there are any changes to these considerations that would alter that stance. In terms of the

Bryant's Lane bus stop, although this could be accessed by the public footpath from the east of the site, through Conduit Lane on to Bryant's Lane, the walk would be along an unlit footpath, which includes part of Conduit Lane which is trafficked. Therefore, the footpath would not provide an attractive or convenient form of alternative transport to the private car as it would not be useable during dark hours or times of inclement weather. There would always be safety concerns from vehicles using Conduit Lane. In this regard, the bus stop would not provide suitable transport provision for the development. The same assessment also applies in respect of the accessibility to the Village Hall and areas of Public Open Space on Post Office Road.

- 5.1.20 Whilst it is proposed that the development would make provision for electric charging points and travel packs for each dwelling, these provisions are standard requirements for developments of this size and therefore, this would not provide over and above the standard requirements for working towards sustainable transport. Therefore, these factors do not outweigh the harm in respect of the poor accessibility credentials of the site.
- 5.1.21 Overall, taking into consideration the above, which includes the considerations made as part of the previous application, it is not considered that the proposal represents sustainable development, and the benefits of the scheme are not considered to outweigh the harm.

## **5.2 Loss of Employment Use, Community and Tourism Facility and Sports and Leisure Facility**

- 5.2.1 The proposed development would result in the entire loss of the existing facilities provided at the application site, which are a golf driving range, pitch and putt course and the sales of bottled gas. Therefore, the proposal would result in the loss of an employment generating use and a community, tourism and sports and leisure facility. As recognised historically, it is considered important that the use of this site is maintained and improved (or some similar activities provided) to support employment, tourism and sport and leisure opportunities in the locality. Therefore, in order for the proposal to be supported, it will need to comply with the criteria set out in policies E1, E3, E5 and N3 of the LDP.

### Loss of Employment Use

- 5.2.2 Policy E1 of the LDP seeks to protect existing employment uses in the district. The proposed development would result in the loss of an employment generating use as a golf driving range, pitch and putt course and for the sales of bottled gas. Policy E1 stipulates that *'Proposals which will cause any loss of existing employment uses, whether the sites are designated or undesignated, will only be considered if:*
- 1) The present use and activity on site significantly harms the character and amenity of the adjacent area; or*
  - 2) The site would have a greater benefit to the local community if an alternative use were permitted; or*
  - 3) The site has been marketed effectively at a rate which is comparable to local market value for its existing use, or as redevelopment opportunity for other Class B Uses or Sui Generis Uses of an employment nature, and it can be demonstrated that the continuous use of the site for employment purposes is no longer viable, taking into account the site's existing and potential long-term market demand for an employment use.'*
- 5.2.3 In relation to criterion 1 and 2 the applicant suggests that floodlighting, golf balls travelling beyond the site and the general appearance of the golf related netting,

lighting and paraphernalia harm the character and appearance of the area and its tranquillity. Additionally, it is contended that the nuisances arising from those using the site add to this harm. It is also suggested that the proposed public open space and play area would be a better community facility than the current private sports facility and the provision of eighteen dwellings within the district would result in the proposal having a greater benefit to the local community than the existing use. The housing to be provided is said to be of an enhanced standard with the dwellings being built to accommodate the ageing population, providing Accessible and adaptable dwellings M4(2) and also seeks to secure the affordable housing for the residents of the village only. However, as with the previous application, the proposal is not considered to be suitable for older people due to its inaccessible location. Further, the Council would expect to see a provision on the site for M4(2) dwellings and therefore, this is not a significant benefit. In respect of ensuring the affordable units are for residents of the village only, the application has not been put forward as a Rural Exception Scheme and as such Policy H5 is not applicable in this instance. Nevertheless, the application has not been supported by a local needs assessment to identify that these units are needed for the village residents. The Strategic Housing Officer has advised that this area is not one where the Council would seek a high percentage of Affordable Housing units, therefore, suggesting the local need is fairly low. Therefore, this is also not considered to provide a significant benefit to the scheme.

- 5.2.4 These points remain similar to those raised as part of the previous application, where it was considered that the existing use of the site is established and lawful and is not considered to cause harm to the character or amenity of the locality.
- 5.2.5 It was previously considered that whilst there are some limited benefits to the scheme, they were not considered to outweigh the harm of the proposal (identified within this report). In respect of golf balls travelling beyond the site, it was considered that the netting around the perimeter of the driving range could be improved to prevent such incidents in the future. The DAS has provided a response to this, suggesting that the netting would need to be doubled in height, which would have financial implications for the Applicant as well as creating issues around stability and impacts on the character and appearance of the site. The Applicant has provided evidence of a quote for replacement netting and support posts that surround the driving range for £247,500 and has also provided commentary regarding the viability of the business, suggesting that the business would make a loss once the Applicant and his Wife have been paid their wage, if the sale of bottled gas was not taking place at the site. This, therefore, suggests that it would not be feasible for the Applicant to replace the netting. However, the viability of the business has only been provided for the last 12-month period which is not considered to be an accurate representation of the use of leisure facilities and therefore the LPA has not been provided with a precise picture. Furthermore, the increase in height of the netting would be subject to a separate planning application to assess its suitability and as such it is not for this application to assess the impacts of such a development, but arguably given the siting of the netting, even if increased in height would have lesser impacts on the character and appearance of the area than the proposed development.
- 5.2.6 The proposed development would result in the provision of eighteen dwellings. However, previously it was found that the benefit of 25 dwellings would be offset by the inappropriate, unsustainable, and inaccessible location. Likewise, the benefit of the provision of public open space and a children's play area was considered to be offset by the loss of an employment generating use and a sport and leisure, community, and tourism facility. Therefore, it was considered the existing lawful use has a greater community benefit than that proposed, even taking into account the

inability of the Council to demonstrate a 5YHLS. Given that the proposal now proposes a lesser number of dwellings the benefits of the scheme are further diluted and the above remains applicable.

- 5.2.7 As part of the previous application the NHS Property Services also highlighted the importance of the existing facility to the community stating the following within their consultation response:

*'Development of the site for housing would result in the loss of an existing sports facility. The CCG does not support the loss of sports facilities as physical activity results in improved physical and mental health.'*

*'It is noted that the planning statement submitted states loss of the golf driving range would not be harmful as it is a private facility not available to the general public, is currently underused and other similar facilities are available. However, the loss of the facility would reduce the offer in the Maldon area and so may result in reduced participation in sport and physical activity. Whereas it could be operated in such a way to encourage and increase participation.'*

- 5.2.8 Whilst the NHS have not responded to this application there is no reason to believe that the above comments do not remain applicable.

- 5.2.9 In relation to criterion 3, as with the previous application, no evidence has been submitted to demonstrate that the property has been marketed, and therefore the site's existing and potential long-term market demand for an employment use is unable to be assessed.

#### Loss of a Community Facility

- 5.2.10 Policy E3 of the LDP states that *'Community services and facilities include, but are not limited to, local shops, post offices, public houses, libraries, places of worship, education facilities, cultural facilities, fuel filling stations, public halls, health care facilities, sporting facilities and local green spaces.'* Given the site is in use as a golf driving range and pitch and putt course the proposed development would result in the loss of a community facility. Policy E3 stipulates that *'Where a proposal will result in the loss of community services or facilities, an application will be required to demonstrate to the Council's satisfaction that:*

*'1) The existing business/service is not and cannot be made viable; and  
2) Effective marketing has been undertaken to demonstrate that there is no viable and appropriate alternative community service-based use.'*

- 5.2.11 In relation to criterion 1, the existing business, which encompasses a golf driving range, pitch and putt course and the sales of bottled gas is considered to be viable. As part of the previous application the Planning Statement said that *'The existing facility is a private one that is under-used and is subsidised by retail sales of bottled gas, without which it would fail. It cannot reasonably be said then that it is a viable enterprise'*. Therefore, the Officer's Assessment stated that whilst the applicant contended that the golf driving range and pitch and putt course would not be viable without the sale of bottled gas, it had been confirmed that the business as a whole is viable. In addition, no evidence to substantiate this claim had been submitted. The applicant had also claimed that *'the LPA simplistically and incorrectly conflates the sale of bottled gas from the site with the golf driving range business. The two are entirely separate and unrelated operations. It is simply that the sale of bottled gas enables the applicant to maintain the golf driving range from the same site'*. However, it was deemed a fact that the existing business/businesses at the

application site was and are viable and this is not considered to alter the stance previously taken by the LPA.

- 5.2.12 Further, it was noted at paragraph 5.47 of the previous Planning Statement that over a 13-week period (27 May-31 August 2019), there were approximately 67 customers per day visiting the site to utilise the driving range and pitch and putt and 685 bottles of gas were sold over this period. These figures were considered to strengthen the view that the existing business is viable. As part of this application, it is stated that over a 12-month period that there was an average of 46 people per day using the driving range, with no figures provided in relation to the sale of gas. Whilst it is accepted that the average is likely lower as a result of 13-week period provided within the previous application was high season, there has been no evidence to support this or the differences between the figures. Likewise, the sale of the gas has not been included in the viability assessment of this application, except for the DAS acknowledging that it supports the viability of the business. Although the repairs to the fence would add financial burden to the business, this relates to a one-off payment and costs for the repair and maintenance of the facility and therefore, further evidence in respect of how this affects the overall viability of the business, rather than just daily takings of the golfing facilities, would be required.
- 5.2.13 In relation to criterion 2 no evidence has been submitted to demonstrate that the property has been marketed and therefore, as above, the site's existing and potential long-term market demand for an employment use is unable to be assessed.
- 5.2.14 The DAS states that the previous applications have over inflated the levels of employment at the site, as the business never has employed 15 people at any given time. It is said that one full-time and four part-time staff are employed at the site. This loss of employment still weighs against the proposal and given the concerns in respect of accessibility and other matters discussed below the benefits are still not considered to significantly and demonstrably outweigh the harm.

#### Loss of Tourism Provision

- 5.2.15 Policy E5 of the LDP states that the Council encourages the provision of tourist attractions and facilities. The existing use of the site as a golf driving range and pitch and putt provides tourist facilities to the district. Policy E5 of the local plan states '*To protect existing tourism provision, the change of use from tourism uses will only be considered if:*
- a) There will be no significant loss of tourism facilities as a result, or an alternative provision in the locality can meet the needs;*
  - b) The existing business / service is not and cannot be made viable; and*
  - c) There is no known demand for existing and alternative tourism use, and the site has been marketed effectively for all alternative tourism related uses.*
- 5.2.16 In an attempt to demonstrate compliance with the first stipulation a list of three alternative golf facilities within the district have been highlighted within the planning statement. However, the presence of alternative facilities alone is not considered to demonstrate that there will be no significant loss of tourism facilities as a result of the proposed development or that the alternative facilities can meet the needs. Further to this it is considered that the site provides a somewhat different facility to formal golf courses.
- 5.2.17 In respect of the second stipulation, as highlighted above it is not considered that it has been demonstrated that the existing business is not viable.

5.2.18 In respect of the third criterion, no evidence to demonstrate that the site has been marketed has been submitted with the application. Therefore, it is not possible to assess if there is a demand for the existing or an alternative tourism use at the application site.

#### Loss of Sport and Leisure Facility

5.2.19 Policy N3 of the LDP seeks to protect open land and sport and leisure facilities within the district. Policy N3 stipulates that '*Proposals for development on open space, sports and recreational buildings and land, including playing fields, will not be allowed unless:*

- 1) Through an assessment there is clear evidence that the open space, buildings or land are surplus to requirements to meet local needs; or*
- 2) The resulting loss would be replaced by new open space, buildings or land of equivalent or better provision in terms of quantity and quality and in a suitable location accessible by the local community; or*
- 3) The development is for alternative sports and recreational provision and the need for that provision clearly outweighs the loss of open space, buildings or land.'*

5.2.20 In relation to stipulation 1, insufficient evidence has been submitted to demonstrate that the existing use is surplus to meet local needs. Therefore, the proposal is contrary to this stipulation.

5.2.21 In relation to stipulation 2, the existing use of the site would be replaced by 18 residential dwellings and associated development. Therefore, the proposal fails to comply with this stipulation. Whilst part of the site is proposed to be used as public open space equipped with a play area it is not considered to be equivalent or better provision in terms of quantity and quality. In addition, although the public open space has been sited close to the public footpath, as addressed previously this will not always be usable and as such it is still considered that the open space is removed from the village.

5.2.22 In relation to stipulation 3, as highlighted above, the proposal is for 18 dwellings and associated development and it is not considered that the benefits of the scheme outweigh the loss of the recreation facilities.

5.2.23 Given the above assessment and the lack of substantive evidence submitted with the application, it has not been demonstrated to the LPA that the proposed development complies with the relevant criteria set out in policies E1, E3, E5 and N3 of the LDP.

### **5.3 Affordable Housing and Housing Mix**

#### Affordable Housing

5.3.1 Policy H1 requires that all housing development of 10 units or more or 1,000sqm contribute towards affordable housing provision to meet the identified need in the locality and address the Council's strategic objectives on affordable housing.

5.3.2 The application proposes 18 dwellings therefore, 7.2 units of affordable accommodation need to be provided in order for the proposal to be policy compliant. The approved LHNA published on 16 July 2021 now forms a material consideration with regards to planning applications and identifies a tenure mix of 75% Affordable/Social Rented and 25% Intermediate Affordable units.

- 5.3.3 The applicant has confirmed within the submitted Planning Statement that 8 affordable units are proposed. The applicant also indicates a willingness to enter into a S106 legal agreement. However, a signed S106 agreement has not been submitted in support of this planning application.
- 5.3.4 The Council's Housing team has assessed the proposal and advised that whilst the Council seeks the provision of on-site Affordable Housing as per policy H1, in exceptional circumstances the Council may consider accepting a financial contribution from the developer where it is justified that affordable housing cannot be delivered on-site, or that the District's need for affordable housing can be better satisfied through this route. This location in Maldon is not an area where Strategic Housing would look to seek a high number of affordable units, however, Strategic Housing could look to seek a smaller quantum of Affordable Housing on site with the remaining percentage of Affordable Housing being delivered through a financial contribution. This would meet the local need for affordable housing units whilst also allowing for a way to meet the needs of the District as a whole.
- 5.3.5 Having regard to the above it is considered that the proposal is policy compliant with regards to Affordable Housing, subject to final details. Furthermore, it is noted that a minor over provision is proposed in order to deliver a rounded number of units on site. However, a signed legal agreement has not been submitted to the Council and the benefits of 4.4% over provision of affordable housing is considered limited. Therefore, the development makes no contribution for affordable housing, and would therefore not contribute to a strong vibrant community as it would not provide a supply of housing required to meet the needs of present and future generations and as such is not considered to represent sustainable development, contrary to policies S1, H1 and I1 of the LDP, and Government guidance as contained within the NPPF.

#### Housing Mix

- 5.3.6 Recent case law, as noted above and having regard to S38 (6), restates the primacy of the statutory development plan as the starting point in the determination of planning applications. However, in respect of the Council's current land supply position, 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.
- 5.3.7 Whilst the LDP carries limited 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.
- 5.3.8 The Local Housing Needs Assessment (LHNA) (2021) 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 LHNA is wholly compliant with the latest NPPF and Planning Practice Guidance 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.

5.3.9 The specific housing mix has not been included as part of the application, but the DAS states that the *'proposals are for well-proportioned two-, three-, and four-bedroom dwellings*. The LHNA concludes that the District has a need for smaller dwellings, with the biggest requirement for 3 bed dwellings; specifically, 25-35% 2-beds and 40-50% 3-beds. The precise housing mix could be secured by a condition to ensure that it is policy compliant. However, whilst a minor benefit can be drawn from the delivery of a suitable mix of dwellings, this would not outweigh the concerns raised within the report.

#### **5.4 Design and Impact on the Character of the Area**

5.4.1 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.

5.4.2 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".*

5.4.3 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;
- e) Historic environment particularly in relation to designated and non-designated heritage assets;
- f) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
- g) Energy and resource efficiency.

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

5.4.5 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 and where possible enhances the

sustainability of the original building; and does not involve the loss of any important landscape, heritage features or ecology interests.

- 5.4.6 Outline planning permission with all matters reserved is sought for 18 dwellings. The application site lies outside of the defined development boundary of Woodham Mortimer in a rural location. It is pertinent to note that the visual impact of the previously refused schemes for 25 dwellings (2021 & 2020) and 8 residential dwellings at the site formed a reason for refusal, specifically stating:

21/00693/OUT:

*'The proposed development would fundamentally alter the open character of the south western edge of the village. The provision of twenty-five unjustified residential dwellings on this site currently used as golf driving range / pitch and putt would fail to provide visual enhancement to the wider rural locality, representing the encroachment of built form into the rural site and sprawl of development into the countryside. The layout of the access road is in stark contrast to the existing development within Woodham Mortimer and is considered to contribute to the harm of the proposal. Therefore, the proposal fails on the environmental stand of sustainability, in conflict the National Planning Policy Framework's "presumption of sustainable development" and policies S1, S8, D1, and H4 of the Maldon District Local Development Plan and guidance contained within the National Planning Policy Framework.'*

20/00675/OUT:

*'The proposed development would fundamentally alter the open character of the south western edge of the village. The provision of twenty-five unjustified residential dwellings on this site currently used as golf driving range / pitch and putt would fail to provide visual enhancement to the wider rural locality, representing the encroachment of built form into the rural site and sprawl of development beyond the settlement boundary. The layout of the access roads, particularly the cul-de-sac arrangements, is in stark contrast to the existing development within Woodham Mortimer and is considered to contribute to the harm of the proposal.'*

17/00286/OUT:

*'The proposed development would fundamentally alter the open character of the south western edge of the village. The provision of eight residential dwellings on this site currently used as golf driving range / pitch and putt would fail to protect or enhance the tranquility, amenity and traditional quality of the rural area by introducing unacceptable built form into a site that currently contributes to, the rural quality of the area.'*

- 5.4.7 The application site is located on the south western edge of the village of Woodham Mortimer. The northern boundary of the site abuts open and undeveloped land sited between the rear boundary of the application site and Conduit Lane. To the east the site abuts the residential gardens of Nursery Barn and Salters Folly and the western boundary of the site abuts the rear gardens of four residential properties, which are located within the settlement boundary of Woodham Mortimer. The site fronts onto Burnham Road with open and undeveloped fields located opposite the site. The stretch of Burnham Road within the vicinity of the site is characterised by low density development with an abundance of soft landscaping, residential dwellings located sporadically along the northern side of the road and mainly open and undeveloped fields to the south. The application site is located within the rural countryside and the largely undeveloped nature of the site contributes to the open and rural nature of the area.

- 5.4.8 The prevailing settlement pattern, seen on Conduit Lane (to the north of the site and Post Office Road (to the east), is predominantly dwellings facing the highway with each plot having individual parking and vehicle access onto the highway.
- 5.4.9 As part of the previous application, it was said that the site as existing is largely undeveloped. The existing low level reception building, and the paraphernalia associated with the golf driving range and pitch and putt, was not considered to harm the rural area. The large expanse of open land was considered to contribute positively to the character and appearance of the rural area. The construction of the 25 dwellings along the entire western side of the site was considered to significantly alter the character of the site and that it would have significant visual impact on the wider area. It was considered that the principle of siting 25 dwellings on a site, in a rural location, that is currently occupied by single storey building and remains largely undeveloped would result in the urbanisation and domestication of the site, representing an encroachment of built form into the site and sprawl of development beyond the settlement boundary. The resulting form of development would detract from the rural character, appearance, and natural beauty of the locality. This was said to fail to provide visual enhancement to the wider rural locality and would intensify the urban appearance of this rural locality. Whilst it was noted that the eastern side of the site was proposed to be retained as public open space, which was seen to be a welcome feature, the proposed car parking area and play area was found to add to the urbanisation and domestication of the site.
- 5.4.10 The visual impact of the development from public vantage points was found to be significant. Views of the development were noted to be available from Burnham Road, particularly through the access point. In addition, regard was had to the public footpath which runs along the entire eastern boundary of the application site. The scale, mass and extent of development was said to be significant and readily visible from the public footpath.
- 5.4.11 In respect of the above, it is not considered that the indicative layout has been substantially altered to a degree which would materially change the above assessment. Rather, the revised layout presents a more significant sprawl across the site towards the east, despite the fact there is a lesser number of dwellings proposed. Whilst the development is shown to be set further back from Burnham Road, there would still be public vantage points from this road and the encroachment of development towards the east of the site, adjacent to the footpath would exacerbate the impacts from the footpath. Furthermore, the car park has been removed, but given the sprawl of development the concerns in respect of the urbanisation and domestication of the site has not been overcome.
- 5.4.12 Although the layout is indicative, the proposal includes the provision of Public Open Space which would need to be of an appropriate size and also SuDS features. Furthermore, there is a need to direct the development away from Burnham Road to respect the rural character of this part of that road. Therefore, it is considered unlikely that an alternative layout could be provided that would not result in similar impacts. However, it is relevant to comment on the indicative layout at this stage:
- 5.4.13 Woodham Mortimer is defined as an 'Arcadian Settlement' within the MDDG. Arcadian Settlements are described as:

*'Houses are generally in large plots and partially hidden from public view, nestling in mature tree cover, hedgerows and landscaping and structural planting.'*

*'The existing streetscape is characterised by an original network of lanes, where properties are often set back behind substantial front gardens. The roadside*

*hedges, trees, green verges and ditches were retained. Deep gardens to the side and rear were retained with planted boundaries. The density can be as low as six dwellings per hectare.'*

- 5.4.14 The dwellings immediately adjacent to the site are generally sited centrally within generous size plots with space between buildings and creating a sense of openness and tranquillity representative of the countryside setting of Woodham Mortimer.
- 5.4.15 The indicative layout and a proposed access track have been amended from that previously shown under the terms of application 21/00693. Whilst the development remains predominantly along the western side of the site, the main access road now runs to the north serving a road that runs across the site in an east to west fashion, expanding the development to the north eastern corner, rather than keeping the eastern parcel completely free from dwellings. The previous application provided 25 dwellings set around a loop within the western side of the site, starting and finishing at the access point. In contrast this proposal relates to three internal roads with ribbon development fronting them on one side, with two dwellings located on the western side of the main access track adjacent to the site entrance.
- 5.4.16 Whilst it is noted that the changes have been made in response to concerns regarding in relation to the layout and its relationship to the surrounding development pattern, the proposal still fails to assimilate with the surrounding pattern of development. The dwellings would appear to be of a more Arcadian character, in that they would be more set back from the road frontage, the regimented internal road layout does not provide the 'network of lanes' character that is expected from an Arcadian Settlement. Furthermore, the dwellings at the far west of the site would be facing the back boundaries to the three dwellings fronting the main access road, which is not considered a successful design approach.
- 5.4.17 Indicative landscaping namely, boundary hedges and tree planting across the site and an area of public open space has been shown. Whilst the landscaping would provide some visual mitigation to the wider area and the area of public open space would be a welcome addition to the site, the provision of these elements alone would not be sufficient in over coming the impacts on the character and appearance of the area.
- 5.4.18 As with the previous application, the LPA is no longer able to meet a deliverable supply of homes that is in excess of five years. However, the significant detrimental impact the proposal would have on the rural character of the area and the intrinsic beauty of the countryside and the resulting environmental harm would significantly outweigh the benefits arising from the provision of additional residential dwellings.
- 5.4.19 Having regard to the above assessment it is considered that the proposed development would have a significant visual impact on the site and surrounding area particularly given the visual prominence of the site. The development would represent the encroachment of built form into the rural site. The layout of the access roads, namely the regimented access roads and the layout of the dwellings is also not considered to reflect the character of the area. Therefore, the proposal is considered to be to the detriment of the character and appearance of the site and the surrounding rural area contrary to policies S1, S8, H4 and D1 of the approved MDLDP and guidance contained within the NPPF.

## **5.5 Impact on Historic Interest of Listed Buildings**

- 5.5.1 The application site is adjacent to the listed building Salters Folly which is grade II\* listed building. In accordance with section 66(1) of the Planning (Listed Buildings

and Conservation Areas) Act 1990, the Council must have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. In the terminology of the NPPF, the Council must consider whether the proposal will 'harm' the listed building's 'significance'. Similar advice is contained within policy D3 of the LDP.

5.5.2 Salters Folly is located around 35m from the south east corner of the application site. Given the separation distance and the intervening vegetation it is not considered that the proposal would harm the setting or significance of Salter's Folly. Therefore, there is no objection at this stage, in terms of the impacts on the nearby heritage assets in accordance with the NPPF and policy D3 of the approved MDLDP.

5.5.3 A public comment has been received stating that the removal of the golf range existing car park to be replaced with public open space and planting would improve the setting of the Listed Building. However, given the distances discussed above this is not considered to be a significant improvement that would outweigh the harm.

## **5.6 Impact on Residential Amenity**

5.6.1 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).

5.6.2 The application is outline in nature, with matters relevant to the impact of the development on the neighbouring residential occupiers, such as scale, appearance, and layout, being reserved for future consideration. Given that the matters mentioned above are subject to submission and revision and considering the limited level of information provided with the application, it is not possible to fully assess the impact of the proposal on residential amenity.

5.6.3 Notwithstanding the above, it is clear from the submitted information that the proposed development would result in up to 18 dwellings, which will inevitably increase levels of activity on site in comparison to the existing use. The site abuts residential development to the west and east. On that basis, the proposed residential development would result in a use that is compatible in terms of amenity with the adjoining residential character of the area and thus, it would not adversely impact upon the amenities of the neighbouring occupiers in that respect.

5.6.4 Having regard to the indicative layout the most effected existing residential properties are likely to be the four residential dwellings to the west of the site, the rear gardens of these dwellings back on the application site.

5.6.5 The MDDG states that where new development backs on to the rear gardens of existing housing, the distances between buildings should be 25m (C 07 Residential Amenity). The indicative layout shows that the dwellings which are located adjacent to the western boundary can achieve a back-to-back distance in excess of the required 25m. However, this would need to be fully assessed at the reserved matters stage when the layout is fully known. However, having regard to the distances that can be achieved it is considered that the scheme could be designed to minimise any unacceptable impacts to the neighbouring occupiers in terms of overlooking, a loss of light or a dominating impact. It is therefore considered that an appropriate layout could be produced so that the amenities of the neighbouring occupiers are not detrimentally impacted.

- 5.6.6 It is also considered that the site would be large enough to ensure suitable separation distances between the proposed dwellings. The finer details such as the siting of windows would need to be considered at Reserved Matters.

## **5.7 Access, Highway Safety**

- 5.7.1 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.
- 5.7.2 The proposed development is outline in nature, with all matters reserved. Therefore, the matters in relation to access and the layout and provision of car parking would be assessed at the detailed stage. However, it is prudent to provide comment on these matters at this stage.

### Access and Highway Safety

- 5.7.3 The existing access to the site is taken from Burnham Road and is located at the eastern end of the site frontage. The indicative layout plan suggests that it is proposed to retain and upgrade the existing access point to serve the proposed dwellings. Whilst Essex County Council Highways Authority (ECC) has not commented fully on the application, they raised no objection previously to the provision of the same access as part of the previous application. In this respect it is considered likely that a suitable access could be provided at the detailed stage.
- 5.7.4 Notwithstanding the above, the Local Highway Authority had requested that the LPA obtain vehicle tracking movements for refuge vehicle and fire tender entering and exiting the site access and around the internal estate roads, but as access and layout are not matters for consideration at this stage, it is not considered necessary to request this information.
- 5.7.5 No information relating to trip generations has been provided in respect of this application. However, as it was deemed previously that the provision of 25 dwellings was unlikely to generate as many trips as the existing use of the site when fully operational there are no concerns to raise in relation to this matter at this stage.
- 5.7.6 As outline above, the Applicant has expressed their willingness within the DAS to provide Residential Travel Information Packs, which could be secured by a planning obligation. However, in the absence of a signed legal agreement this is unable to be secured. Further, as previously discussed this is not considered to be a substantial benefit to the scheme, even if secured by way of legal agreement, as this is a standard provision for residential developments of a certain size.

### Parking Provision

- 5.7.7 The proposed dwellings would provide two, three and four bedroom dwellings. The recommended car parking provision for a one-bed dwelling is 1 car parking space, for a two-bed dwelling is 2 car parking spaces and 3 spaces for a four+ bedroom dwelling.
- 5.7.8 Each plot as shown on the indicative layout appears capable of providing a sufficient number of vehicle parking spaces. However, this would be a matter to be fully

considered at reserved matters stage once the bedroom numbers are known and the layout finalised.

### Proposed Cycle Path and Public Right of Way

- 5.7.9 The previous application proposed a cycle path shown within the development, which is proposed to connect to Footpath 25. However, this no longer forms part of the proposal and as such the concerns raised by the Local Highway Authority fall away, albeit this did not previously form a reason for refusal.

## **5.8 Private Amenity Space**

- 5.8.1 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 Maldon Design Guide SPD advises a suitable garden size for each type of dwellinghouse, namely 100m<sup>2</sup> of private amenity space for dwellings with three or more bedrooms, 50m<sup>2</sup> for smaller dwellings and 25 m<sup>2</sup> for flats.
- 5.8.2 The proposed development is outline in nature, with matters of layout, scale, appearance, and landscaping reserved for future consideration.
- 5.8.3 The proposed dwellings would provide two, three and four bedroom dwellings. . Therefore, the private amenity area to serve each dwelling should be a minimum of 50m<sup>2</sup> for the two beds and 100m<sup>2</sup> for three and four beds. The indicative layout plan submitted demonstrates that each plot could provide an amenity area in excess of 100m<sup>2</sup>. Therefore, no concerns in respect of private amenity space are raised at this time. However, this would be a matter to be fully considered at a reserved matters stage once the dwelling sizes are known.

## **5.9 Flood Risk and Drainage**

- 5.9.1 Policy D5 of the LDP sets out the Council's approach to minimising flood risk. Policy S1 requires that new development is either located away from high-risk flood areas or is safe and flood resilient when it is not possible to avoid such areas.
- 5.9.2 The proposed development is located in Flood Zone 1; thus, not in an area at risk of tidal or fluvial flooding. However, the application is more than 1 hectare in size and therefore has been accompanied by a Flood Risk Assessment (FRA).
- 5.9.3 The Lead Local Flood Authority (LLFA) has been consulted on the FRA and have raised no objection subject to conditions requiring:
- A detailed surface water drainage scheme
  - A scheme to minimise the risk of offsite flood caused during the construction works.
  - A maintenance plan for the surface water drainage system
  - Yearly logs of maintenance
- 5.9.4 Having considered the comments made by the LLFA, subject to the imposition of the above conditions if the application were to be approved, there is no objection raised in respect of flood risk and drainage.

## 5.10 Nature Conservation and Biodiversity

- 5.10.1 Paragraph 170 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.*'
- 5.10.2 Strategic LDP policy S1 includes a requirement to conserve and enhance the natural environment, by providing protection and increasing local biodiversity and geodiversity, and effective management of the District's green infrastructure network.
- 5.10.3 Policy N1 states that open spaces and areas of significant biodiversity or historic interest will be protected. There will be a presumption against any development which may lead to the loss, degradation, fragmentation and/or isolation of existing or proposed green infrastructure. LDP 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.
- 5.10.4 The application has been accompanied by a Preliminary Ecological Assessment. The Ecology Consultant has not yet provided a response on the application. However, Officers have concerns over the validity of the Assessment as it does not appear to have been dated. Although no objection was raised as part of the previous application, the PEA provided as part of that application is now 2 years out of date, being dated September 2020 which also raises concerns in respect of its validity. A response from the Ecological Consultant will be sought where possible and updated via the Members' Update.
- 5.10.5 In terms of offsite impacts, 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.
- 5.10.6 The development of one dwelling falls below the scale at which bespoke advice is given from Natural England (NE). To accord with NE's requirements and standard advice an Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (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 the 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

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

5.10.7 As a competent authority, the LPA concludes that the project will, without mitigation, have a likely significant effect on the sensitive interest features of the European designated sites due to the scale and location of the development proposed. Based on this and taking into account NE's advice, it is considered that mitigation, in the form of a financial contribution of £2478.78 is necessary. Whilst the applicant has expressed that they are willing to enter into an agreement to secure the required mitigation. given that a signed S106 Agreement has not been submitted, to support the application the mitigation is not secured.

5.10.8 Based on the lack of secured mitigation through RAMS the proposal would be contrary to policies S1, D1, N1 and N2 of the LDP and Government advice contained in the NPPF.

## **5.11 Other Matters**

### Public Open Space

5.11.1 It is noted that an area of public open space is proposed to be provided within the south eastern part of the application site. However, its accurate location would need to be agreed as part of the site layout at the detail stage. Nevertheless, in the absence of a legal agreement securing the public open space the impact of the development and its future needs would not be able to be secured and thus, an objection is raised in that respect.

### Archaeology

5.11.2 The Historic Environment Officer at Essex County Council has confirmed that the site is located within an area of historic environment potential. The Historic Environment Characterisation assessment for Maldon District establishes that the site falls within Historic Environment Characterisation Zone 7.2, which has moderate significance for the Historic Environment. As archaeological features and deposits are both fragile and irreplaceable, should the application be approved full archaeological conditions should be imposed in line with the guidance set out within the NPPF.

### Contamination

5.11.3 The Council's Environmental Health department advised as part of the previous application that due to the northern end of the driving range being levelled with an unidentified fill; contaminated land conditions should be imposed, if the application were to be approved. Contamination conditions have also been suggested by Environmental Health as part of this application.

### Noise

5.11.4 The indicative layout plan shows that dwellings would be located in close proximity to Burnham Road (B1010) which is heavily used by vehicles. Whilst it is noted that the layout is a reserved matter, given the proximity of the indicative dwellings to the road, it is recommended that should the application be approved a condition to ensure that a noise assessment is submitted with the reserved matters application, should be imposed.

## Trees

- 5.11.5 The application has been supported by an Arboricultural Impact Assessment and Tree Constraints Plan. The report suitably identifies the quality of the trees and how they will be impacted. Whilst in principle it is considered that the scheme could be acceptable, the retention of the better-quality trees and long-term protection would need to be put in place, which could be secured by a condition. Furthermore, a more detailed soft landscaping scheme would be required to compensate for the loss of trees and enhance the amenity and ecological benefit. This again can be secured by a condition.
- 5.11.6 Whilst the details of protection have been provided this would need to be amended when the layout is approved and would therefore, need to be subject of a condition.

## NHS Property Services

- 5.11.7 The NHS Property Services Planning Policy Officer has not provided a response to this application. However, as part of the previous application they confirmed that the proposed development would impact GP practices which currently do not have the capacity to accommodate the additional growth resulting from the proposed development. That development was expected to generate approximately 60 new residents and subsequently increase demand upon existing constrained services. However, it was found that the impact of the proposed development on healthcare facilities could be mitigated via a financial contribution which was calculated at £9,430. The contribution is expected to be lower given the reduced dwelling numbers proposed as part of this application, although a contribution is still expected to be required. Therefore, there is an objection raised in this respect.

## **5.12 Planning Balance and Sustainability**

- 5.12.1 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.
- 5.12.2 The key priority within the NPPF, 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.
- 5.12.3 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.
- 5.12.4 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.
- 5.12.5 With regard to the 3 tests of sustainability, in economic terms, it is reasonable to assume that there may be some support for local trade from the development. This

was however found to be limited as part of the previous application given the scale of the proposal was for 25 dwellings. Equally, it was considered that there was no guarantee that the construction works required for the development would be undertaken by local businesses, the economic benefits of the proposal were therefore considered minor. Furthermore, whilst it was acknowledged that the residents of the proposed dwellings would bring some economic benefits to the village, which may provide some support to existing services, it was not considered that the benefits would be substantial. Therefore, due to the limited provision of local businesses, shops and services and the minor nature of the development it was found that there would be a limited increase in footfall or economic benefit to the area. In addition, the proposal was considered to result in the unjustified loss of an employment use and tourism facility which was deemed to significantly outweigh any benefits in this respect. Given that the proposal would provide a lesser number of units than previously the case the economic benefits of this scheme are considered to be lower than before. Furthermore, the concerns in respect of the loss of the existing facilities remain.

- 5.12.6 The previous proposal was also considered to result in the unjustified loss of a community and sports facility which was considered to weigh heavily against the social sustainability of the site. Again, this has not changed as a result of the amendments to this application. Furthermore, the occupiers of the site would still be reliant on private cars due to the lack of a lit footpath to the nearby facilities. Whilst the proposal would provide slightly over the required affordable housing contribution, this alone is not substantial enough to significantly and demonstrably outweigh the harm.
- 5.12.7 In environmental terms, the site has limited access to services, facilities, and public transport infrastructure and that the occupiers of the dwellings will be reliant on private motor vehicles to satisfy the requirements of day-to-day living. Furthermore, the development would also harm the character and appearance of the rural area.
- 5.12.8 Overall, taking this into account, the development is not considered to be sustainable as the limited benefits do not outweigh the substantial harm outlined within the report above.

## **6 ANY RELEVANT SITE HISTORY**

- **21/00693/OUT** - Outline planning permission with the matter of access for consideration is sought for the demolition of the building and replacement of the driving range and pitch & putt with up to 25 new one- and two-bedroom single storey dwellings and public open space with an equipped play area.- Refused 08.10.2021
- **20/00675/OUT** - Outline planning permission with the matter of access for consideration is sought for the demolition of the building and replacement of the driving range and pitch & putt with 25 new one and two-bedroom detached and semi-detached elderly persons/disabled bungalows. – Refused:16.10.2020
- **17/00293/SCR** - Request for a Screening Opinion to determine the requirement for an Environmental Impact (EIA) for residential development for 8No. two-storey detached dwelling houses and associated garages, lay out parking, amenity areas, estate road, footpaths landscaping and foul and surface water drainage infrastructure and alter access onto Burnham Road. EIA Not Required: 15.03.2017
- **17/00286/OUT** - Demolish building and cease driving range and pitch and putt uses. Erect 8No. two-storey detached dwellinghouses and associated garages, lay out parking, amenity areas, estate road, footpaths landscaping and foul and surface water drainage infrastructure and alter access onto Burnham Road (B1010). – Refused: 28.06.2017

## 7 CONSULTATIONS AND REPRESENTATIONS RECEIVED

### 7.1 Representations received from Parish/Town Councils

Name of Parish / Town Council	Comment	Officer Response
Woodham Mortimer and Hazeleigh Parish Council.	<p>Comment – previous applications have been supported by the Parish with some concerns and recommendations.</p> <p>This application is supported as many residents would welcome the cessation of the current activities which cause nuisance. However, a condition should be imposed ensuring that Woodham Mortimer Brook can sustain the expected volumes from water discarded from the proposed properties, without increasing flood risk elsewhere.</p>	The existing use is addressed at section 5.1. whereas the flood risk is addressed at section 5.9.

### 7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Natural England	A Habitats Regulation Assessment should be undertaken in respect of the Essex Coast RAMS.	Addressed at section 5.10 .
Archaeology	The proposed development site has the potential to impact on archaeological remains. Therefore, archaeological conditions are proposed.	Noted, should the application be approved then archaeological conditions would be imposed.
Lead Local Flood Authority.	No objection subject to conditions relating to a number of conditions in relation to surface water and drainage.	Noted and addressed at section 5.9.

### 7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	A noise condition is recommended as the	Noted and addressed at section 5.6 .

Name of Internal Consultee	Comment	Officer Response
	indicative layout shows two houses along the boundary of the busy B1010.	
Conservation Officer	The distance of the proposed houses from the listed building and the intervening vegetation are such that the proposal should not harm the setting or significance of Salter's Folly. The scheme would therefore pose no conflict with Policy D3 of the Maldon LDP, the policies set out in Chapter 16 of the NPPF or with the statutory duties set out in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Noted and addressed at section 5.5.
Strategic Housing Services	The scheme is Policy Complaint with regards to Affordable Housing, proposing 8 units (44%) above the Policy requirement, subject to an appropriate tenure, cost, and allocation of units to be agreed as part of a S106.	Addressed at section 5.3

#### 7.4 Representations received from Interested Parties

7.4.1 2 letters of objection have been received. The reasons are summarised in the table below:

Objecting Comment	Officer Response
<p>Outside of the settlement boundary.</p> <p>The village cannot accommodate the disproportionate number of dwellings proposed.</p> <p>Concerns over flood risk.</p> <p>The affordable dwelling mix has not been specified and would not be affordable.</p>	<p>Addressed at section 5.1</p> <p>It is not considered that the provision of 18 dwellings would place a substantial burden on the facilities and services of the village. However, accessibility is addressed at section 5.1.</p> <p>Addressed at section 5.9.</p> <p>The mix can be agreed via a condition. The affordable units would meet the</p>

<p>Pedestrian accessibility concerns.</p> <p>The previous application was refused, and this is trying to overcome the previous refusal without merit.</p>	<p>definitions of affordable housing set out within the NPPF and a S106 agreement would be put in place to secure this.</p> <p>Addressed at sections 5.1 and 5.7..</p> <p>Comparisons between the two applications and the justification for the Officer's recommendation in respect to this is made throughout the report.</p>
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7.4.2 1 letter supporting the application has been received, and has been summarised in the table below:

<b>Comment</b>	<b>Officer Response</b>
<p>If the application is approved, it is assumed that it will have conformed to the local planning criteria. It appears to be well thought out and the number of dwellings fit well into the site. The neighbouring Grade II* listed property would benefit from the removal of the golf range to become an open space. The removal of the car park to be replaced with trees and grass verging would improve the rear aspect of the property.</p>	<p>Comments are noted.</p> <p>Layout and design are addressed at section 5.4, impacts on the Listed Building at section 5.5</p>

## 8 **REASONS FOR REFUSAL**

1. The application site is in an unsustainable and rural location and remote from essential support facilities and community services; is inaccessible by a range of transport modes and is located where the need to travel would be maximised and the use of sustainable transport modes would be minimised and would therefore represent an unsustainable form of development, failing in relation to the social strand of sustainability. Therefore, the proposal conflicts with the National Planning Policy Framework's "presumption of sustainable development" and policies S1, S8 and T2 of the Maldon District Local Development Plan.
  
2. The proposed development would fundamentally alter the open character of the south western edge of the village. The provision of eighteen unjustified residential dwellings on this site currently used as golf driving range / pitch and putt would fail to provide visual enhancement to the wider rural locality, representing the encroachment of built form into the rural site and sprawl of development into the countryside. Therefore, the proposal fails on the environmental stand of sustainability, in conflict the National Planning Policy Framework's "presumption of sustainable development" and policies S1, S8, D1, and H4 of the Maldon District Local Development Plan and guidance contained within the National Planning Policy Framework.

3. The proposed residential development would result in the unjustified loss of an employment use, community facility, tourism facility and sports and leisure facility. It has not been satisfactorily justified or evidenced that the sites present use significantly harms the character and amenity of the area, the proposed use would be a greater benefit to the community, or that the site has been marketed for sale or rent and that there is a confirmed lack of interest. Further, it has not been demonstrated that the existing use is no longer viable, that there will be no significant loss of tourism facilities or that the land is surplus to requirements to meet local need or that alternative provision in the locality can meet the needs. Therefore, the proposal conflicts with policies E1, E3, E5 and N3 of the Maldon District Local Development Plan and guidance contained within the National Planning Policy Framework.
4. In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990, the development makes no contribution for affordable housing to meet the identified need in the locality, the necessary financial contribution towards Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy and NHS services, the management and maintenance of the public open space and would fail to secure the provision of residential travel packs for sustainable modes of transport, required for the future occupiers of the site contrary to Policies S1, D1, H1 and I1 of the Maldon District Local Development Plan and Government advice contained within the National Planning Policy Framework.