



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
15 MARCH 2023**

<b>Application Number</b>	<b>22/01063/VAR</b>
<b>Location</b>	Seal Point, 10 Sea View Parade, Mayland, Essex, CM3 6EL.
<b>Proposal</b>	Section 73A application for the variation of condition 2 (approved drawings) of planning permission 16/01492/FUL (Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade.)
<b>Applicant</b>	Mr Geoff Wood
<b>Agent</b>	Mr Andrej Bozin – Agency of Architecture
<b>Target Decision Date</b>	22.03.2023 (EOT deadline)
<b>Case Officer</b>	Lisa Greenwood
<b>Parish</b>	<b>MAYLAND</b>
<b>Reason for Referral to the Committee / Council</b>	The original application reference 16/01492/FUL was determined by the South Eastern Area Planning Committee.

1. **RECOMMENDATION**

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

2. **SITE MAP**

Please see below.



### **3. SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information and related planning history**

##### Application site

3.1.1 The application site is located along the south side of Sea View Parade, an unmade and unadopted road. The site is outside the defined settlement boundary of the District and consists of a dwelling relating to planning permission reference 16/01492/FUL. There is woodland to the southeast and northeast of the site. To the north and south are dwellings fronting Sea View Parade and North Drive, whilst to the north is the Harlow Sailing Club, which fronts the foreshore of the Blackwater, with a clubhouse and dinghy park.

3.1.2 As stated above, the site benefited from planning permission reference 16/01492/FUL, for the erection of a dwelling. This was approved on 13 March 2017. An application was also submitted and approved (planning reference 19/00704/FUL) on 6 January 2020 for the removal of condition 5 (construction works to take place outside of the sensitive bird overwintering period) and variation of conditions 2 (approved plans), 7 (landscaping) and 13 (vehicular access) of the original permission. The plans submitted to support this application show an amended access and landscaping of the site. The access would be located further south from where it was originally approved. The application was also supported by a revised Ecological Appraisal Survey. The soft landscaping details were previously approved assessed and found to be acceptable under application reference 19/05148/DET. Notwithstanding the alterations approved under this application, the dwelling has not been constructed in accordance with the plans approved under application reference 16/01492/FUL.

3.1.3 The main differences between the approved development and the development as constructed are as follows:

##### South elevation

- Removal of opening at ground floor level to a store
- Reduction in the height of the glazing
- Reduced width of some of the glazing
- Removal of laser cut sliding screens
- Render used on the underside/side of the roof/ the soffit opposed to weathered larch cladding
- The double bund wall has been removed from the rear garden.

##### East elevation

- Reduction in the height of the glazing
- Reposition of the glazing which has created larger gaps between some openings and smaller gaps between others
- Removal of laser cut sliding screens
- Render used on the underside/side of the roof/the soffit opposed to weathered larch cladding.
- The double bund wall has been removed from the rear garden.
- Increase in size of the space between the supporting post and the main dwelling.

### North elevation

- Removal of a roof light principal roof slope.
- Fenestration position and size has been altered from four full length narrow windows to two square high-level windows and two full length windows. The windows were positioned either side of the 'tower' structure but are now positioned either side and upon it.
- Loss of laser cut screen at ground level.
- Cladding included on the tower opposed to exposed concrete.

### West elevation

- Reduction in the height of the glazing
- Silicone render used on the exterior walls opposed to cementitious render
- Removal of laser cut sliding screens
- Render used on the underside/side of the roof/ the soffit opposed to weathered larch cladding.
- The double bund wall has been removed from the rear garden.
- Doorway at ground floor has been removed.

### Internal changes

- W.C. has been provided at ground floor.
- Store removed at ground floor adjacent to the garage.
- Lobby area created at ground floor.

### The Proposal and Background Information

- 3.1.4 The application seeks planning permission for the variation of condition 2 (approved plan) of planning permission reference 16/01492/FUL and seeks to reinstate some features of the original approval, as well as retain some of the changed elements.
- 3.1.5 The application is supported by the drawings originally approved under planning application reference 16/01492/FUL, and the proposed amendments. The amendment statement submitted to support the proposal states the following features are to be retained / reinstated from the original permission:
- Extensive glazing on the east, west and south elevations
  - Metal screens which are operable
  - Soffit cladding
  - Staggered bund wall

The following are to be omitted:

- Glazing above atrium space
- Change of fenestration on north elevation to account for internal configurations

The Statement also includes the specifications of a range of features and materials, and additional information has also been submitted in this regard during the application process (received via email by the Local Planning Authority (LPA) on 8 February 2023).

### 3.1.6 Other points of note:

- The site access and driveway are not shown on the submitted block plan in the same location as they have been built and are also not in accordance with the terms of planning application reference 19/00704/FUL, which sought to amend the location of the vehicular access further south.
- The proposal also includes details of the boundary treatments to the driveway in relation to condition 6 of 16/01492/FUL, which consists of a 1.2m high post and rail fence, 1.5m high brick piers and 1.5m high and 5m wide wooden gates.

3.1.7 It should be noted that this is the second application submitted to the LPA to try to rectify some of the differences between the approved plans, and what has been constructed. An application was refused in May 2022 (planning reference 21/00720/VAR, as it was felt that the differences suggested in this instance were too great, and as a result, the architectural and design changes to the dwelling were no longer considered to achieve the exceptional design standards as set out in Paragraph 80 of the National Planning Policy Framework (NPPF) (2021). As a result of the modifications proposed within this application, demonstrable harm would be caused to the character and appearance of the area.

3.1.8 Since the refusal of this application, the applicant has engaged with the LPA to try to address the concerns in respect of design. The applicant has spoken to Officers informally on several occasions and has also sought pre-application advice (reference 22/03116/PREAPP) with regard to the amendments. The scheme presented is in response to discussions with Officers.

## 3.2 Conclusion

3.2.1 An application has been made to vary Condition 2 of approved planning permission reference 16/01492/FUL, proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade. The revised scheme seeks to retain the extensive glazing on the east, west and south elevations as approved under planning reference 16/01492/FUL, the operable metal screens, soffit cladding, and staggered bund wall, and is largely consistent with the originally approved scheme. Whilst it is acknowledged that alterations have been made to the north elevation, these are not considered to be so significant as to harm the overall character of the area and justify the withholding of permission. Subject to the imposition of any outstanding / relevant conditions attached to planning reference 16/01492/FUL and 19/00704/FUL, it is recommended that planning permission is now granted.

## 4. MAIN RELEVANT POLICIES

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

### 4.1 National Planning Policy Framework (NPPF) 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
- 55-59 Planning conditions and obligations
- 59-79 Delivering a sufficient supply of homes
- 92-103 Promoting healthy and safe communities
- 104-113 Promoting sustainable transport
- 119-125 Making effective use of land

- 126-136 Achieving well-designed places
- 152-173 Meeting the challenge of climate change, flooding and coastal change
- 189-217 Conserving and enhancing the historic environment

#### 4.2 **Maldon District Local Development Plan (LDP) 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 & Environmental Impact of New Development
- D4 Renewable and Low Carbon Energy Generation
- D5 Flood Risk and Coastal Management
- H2 Housing Mix
- H4 Effective Use of Land
- N2 Natural Environment and Biodiversity
- T1 Sustainable Transport
- T2 Accessibility
- I1 Infrastructure and Services
- I2 Health and Wellbeing

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

- Planning Practice Guidance (PPG) (first released in 2014, but regularly updated)
- Maldon District Design Guide Supplementary Planning Document (SPD) (MDDG) (2017)
- Maldon District Vehicle Parking Standards SPD (2018)

### 5. **MAIN CONSIDERATIONS**

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

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

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

5.1.3 Where the 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 7, of the NPPF which states:

***“For decision taking this means:***

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

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

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

*Footnote 8 - 8 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74).*

- 5.1.4 At the heart of the NPPF is a presumption in favour of sustainable development (the ‘presumption’) which is central to the policy approach in the Framework, as it sets out the Government’s policy in respect of housing delivery within the planning system and emphasises the need to plan positively for appropriate new development. The NPPF replaces those Local Plan policies that do not comply with the requirements of the NPPF in terms of housing delivery. In addition, leading case law assists the LPA in its application of NPPF policies applicable to conditions where the 5YHLS cannot be demonstrated (*Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC* [2017] UKSC 37).
- 5.1.5 It is necessary to assess whether the proposed development is ‘sustainable development’ as defined in the NPPF. If the site is considered sustainable then the NPPF’s ‘presumption in favour of sustainable development’ applies. However, where the development plan is ‘absent, silent or relevant policies are out-of-date’, planning permission should be granted ‘unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or that specific policies in this Framework indicate development should be restricted’.
- 5.1.6 In judging whether a residential scheme should be granted, it is necessary to consider the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall, against the adverse impacts identified (if any) arising from the proposal in relation to the policies contained within the NPPF and relevant policies in the Local Plan.
- 5.1.7 There are three dimensions to sustainable development as defined in the NPPF. These are the economic, social and environmental roles. The LDP through Policy S1 re-iterates the requirements of the NPPF but there are no specific policies on sustainability in the current Local Plan. Policy S1 allows for new development within the defined development boundaries. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. However, because the Council cannot demonstrate an up to date five year supply of deliverable housing and on the basis that sites outside of the defined development boundaries could be judged to be ‘sustainable development’ through the three dimension tests of the NPPF, the LPA 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
- 5.1.8 Paragraph 79 of the National Planning Policy Framework (2021) 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.”

- 5.1.9 In the assessment of planning application reference 16/01492/FUL the application site was deemed to be within a sustainable location, albeit outside of the settlement boundary, due to its close proximity to the settlement boundary and the services and facilities within the Mayland village. However, as addressed above, accessibility is not the only consideration in assessing whether a development is sustainable. The original application was, in part, considered to be sustainable and acceptable as it was for a dwelling that met the aims of Paragraph 55 (now Paragraph 80) of the NPPF (2021), in relation to dwellings of exceptional design in rural areas. Therefore, matters relating to the impacts on the character and appearance of the area and countryside and other material considerations will be discussed below.

## **5.2 Housing Need and Supply**

- 5.2.1 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 LPAs should consider applications for new dwellings in the context of the presumption in favour of sustainable development, and the LDP policies in relation to the supply of housing should not be considered to be up to date. As a result, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted.
- 5.2.2 Whilst the LDP carries 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.
- 5.2.3 The Local Housing Needs Assessment (2021) (LHNA) is an assessment of housing need for Maldon District 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 (2021) and up to date Planning Practice Guidance and provides the Council with a clear understanding of the local housing 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.
- 5.2.4 The LHNA states that the greatest mix needed for market housing is for 3-bedroom dwellings (40-50%). There is a 25-35% requirement for 4-bedroom dwellings, and a 15-25% requirement for 4+ bedroom dwellings. The proposal seeks to provide for 1no. 3-bedroom dwelling. This satisfies the required housing mix for the District and whilst nominal, the proposal is considered to be acceptable in this regard.

## **5.3 Design and the Impact on the Character of the Area and its Landscape**

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



- 5.3.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. Similar support for high quality design and the appropriate layout, scale and detailing of development is required by Policy D1 and H4 of the LDP and is found within the MDDG (2017).
- 5.3.3 A successful development needs to integrate well with the existing streetscene. Visual cues such as rhythm, proportions and alignments taken from adjacent buildings should be used to inform the design of the development.
- 5.3.4 The application site lies outside of a defined settlement boundary. In accordance with 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 of 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.
- 5.3.5 As part of the original application, it was noted that the site's location is sensitive from both a visual viewpoint and also an ecological viewpoint. It was acknowledged that the site is not one that would usually be considered for residential development due to its location outside of the settlement boundaries and within Flood Zone 3. However, the development was considered against Paragraph 55 of the NPPF (2019, now superseded), and was deemed to be a dwelling of outstanding or innovative design with quality architecture, thereby justifying the siting of the proposal.
- 5.3.6 Since the determination of that application, the NPPF has been updated (2021) and Paragraph 55 is now reflected in Paragraph 80. Although worded differently, the premise of Paragraph 80 remains the same in that it requires design of exceptional quality that is truly outstanding, reflecting the highest standards in architecture and design that would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
- 5.3.7 The key characteristics of the original permission that afforded it an 'exceptional design' status included the extensive glazing on the east, west and south elevations. However, as erected, the dwelling has lost a vast amount of this glazing to all elevations, largely as a result of it no longer being full length, but also due to it being of a standard height that could be expected to be seen in any residential development. Furthermore, the laser cut sliding screens, at the north and south ground and all of the first floor, appear to have been lost, which dilutes the architectural interest of the scheme and creates a harsher, more bland development. Also, the use of render soffits / under side of the roof overhang as opposed to weathered larch cladding, again creates a more generic residential appearance, rather than a building which is drawing on its maritime and out of settlement character.
- 5.3.8 The dwelling as constructed has also included the removal of the staggered bund wall around the associated amenity space. Whilst the retaining wall which encloses the amenity space has been maintained, the two areas of bunding that have been lost were considered to provide a gentle, progressive, soft landscaped incline to the main retaining wall, providing a degree of screening and visual interest. In contrast, the retained wall in isolation is considered to create a harsh and abrupt edge to the amenity area that is highly visible from within the public realm. Whilst the long grass meadow soft landscaping approved under the terms of 18/05093/DET will screen this to a degree, it is not considered the landscaping is sufficient to fully mitigate against

the visual impacts of the stark white wall. It is therefore essential that the original staggered bund is reinstated to lessen this impact.

5.3.9 The dwelling as originally approved represented a dwelling with a design that was sensitive to the site and its surroundings with high quality and innovative architecture. Whilst the dwelling continues to address flood resilience to the home, garden and garaging in a holistic manner, the overall special architectural character of the dwelling has been watered down through the inclusion of more generic design choices, the omission of particular design elements such as the laser cut panels and the alteration to materials. It is considered that the dwelling as constructed appears more as an elevated bungalow than a design innovation and therefore, it is no longer considered that the proposal would warrant exceptional design status. Overall, it is considered that whilst the original dwelling was considered to be of a demonstrably high standard of design the development as built, which this application seeks to regularise, by contrary, the dwelling as constructed is of a limited architectural merit and appears as an alien feature, detracting from the character and appearance of the area.

5.3.10 In relation to the above, it is acknowledged that the site is not necessarily isolated in terms of Paragraph 80 of the NPPF, and as such it is not paramount that the proposal achieves exceptional design quality. However, the proposal does still lie outside of the settlement boundary, in a visually sensitive location and in a flood zone area where residential development would not usually be permitted. Therefore, in order to be considered acceptable the benefits of the development must outweigh the harm. Whilst other factors will be discussed within the planning balance, it is considered that the overall alterations to the dwelling, as stated at Paragraph 3.1.4, of this report, are now more consistent with the original permission. Whilst it is acknowledged that the glazing above the atrium space at the north elevation has now been omitted, and a change to the fenestration at this elevation has been introduced, the proposal has now sought to address the majority of the overall features considered to be harmful. Most notably, the proposal now re-introduces full length glazing and laser cut sliding screens, key features of the originally approved application. Dark shiplap boarding will also replace the existing soffit, and the staggered bund wall is to be re-introduced, which, when read in conjunction with the approved soft landscaping scheme, will help to mitigate against the visual impacts of the ground floor “stalk” element. Whilst it is acknowledged that the glazing above the atrium did add to the interest of this elevation, it is not considered that this omission will dilute the design of the originally approved dwelling, and the architectural character has now been retained. Subject to the control of the setting of the building and the prevention of the spread of domestic paraphernalia, the revised scheme is now considered to complement the character of the area and is acceptable in this regard.

#### **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 alterations have resulted in two windows serving the landing on the northern elevation. However, they do not serve a habitable room and given the distance from neighbouring properties it is not considered that there will be an increase in harm to neighbouring residential amenity as a result of the amendments to the scheme.

## **5.5 Access, Parking and Highway Safety**

- 5.5.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, Policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.
- 5.5.2 The Council's adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as minimum standards. This takes into account Government guidance which recognises that car usage will not be reduced by arbitrarily restricting off street parking spaces. Therefore, whilst the Council maintains an emphasis of promoting sustainable modes of transport and widening the choice, it is recognised that the Maldon District is predominantly rural in nature and there is a higher than average car ownership. Therefore, the minimum parking standards seek to reduce the negative impact unplanned on-street parking can have on the townscape and safety, and take into account the availability of public transport and residents' reliance on the car for accessing, employment, everyday services and leisure. The key objectives of the standards are to help create functional developments, whilst maximising opportunities for use of sustainable modes of transport. This will enable people to sustainably and easily carry out their daily travel requirements without an unacceptable detrimental impact on the local road network, or the visual appearance of the development, from excessive and inconsiderate on street parking.
- 5.5.3 The proposed alterations would not vary the off-street parking provision and as such, no objection is raised in that respect.
- 5.5.4 The proposed altered entrance gate would also be inward opening / sliding and have no additional impacts on highway safety. Therefore, the revised development would not result in adverse impacts on the highway network or highway safety.
- 5.5.5 The site access and driveway are not shown on the submitted block plan in the same location as they have been built and are also not in accordance with the terms of planning application reference 19/00704/FUL, which sought to amend the location of the vehicular access further south. The LPA has spoken with the agent for the applicant (28/02/2023), who is happy for a condition to be attached to any forthcoming planning permission to ensure that the vehicular access is in accordance with plan nos. 118-200-156 Rev A; 188-200-004F and OS 1424-17.3 Rev F of planning permission reference 19/00704/FUL.

## **5.6 Private Amenity Space and Landscaping**

- 5.6.1 Policy D1 of the approved LDP requires all development to provide sufficient and usable private and public amenity spaces, green infrastructure and public open spaces. In addition, the adopted 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.
- 5.6.2 The proposed revised development would not impact upon the provision of outdoor amenity space, which is in excess of the minimum requirement of 100m<sup>2</sup> required for the previously approved dwelling.

- 5.6.3 With regard to the proposed entrance gate and boundary treatment, it is acknowledged that a post and rail fence, 2no. white rendered piers, and a dark metal gate are in situ at the main entrance. This is contrary to the details submitted to support the original permission. The original permission proposed a timber post and rail fence of 1.2m and a double automated timber access gate measuring 3.6m wide x 1.27m high as the site entrance. The remaining boundaries will remain as approved (post and rail fence).
- 5.6.4 The revised scheme now proposes to introduce a post and rail fence, brick piers measuring 1.5 metres in height and a wooden gate measuring 1.5 metres in height and 5 metres in width. Whilst notably larger than the details approved under condition no.6 of the original permission, it is considered that the boundary fences and gates would be in keeping with the semi-rural character of the area and would not detract from the character of the area.

## **5.7 Ecology**

- 5.7.1 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*'.
- 5.7.2 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.
- 5.7.3 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.
- 5.7.4 The site is close to the Blackwater estuary, which is the subject of a variety of internal and national natural conservation designations (SPA, SAC, Ramsar, SSI). However, the amendments are not considered to impact on these features.

## **5.8 Ecology regarding development within the Zone of Influence (Zoi) for the Essex Coast Recreational Avoidance Mitigation Strategy (RAMS).**

- 5.8.1 Natural England (NE) has produced interim advice to ensure new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. The European designated sites within Maldon District Council (MDC) are as follows: Essex Estuaries Special Area of Conservation (SAC), Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Crouch and Roach Estuaries SPA and Ramsar site. The combined recreational 'zones of influence' of these sites cover the whole of the Maldon District.
- 5.8.2 NE anticipate that, in the context of the LPA's duty as competent authority under the provisions of the Habitat Regulations, new residential development within these zones of influence constitutes a likely significant effect on the sensitive interest features of these designated site through increased recreational pressure, either when considered 'alone' or 'in combination'. Residential development includes all

new dwellings (except for replacement dwellings), HMOs, student accommodation, residential care homes and residential institutions (excluding nursing homes), residential caravan sites (excluding holiday caravans and campsites) and gypsies, travellers and travelling show people plots.

- 5.8.3 Prior to the RAMS being adopted, NE advise that these recreational impacts should be considered through a project-level Habitats Regulations Assessment (HRA) - NE has provided a HRA record template for use where recreational disturbance is the only HRA issue.
- 5.8.4 The application site falls within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast RAMS. This means that the development could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure.
- 5.8.5 As the proposal is for less than 100 houses (or equivalent) and not within or directly adjacent to one of the designated European sites, NE does not provide bespoke advice. However, NE's general advice is that a HRA should be undertaken and a 'proportionate financial contribution should be secured' from the developer for it to be concluded that the development proposed would not have an adverse effect on the integrity of the European sites from recreational disturbance. The financial contribution is expected to be in line with the Essex Coast RAMS requirements to help fund strategic 'off site' measures (i.e. in and around the relevant European designated site(s)) targeted towards increasing the site's resilience to recreational pressure and in line with the aspirations of emerging RAMS.
- 5.8.6 Notwithstanding this, as aforementioned, the site benefits from planning permission for application reference 16/01492/FUL. NE Guidance was not in place when the dwelling was approved and given that the dwelling is currently constructed and that the sole difference between the extant permissions and the current proposal relates to aesthetic changes, it is not considered reasonable for a contribution towards RAMS to be payable. Thus, in this instance, it is considered that the lack of developer contribution to address the impacts of the development on the Essex Coast would not justify a reason for refusal.

## **5.9 Flood Risk**

- 5.9.1 Policy D5 of the LDP sets out the Council's approach to minimising flood risk. Policy S1 of the same Plan 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. Policy D5 of the LDP also acknowledges that all development must demonstrate how it will maximise opportunities to reduce the causes and impacts of flooding through appropriate measures such as Sustainable Drainage Systems (SuDS).
- 5.9.2 The site is located within Flood Zone 3(a) and thus, in an area at high risk of flooding. The National and local approach is to direct development away from areas at high risk of flooding. However, the resultant impact of the development on future occupiers of the dwelling and the surrounding area was previously assessed and found to be acceptable. The current proposal would not alter the details of the previously approved dwelling in terms of flood risk. Whilst part of the bund wall has not been erected, the main bund, which offers the flood protection is in situ, and the remaining bund is proposed to be developed as part of this application. Therefore, given the findings as part of the original permission in relation to flood risk it is not considered reasonable to reach a different stance at this time.

## **5.10 Planning Balance and Sustainability**

- 5.10.1 It is important to recognise the balance between the Local Plan policies relevant to the development under consideration and the position of the NPPF in respect of the LDP policies now considered to be out of date due to the lack of a 5YHLS. The tilted balance is engaged in this case and hence the LPA must give significant weight to the NPPF and its fundamental position of sustainable development which is the defining purpose of the planning system, as a material consideration
- 5.10.2 The key priority within the NPPF, stated at paragraphs 7 and 8, is the provision of sustainable development. This requires any development to be considered against the three dimensions within the definition of 'sustainable development' providing for an economic, social and environmental objective as set out in the NPPF.
- 5.10.3 Notwithstanding the considerations as contained in those paragraphs, it is incumbent on the LPA, where appropriate to consider, as a matter of general planning judgment, the site specific or scheme specific reasons for refusal. However, it does mean that planning applications submitted for land which is unallocated or located outside defined settlement boundaries, as set out in local plan policies, could no longer be refused on those grounds alone.
- 5.10.4 In judging whether a residential scheme should be granted, it is necessary to set out the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall (with reasons), against the harm identified (if any) arising from the proposed development.
- 5.10.5 With regard to the three tests of sustainability, in economic terms support for local trade would be limited given that the dwelling is already constructed. Equally, there is no guarantee that any additional construction such as installing the finish materials to the base of the dwelling, would be undertaken by local businesses, with locally sourced materials. No details are provided within the application to this effect. Any economic benefits would therefore be considered nominal.
- 5.10.6 In social terms the proposal provides limited benefits to the vibrancy of the local area, as the proposal is for one three-bedroom dwelling, and therefore any contribution is likely to be limited. Furthermore, the site is located within Flood Zone 3 and therefore, although flood resilient, at times of flood the dwelling may be cut off from the services and facilities of Mayland village.
- 5.10.7 In environmental terms, the development is now considered to have largely overcome previous concerns regarding the harm caused to the character and appearance of the site and the surrounding area, which is considered to be a sensitive location, particularly as a result of its proximity to the river. Whilst it has not been demonstrated that the site has undergone a sequential test to demonstrate that there are no other available sites more suitable for the development which would not require building on the floodplain, the proposal has been found to be considered to be acceptable as it is considered to be of exceptional design.

**ANY RELEVANT SITE HISTORY**

<b>Application Number</b>	<b>Description</b>	<b>Decision</b>
<b>16/01492/FUL</b>	Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade.	Approved (13.03.2017)
<b>17/00787/FUL</b>	Siting of static caravan whilst building work is carried out for approved planning permission FUL/MAL/16/01492.	Approved (27.09.2017)
<b>17/05201/DET</b>	Compliance of conditions notification of approved application FUL/MAL/17/00787 (Siting of static caravan whilst building work is carried out for approved planning permission FUL/MAL/16/01492) Condition 5. Flood action plan. Condition 7. Foul drainage.	Details agreed (04.01.2018)
<b>18/05093/DET</b>	Compliance with conditions notification of approved application FUL/MAL/16/01492 (Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade). Condition 3 - Materials. Condition 4 - Scaled drawings. Condition 6 – Boundary treatments. Condition 7 - Hard and soft landscaping. Condition 10 – Ground raising details. Condition 11 - Foul sewer connection. Condition 12 - Surface water drainage. Condition 13 - Vehicular access. Condition 15 - Construction method statement. Condition 16 - Flood resilience. Condition 17 - External illumination.	Details part approved (14.12.2018)
<b>18/05172/DET</b>	Compliance with conditions notification of approved application FUL/MAL/16/01492 (Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade). Condition 3. Materials. Condition 6. Treatment boundaries. Condition 12. Surface water drainage. Condition 13. Vehicular access. Condition 17. External illumination.	Details approved (14.12.2018)
<b>19/05093/DET</b>	Compliance with conditions notification FUL/MAL/16/01492 (Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade) Condition 7 - Hard & soft landscaping.	Details refused (14.08.2019)

<b>19/05148/DET</b>	Compliance with conditions notification FUL/MAL/16/01492 (Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade) Condition 7 - Hard & soft landscaping.	Details approved (11.11.2019)
<b>19/00704/FUL</b>	Removal of conditions 5 and variation of conditions 2, 7 & 13 on approved planning permission FUL/MAL/16/01492 (Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade)	Approved (06.01.2020)
<b>21/00720/VAR</b>	Section 73A application for the variation of condition 2 (approved drawings) and removal of condition 6 (boundary treatment) of planning permission 16/01492/FUL (Proposal for a replacement dwelling to re-establish the street frontage along Sea View Parade).	Refused (09.05.2021)

## **7 CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Mayland Parish Council	No comment.	Noted.

### **7.2 Statutory Consultees and Other Organisations**

<b>Name of Statutory Consultee / Other Organisation</b>	<b>Comment</b>	<b>Officer Response</b>
Natural England	General advice provided.	Noted.

### **7.3 Internal Consultees**

<b>Name of Internal Consultee</b>	<b>Comment</b>	<b>Officer Response</b>
Environmental Health	No objection.	Noted.

### **7.4 Representations received from Interested Parties**

No letters of representation have been received from Interested Parties.

## **8 PROPOSED CONDITIONS**

- The development hereby permitted shall be carried out in accordance with the following approved plans and documents: PL.03, PL.04, PL.05, PL.06, SV.01\_AS, SV.01\_220\_Boundary Details, SV.01\_202\_Roof Plan, SV.01\_200\_Ground Floor Plan, SV.0\_2-1\_First Floor Plan, 103\_Site Plan\_PR, 102\_Site Plan\_EX.  
REASON To ensure that the development is carried out in accordance with the details as approved.
- Prior to construction of the amendments hereby approved, details and samples of the materials to be used in the construction of the external surfaces of the dwelling shall have first been submitted to and approved in



writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

REASON In order to ensure that the development is carried out in accordance with the approved details and in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

3. No further development shall commence until scaled drawings have been submitted to show all new window frames, external doors and door frames including sections through the head, jamb, cill and any glazing bars. The details shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

REASON In order to ensure that the development is carried out in accordance with the approved details and in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

4. Construction works shall only be carried out in accordance with the recommendations included within the submitted Ecological Appraisal Survey (dated 30/08/2019) which was submitted and approved in writing to support planning application reference 19/00704/FUL.

REASON To minimise adverse environmental impacts on the designated sites, by minimising the risk of disturbance to SPA birds, thereby ensuring compliance with the Habitats Regulations (as amended) and Policy N2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

5. The treatment of all boundaries shall be constructed in accordance with drawing no. SV.01 220 of this permission and be retained in perpetuity thereafter.

REASON To ensure that the details of development within this sensitive estuary location area acceptable and comply with the requirements of Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

6. The hard and soft landscaping has been implemented in accordance with the details approved under application reference 19/05148/DET and those included in plans no. OS 1424-17.1 Rev H of planning application reference 19/00704/FUL.

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

REASON To ensure that the details of the development provide the appropriate setting for the development within the local landscape and provide opportunities for habitat enhancement in accordance with the requirements of Policy N2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

7. The bund the subject of this permission shall be erected in accordance with drawing nos. PL.03, PL.04, PL.05 and PL.06 of this permission and be retained in perpetuity thereafter.

- REASON To ensure that the details of development within this sensitive estuary location area acceptable and comply with the requirements of Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).
8. All trees shown as being retained on Appendix 5 (Tree Protection Plan) of the Arboricultural Report dated 15th August 2016, which forms part of planning permission reference 16/01492 and 19/00704/FUL shall be retained. No development shall commence until fencing and tree protection measures to protect the trees and vegetation to be retained has been implemented in accordance with the details set out in the Method Statement for Tree Protection Measures as set out in the Arboricultural Report. The protective fencing shall be erected before the commencement of any clearing, demolition and building operations and shall be retained until all equipment, machinery and surplus materials have been removed from the site. The protective fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Within the fenced protection zone nothing shall be stored or placed, no fires lit, no vehicle shall gain access, ground levels shall not be altered, no excavation shall be made and no structure shall be erected. If within five years from the completion of the development a retained shrub or hedge is removed, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, a replacement shrub or hedge shall be planted within the site of such species and size and shall be planted at such time, as specified in writing by the Local Planning Authority.
- REASON To protect existing trees and vegetation on the site in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).
9. Finished floor levels for the ground floor shall be at least 3.0 metres AOD and for the first floor no less than 6.5 metres AOD.
- REASON To provide a safe refuge in the event of a major flooding incident in accordance with Policy D5 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).
10. The ground levels shall be as approved under application reference 18/05093/DET.
- REASON To ensure that the details of the proposal are acceptable and accord with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).
11. The foul sewer shall be implemented in accordance with the details approved under application reference 18/05093/DET.
- REASON To ensure that the scheme is acceptable and prevent potential pollution as required by Policy D5 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).
12. The surface water drainage shall be implemented in accordance with the details approved under application reference 18/05172/DET.
- REASON To ensure that the scheme is acceptable as required by Policy D5 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).
13. The proposed vehicular access and the means of stopping up the existing vehicular access shall implemented in accordance with plan nos. 188-200-156 Rev A; 188-200- 004F and OS 1424-17.3 Rev F of planning permission reference 19/00704/FUL. The existing access shall be stopped up and cease to be used within 3 months of the new access becoming available.

REASON In the interests of highway safety and the requirements of Policy T2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

14. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order)
- i. no garages, extensions, separate buildings, other structures or swimming pools shall be erected within the site without planning permission having been obtained from the local planning authority.
  - ii. no dormer window or other form of addition or opening shall be constructed in the roof or gable walls of the building.
  - iii. no wall, fence, gate or other means of enclosure shall be erected within or around the site. without the prior grant of planning permission by the local planning authority.

REASON The development has been approved as an exception to general planning policy because of its innovative and outstanding design within a special landscape area. Inappropriate domestic additions could diminish the landscape quality and compromise the setting and architectural merit of the building contrary to the requirements of Policies D1 and H4 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

15. The development shall be constructed in accordance with the details included within the Construction Method Statement approved under planning application reference 18/05093/DET and retained as such thereafter.

REASON To protect the amenities of local residents and the area generally in accordance with Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

16. The development shall be implemented in accordance with the flood resilience measures approved under planning application reference 18/05093/DET.

REASON To mitigate against the risks of flooding in accordance with Policy D5 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

17. The development shall be constructed in accordance with the details of all external illumination as approved under planning application reference 18/05172/DET and retained as such thereafter. There shall be no other lighting of the external areas of the site.

REASON In order to protect the visual character of the area as well as in the interests of nature conservation in accordance with the requirements of Policy D1 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).

18. The vehicular access and the means of stopping up the existing vehicular access shall be implemented in accordance with plan nos. 188-200-156 Rev A; 188-200-004F and OS 1424-17.3 Rev F of planning permission reference 19/00704/FUL and retained in perpetuity hereafter. The access as approved under planning permission reference 16/01492/FUL shall remain stopped up and cease to be used.

REASON In the interests of highway safety and the requirements of Policy T2 of the Maldon District Local Development Plan (2017) and the policies and guidance contained in the National Planning Policy Framework (2021).