



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**CENTRAL AREA PLANNING COMMITTEE
19 OCTOBER 2022**

Application Number	22/00820/FUL
Location	The Promenade Park, Park Drive, Maldon, Essex
Proposal	Use of a defined area of Promenade Park for concessions in temporary structures (such as gazebos, tents, shepherd huts or small motorised vehicles) to support seasonal attractions between April and October inclusive between the hours of 10am and 10pm
Applicant	Maldon District Council
Agent	Mr Paul Calder – Real8 Group
Target Decision Date	11.10.2022
Case Officer	Kathryn Mathews
Parish	MALDON EAST
Reason for Referral to the Committee / Council	Council application relating to Council owned land Call-in by Councillor Swain for the following reason(s): so that its implications can be considered in detail by Committee. Policies N1 and N3 are both affected.

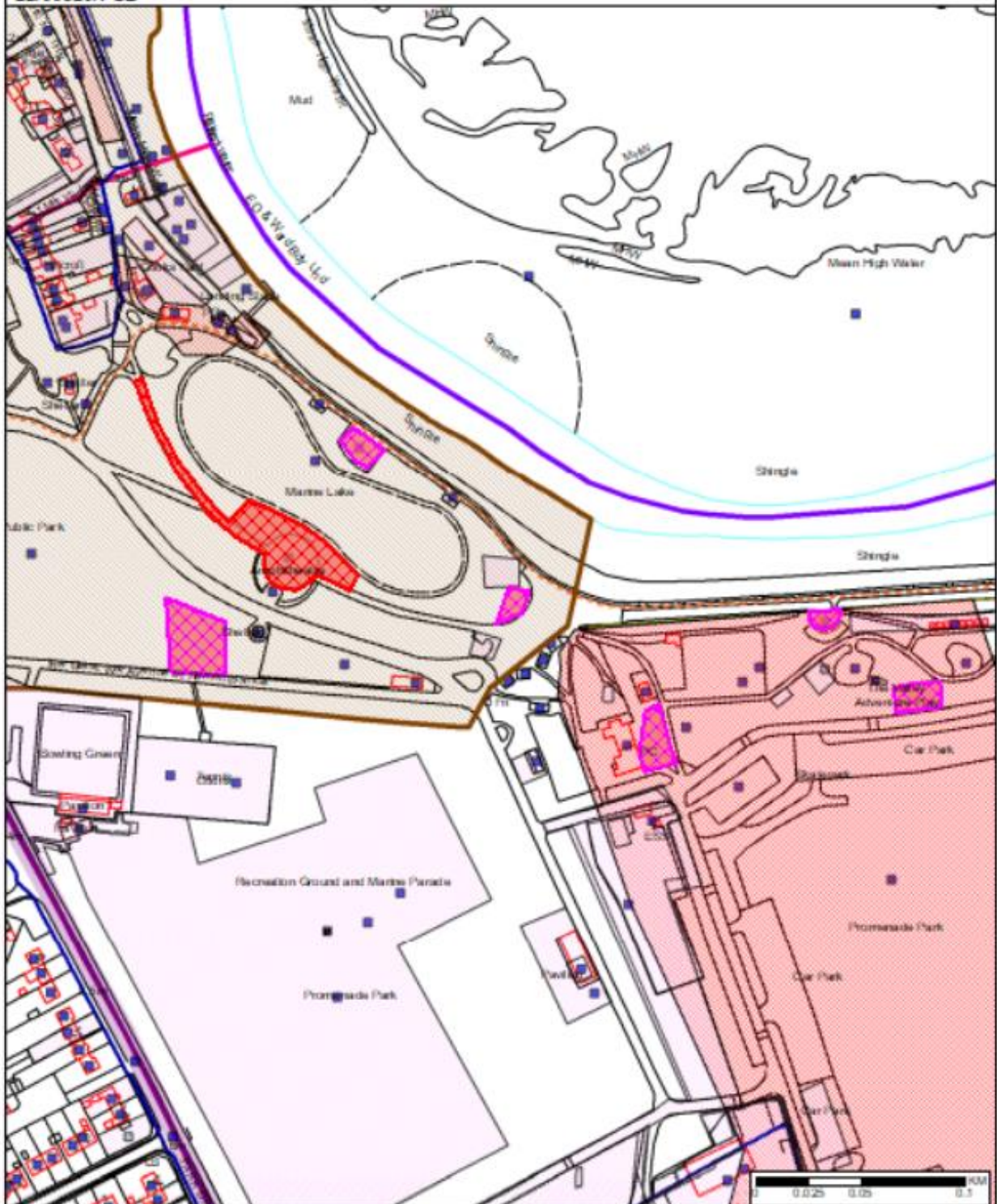
1. **RECOMMENDATION**


APPROVE subject to conditions as detailed in Section 8.

2. **SITE MAP**

Please see below.

The Promenade Park, Park Drive, Maldon
22/00820/FUL



 <p>Copyright For reference purposes only. No further copies may be made. This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Maldon District Council 100018568 2014</p> <p>www.maldon.gov.uk</p>	Scale:	1:2,500
	Organisation:	Maldon District Council
	Department:	Department
	Comments:	Central Area Committee
	Date:	22/09/2022
	MSA Number:	100018568

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site lies within Promenade Park to the east of Park Drive, beyond the settlement boundary of Maldon. Promenade Park lies within the Leisure Quarter as identified in the Maldon and Heybridge Central Area Masterplan. Whilst Promenade Park is not a formally Registered Park and Garden as identified by Historic England, it has been identified within the Local Development Plan (LDP) as a local Historic Park and Garden and is therefore considered to be a non-designated local heritage asset.
- 3.1.2 The development proposed is described as the use of a defined area of Promenade Park for concessions in temporary structures (such as gazebos, tents, shepherd huts or small motorised vehicles) to support seasonal attractions between April and October inclusive between the hours of 10am and 10pm.
- 3.1.3 The application site includes two areas within the Valley Adventure Play area; one between the public conveniences and the Splash Park; three adjacent to the eastern half of the marine lake (one includes the Amphitheatre) and one between the tennis courts and the Amphitheatre. These areas consist of a mixture of grass, seating and/or hardstanding and measure 116sq.m., 250sq.m., 269sq.m., 270sq.m., 365sq.m., 930sq.m. or 1270sq.m. The proposed block plan submitted includes one temporary stall for each of the seven areas identified measuring 3m x 5.9m.
- 3.1.4 The application is accompanied by supporting documents as follows:
- Planning Statement;
 - Preliminary Flood Risk Assessment (August 2022);
 - Letter from Hybrid Ecology Ltd (July 2022);
 - Seven photographs of examples of the type of structures proposed – trailers, gazebos, caravans and huts.

3.2 Conclusion

- 3.2.1 It is considered that the principle of the development is acceptable and no objections are raised in relation to the impact of the proposal on the character or appearance of the area (which is a Conservation Area), the amenity of local residents, highway safety/access/parking, flood risk or nature conservation.

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
- 55-58 Planning conditions and obligations
- 81-85 Building a strong, competitive economy

- 92-103 Promoting healthy and safe communities
- 104-109 Promoting sustainable transport
- 119-123 Making effective use of land
- 124-125 Achieving appropriate densities
- 126-135 Achieving well-designed places
- 152-173 Meeting the challenge of climate change, flooding and coastal change
- 174-188 Conserving and enhancing the natural environment
- 189-208 Conserving and enhancing the historic environment

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

- Policy S1 - Sustainable Development
- Policy S5 - Maldon and Heybridge Central Area
- Policy S8 - Settlement Boundaries and the Countryside
- Policy E1 – Employment
- Policy E2 – Retail Provision
- Policy E5 - Tourism
- Policy D1 - Design Quality and Built Environment
- Policy D2 - Climate Change & Environmental Impact of New Development
- Policy D3 – Conservation and Heritage Assets
- Policy D5 - Flood Risk and Coastal Management
- Policy N1 - Green Infrastructure Network
- Policy N2 - Natural Environment, Geodiversity and Biodiversity
- Policy N3 - Open Space, Sports and Leisure
- Policy T1 - Sustainable Transport
- Policy T2 – Accessibility
- Policy I1 – Infrastructure and Services

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Car Parking Standards
- Maldon and Heybridge Central Area Masterplan (2017)

5. MAIN CONSIDERATIONS

5.1 The main issues which require consideration as part of the determination of this application are the principle of the development, the impact of the development on the character and appearance of the area, any impact on the amenity of the occupiers of neighbouring residential properties, highways / access / parking, flood risk, and nature conservation.

5.2 Principle of Development

5.2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the NPPF require that planning applications are

determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the development plan comprises of the approved LDP.

- 5.2.2 Policy S1 refers to the NPPF's presumption in favour of sustainable development and makes specific reference to the local economy, housing growth, effective use of land, prioritising development on previously developed land, design, the environment, sustainable communities, the effects of climate change, avoiding flood risk area, the historic environment, local infrastructure and services, character and appearance, and minimising need to travel.
- 5.2.3 Policy E2 aims to support the provision of retail, office, tourism, cultural and community uses.
- 5.2.4 As part of Policy E5, it is stated that the District needs to continue to develop tourism related assets such as accommodation, attractions and unique visitor experiences.
- 5.2.5 Policy S5 states that the Masterplan seeks to *'retain the Central Area (Maldon and Heybridge) as a focal point in the District for retail (on Maldon's High Street), commercial, industrial (at The Causeway Regeneration Area) community and tourism activities (in The Leisure quarter). It will be a thriving and vibrant destination that has strong connections with surrounding areas and is supported by its heritage assets, waterways and green spaces'*.
- 5.2.6 In support of the application, the following is stated as part of the Planning Statement submitted:
- There are 500,000 visitors to the Park per year and so the use of the Park supports tourism, local business and the local economy as well as the local community due to the public open space, sports clubs and amenity societies it provides.
 - The existing concessions are in permanent, small kiosks / boat shed style structures centered around the Splash Park and the ornamental lake.
 - The Park's current attractions include the Splash Park, Galleon Activity Park, Adventure Golf, seafood bar and petting zoo, in addition to a calendar of annual events.
 - The proposal would support local businesses, improve the visitor offer within the Park and support the local economy.
 - Visitor numbers continue to increase and are expected to increase further as a result of the creation of the England Coastal Path which will include the Park.
 - There is a need for additional concessions of a different type to those which exist – both food and drink and attractions e.g., Grape and Grain bar, Shepherd Hut reading room, 'Afternoon Tea' takeaway and ice cream vans. The current offers are described as selling mainly fast food, soft drinks, hot beverages and ice cream as well as sweets style outlets with some retail for sport/activity products. The Council has received interest from heritage food and drink concessions and local businesses wishing to have a presence in the Park which, if permitted, could also encourage footfall from the Park to the High Street. It is stated that there is a need to ensure the needs of visitors are catered for.
- 5.2.7 With respect to Policy E2, although the site is not located within a town centre area, or a primary or secondary area, there are surrounding kiosks being used for similar

uses, such as cafes and takeaways. It is not considered that the development is at a scale that would require a retail impact assessment.

5.2.8 Policy E5 aims to encourage the provision of tourist facilities and attractions that would provide facilities for residents and attract visitors to the District. The site is within the Promenade Park which provides a number of tourist-based facilities. As part of the application, it is stated that the uses of the kiosks would not replicate the goods currently available to purchase within the Park, but competition is not a material planning consideration. The Park is identified as a Destination Hub for restaurant and visitor centre facilities in the Masterplan; the proposals would positively contribute to this.

5.2.9 Based on the above, no objections to the principle of the development are raised.

5.3 Design and Impact on the Character of the Area

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

5.3.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. 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”.

5.3.3 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.

5.3.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the Maldon District Design Guide Supplementary Planning Document (SPD) (2017) (MDDG).

- 5.3.5 The application site lies outside of any defined development boundary. According to Policies S1 and S8 of the LDP, the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The policies stipulate that outside the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the development is for proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance. Tourism related developments are identified as ones which may be appropriate to rural areas (f), in accordance with Policies E4 and E5 although Policy E4 is not relevant in this case as it relates to agricultural and rural diversification. Policy E5 is referred to above.
- 5.3.6 The application site falls within the Maldon Conservation Area and the Park is a non-designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Council to pay special attention to desirability of preserving or enhancing the character or appearance of the conservation area. Similarly, policy D3 of the approved Maldon District LDP states that development proposals that affect heritage assets must preserve or enhance its special character, appearance, setting and any features and fabric of architectural or historic interest. Where a proposed development would cause less than substantial harm to the significance of a designated heritage asset, this harm will be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 5.3.7 The development would consist of a limited number of small temporary structures in the context of an extensive recreational area where numerous commercial outlets already exist. It is noted that the Specialist – Heritage and Conservation has raised no objections to the proposal. Therefore, it is not considered that the development would cause demonstratable harm to the character or appearance of the area. However, due to the temporary nature of the stalls proposed, it is not considered appropriate for planning permission to be granted on a permanent basis and it is also considered necessary to require the removal of the stalls from the Park during the months they would not be in use.

5.4 Impact on Residential Amenity

- 5.4.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG (2017).
- 5.4.2 The development proposed would be located at a sufficient distance away from existing residential properties to avoid any adverse impact being caused with respect to privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. However, it is considered appropriate to impose conditions, including restricting opening hours, to any grant of planning permission in the interests of the amenity of local residents.
- 5.4.3 It is noted that the Specialist – Environmental Health raises no objections advising that any potential problems relating to noise, food hygiene, health and safety etc. could be controlled by conditions on any licence or lease issued by the Council.

5.5 Access, Parking and Highway Safety

- 5.5.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposal, inter alia, to include sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.
- 5.5.2 The Council's adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as minimum standards.
- 5.5.3 Promenade Park is served by two existing car parks and the development proposed is not expected to materially increase the demand for off-street parking due to the nature and scale of the use proposed. In addition, there are local bus services which provide a means of transport for visitors to the Park in addition to visitors being able to arrive on foot or by bicycle. It is not considered that the proposal would adversely impact the free flow of pedestrians through the Park.
- 5.5.4 Therefore, it is considered that the existing car parks would provide sufficient parking in relation to the development proposed and no objections to the proposal are raised on the grounds of highway safety, access or car parking.

5.6 Flood Risk and Drainage

- 5.6.1 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.
- 5.6.2 The Flood Risk Assessment (FRA) submitted includes the following conclusions:
- This 'Less vulnerable' development is compatible with Flood Zone 3A and the temporary nature of the proposed structures would ensure that flooding from all sources would be negligible to low.
 - There would be one stall above the flood level during each of the design flood events – the others would be located on ground levels below these flood levels meaning they would be flooded during an overtopping event of the nearby sea wall. However, it is stated that these stalls would be removed / moved in the event of a flood and, as they are temporary, they would be easily transportable and able to be wheeled to safety.
 - Flooding from artificial waterbodies –whilst at risk of flooding from reservoirs, the temporary nature of the stalls means that this source poses a negligible risk.
 - Surface water flooding – most of the stalls would be in areas of low surface water risk. Furthermore, given the nature of the proposal and the temporary nature of the stalls, the risk from this source is considered to be low.
 - Sewer flooding – there is a 525mm foul water sewer which runs through the Park. Blockages or surcharges in the site drainage or the public sewer network may result in flooding of the site or surrounding areas due to the backing up of internal pipe work but, given the temporary nature of the proposals, the risk is considered to be low.
 - Water Mains – flood risk is considered to be low given the temporary nature of the proposals.

- Flood History – three of the sites for the proposed stalls are within the area flooded in 1953 flooding event.

5.6.3 As part of the FRA, mitigation is proposed: all stall holders (or the managing organization of their tenancy) should subscribe to the Environment Agency's flood warning service and, if a Flood Warning is issued, those stalls and associated personnel should be moved to higher ground. It is not explicitly stated, but it appears to be recommended that a Flood Warning and Evacuation Plan is required by condition.

5.6.4 The Environment Agency (EA) has advised that, whilst the temporary stalls would be situated in flood zone 3, they do not pose a risk of increased flooding elsewhere. The EA notes that the applicant has proposed an evacuation plan and will sign up for flood warnings. Therefore, the EA feels that the risk of flooding has been considered but the suitability of this should be considered by the emergency planners.

5.6.5 Based on the contents of the FRA submitted and the advice of the EA, it is considered that the development would be safe for its lifetime and no objections are raised in relation to flood risk or drainage. However, due to the limited details contained within the FRA, it is considered that the imposition of a condition requiring details of a Flood Warning and Evacuation Plan would be necessary if planning permission were to be granted.

5.7 Nature Conservation

5.7.1 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.

5.7.2 Policy S8 states that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty.

5.7.3 Policy D1 requires that, amongst other things, all development must respect and enhance the character and local context and make a positive contribution in terms of the natural environment particularly in relation to designated and non-designated sites of biodiversity/geodiversity value (criterion f).

5.7.4 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.

5.7.5 Policy N2 states that, any development which could have an adverse impact on sites with designated features, priority habitats and/or protected or priority species, either individually or cumulatively, will require an assessment as required by the relevant legislation or national planning guidance. Where any potential adverse effects to the conservation value or biodiversity value of designated sites are identified, the proposal will not normally be permitted.

5.7.6 The application is supported by a letter from Hybrid Ecology Ltd (July 2022) which advises that the *'site is adjacent to the Blackwater Estuary which is designated on an international level as a SPA and SAC and on a national level as a SSSI. The Blackwater Estuary holds international significance for breeding and over-wintering birds and its Priority Habitats, including mudflats'*, the *'project will draw more people to the site in the summer months and this could impact the breeding wildfowl that depend on the Estuary. However, the areas surveyed are not part of these*

designated areas nor are they required for its conservation integrity or future management', the 'project will not create new access to the ecological conservation areas nor will it create any significant disturbance to the site's wildlife' and the 'site is already heavily used by the public for recreation and there are already mitigation measures in place such as extensive hardstanding and means of keeping people away from the water including signage. It is therefore unlikely that the increased number of visitors to the site brought about by the markets would negatively impact the reasons for which the Blackwater Estuary is designated. No constraints in relation to nesting birds or legally protected or other species are identified.

- 5.7.7 As part of the letter, it is noted that it is recommended that the several mature trees around the areas identified are protected (e.g. with Heras fencing) to reduce trampling around the Root Protection Areas and direct damage during market events. This issue could be covered by condition if planning permission were to be granted.
- 5.7.8 Whilst Essex County Council (ECC) Ecology has not commented on the proposal, Natural England has raised no objections advising that, based on the plans submitted, the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.
- 5.7.9 Based on the above, there is no reason to conclude that the development would have an adverse impact on the ecology of the site or its surroundings.

6. ANY RELEVANT SITE HISTORY

- **21/00314/FUL** - Converting & renovating an existing public seating shelter into a food serving kiosk – Approved 04.06.2021.
- **20/01328/FUL** - Timber clad kiosk with two opening shutters, serving light refreshments. Approved 04.05.2021.
- **19/00201/FUL** – Mobile catering unit within adventure golf site - permission for 10 years. Approved 31.05.2019 for temporary period for 3 years.
- **19/00092/FUL** - Proposed gemstone mining attraction. Approved 31.05.2019.
- **18/00480/FUL** - Use of land for the temporary siting of a mobile food and drink kiosk. Refused 09.07.2018.
- **17/00067/FUL** - Place a 20 foot x 10 foot converted metal container in the promenade park for use as a booking in suite, office and storage. Fence off the surrounding area for change of use for outdoor activity centre. Refused 18.07.2017.
- **16/00629/FUL** - Temporary planning permission for two catering units Approved 28.07.2016.
- **16/00064/FUL** - Application for permission to erect a single storey 'Portacabin' style building for permanent use. Approved 21.03.2016.
- **14/00819/FUL** - 18 hole adventure golf course with additional 19th free game hole. To include pirate themed props and structures with cafeteria and clad storage containers. Approved 31.10.2014.

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Maldon Town Council	Recommends refusal as it is considered that several of the proposed concessions are not in keeping and are out of character with the Town's historic Victorian Promenade Park. No detailed specifications of the proposed units have been provided or a commitment to support local businesses and, therefore, the proposal would be detrimental to the existing, established Promenade Park businesses. The application is, therefore, contrary to policies D1, D3 and E1 of the Maldon District Local Development Plan.	Noted – refer to sections 5.2 and 5.3 of report.

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Natural England	Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.	Noted – refer to section 5.7 of report.
Environment Agency	Whilst the temporary stalls would be situated in flood zone 3, they do not pose a risk of increased flooding elsewhere. The applicant has proposed an evacuation plan and will sign up for flood warnings and therefore they feel that the risk of flooding has been considered, the suitability of this should be considered by the emergency planners.	Noted – refer to section 5.6 of report.

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Strategy Team	No response.	
Specialist –	No objections any potential	Noted – refer to

Name of Internal Consultee	Comment	Officer Response
Environmental Health	problems relating to noise, food hygiene, health and safety etc. could be controlled by conditions on any licence or lease issued by the Council.	section 5.4 of report.
ECC Ecology	No response.	
Specialist - Heritage and Conservation	No objection.	Noted – refer to section 5.3 of report.

7.4 Representations received from Interested Parties

7.4.1 No letters of representation have been received.

8. PROPOSED CONDITIONS

1. The use hereby permitted shall cease and the land restored to its existing condition within three years of the date of this planning permission.
REASON Due to the temporary nature of the structures proposed, in the interests of the character and appearance of the area, in accordance with Policies D1 and D3 of the Maldon District Local Development Plan and the NPPF.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Location plan R8.MPP.LP01 rev.A
 - Existing plan R8.MPP.EX01 rev.A
 - Block Plan R8.MPP.BP01 rev.AREASON To ensure that the development is carried out in accordance with the details as approved.
3. The development hereby permitted shall only be open to the public between the hours of 10:00 to 22:00 hours Monday -Sunday inclusive, including Public Holidays and not at any other times.
REASON To ensure the appropriate use of the site in accordance with Policies D1 and D2 of the Maldon District Local Development Plan and the NPPF.
4. The use hereby permitted shall only be carried-out during the months of April to October each year. Any temporary structures or paraphernalia brought on the sites in association with the use hereby permitted during these months shall be removed and not be on site or elsewhere within the Promenade Park between the months of November- March.
REASON To ensure the appropriate use of the site in accordance with Policies D1 and D3 of the Maldon District Local Development Plan and the NPPF.
5. The development hereby permitted shall not be open to the public until details of means of refuse storage and disposal have been submitted to and approved in writing by the local planning authority. The use shall be carried-out in accordance with the approved details.
REASON To protect the amenity of the area and to prevent pollution, in accordance with Policies D1 and D2 of the Maldon District Local Development Plan and the NPPF.
6. The development hereby permitted shall not be open to the public until details of the means of protection of the existing trees within and along the boundaries of the sites have been submitted to and approved in writing by the

local planning authority. The development shall be carried-out in accordance with the approved details.

REASON To ensure the appropriate use of the site in accordance with Policies D1 and D3 of the Maldon District Local Development Plan and the NPPF.

7. The development hereby permitted shall not be open to the public until details of a Flood Warning and Evacuation Plan have been submitted to and approved in writing by the local planning authority. The use of the site shall be carried-out in accordance with the approved Plan, thereafter.

REASON As the site is located within a high-risk flood zone, in the interests of minimising the impacts of flood risk, in accordance with Policy D5 of the approved Maldon District Local Development Plan and the NPPF.