



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

**to
SOUTH EASTERN AREA PLANNING COMMITTEE
14 FEBRUARY 2024**

Application Number	23/01056/VAR
Location	Paton Place, Nipsells Chase, Mayland
Proposal	Variation of conditions 1 & 12 of approved application 23/00749/FUL (Amendment of condition 2 of 21/01240/VAR. Alterations to scale of the dwelling, the fenestration, design and materials).
Applicant	Mr & Mrs Kenny Paton
Agent	N/A
Target Decision Date	12.01.2024
Case Officer	Fiona Bradley
Parish	MAYLAND
Reason for Referral to the Committee / Council	Councillor / Member of Staff

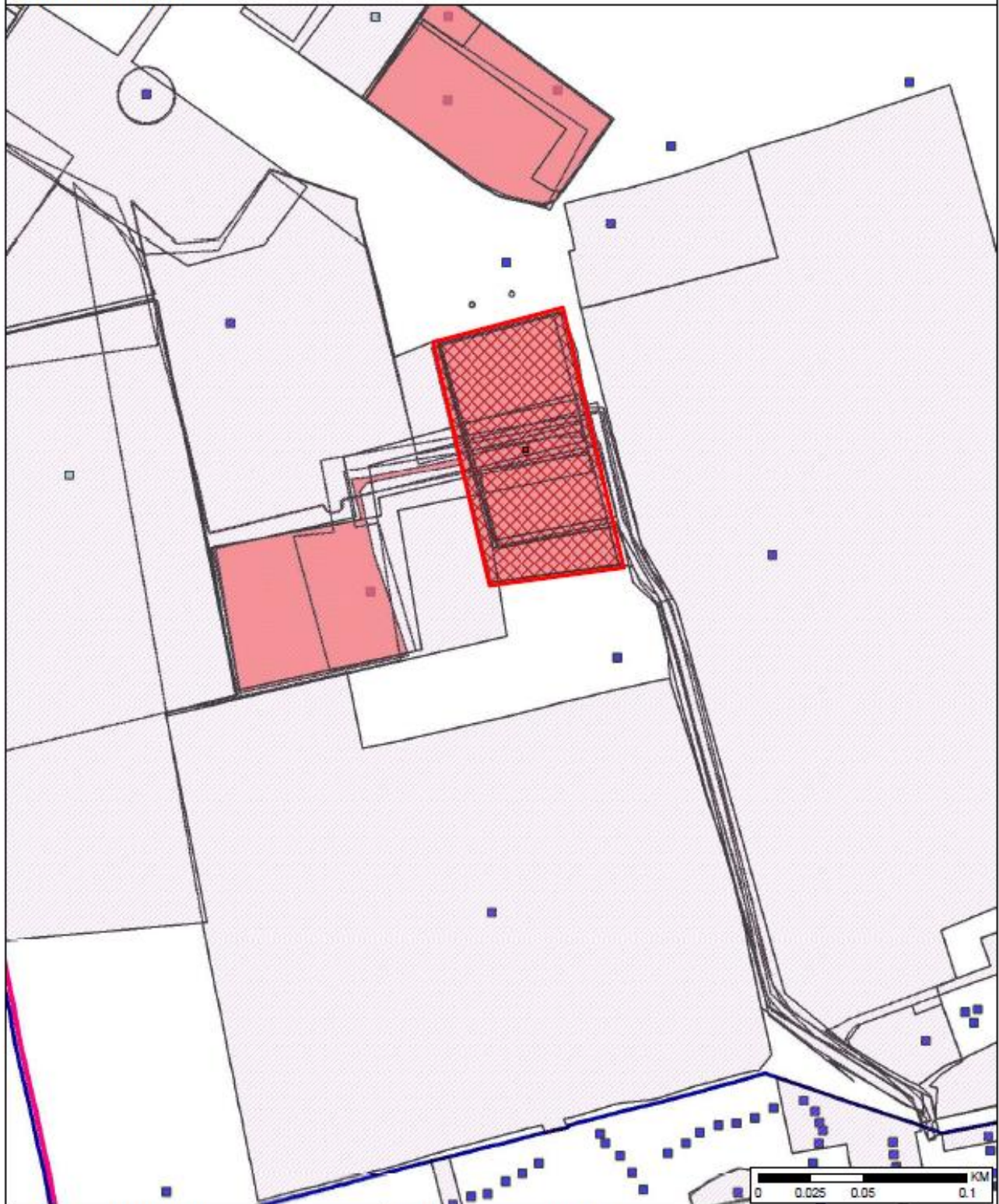
1. RECOMMENDATION

REFUSE for the reason as detailed in Section 8 of this report.

2. SITE MAP

Please see below.

Paton Place, Nipsells Chase
South Eastern Area



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 Maldon District Council 100018588 2014



MALDON DISTRICT COUNCIL

www.maldon.gov.uk

Scale:	1:2,500
Organisation:	Maldon District Council
Department:	Department
Comments:	Not Set
Date:	18/01/2024
MSA Number:	100018588

3. **SUMMARY**

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

Application Site

- 3.1.1 The application site is located to the west of Nipsells Chase to the north of the settlement boundary of Mayland and is a designated wildlife site.
- 3.1.2 The site comprises the previously approved dwelling which is currently under construction.
- 3.1.3 Access is taken from the west of Nipsells Chase, which adjoins the access track and leads to a wider field where planning permission has been granted for a barn, stable and ménage. A building has been erected to the west of the application site where the permission for a barn for use as an apple store was granted which is the subject of a current planning application and an enforcement case. The majority of the wider site is a largely open area of grassed land with a number of young trees. The edges of the site feature denser and more mature trees and hedgerow soft landscaping. To the north of the site is the residential property of Orchard House and to the south is the residential property of Riversleigh.

Proposal

- 3.1.4 The application seeks a variation to condition 1 (plans) and removal of condition 12 (dormer windows) of application 23/00749/FUL.

- 3.1.5 Condition 1 of 23/00749/FUL states:

“The development hereby permitted shall be carried out in accordance with the following approved plans and documents: R10 Rev G, 1056/06A, 1056/07A, Arboricultural Method Statement 27 September 2021.

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

- 3.1.6 Condition 12 of 23/00749/FUL states:

“Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed in the roof of the building hereby permitted without planning permission having been obtained from the local planning authority.

REASON: To protect the character and appearance of the area, in accordance with policies, S8, D1 and H4 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.”

- 3.1.7 Specifically, the proposal seeks to vary the plans listed in condition 1 which would involve alterations to the roof and fenestration, which together with the installation of a first floor, provide for the creation habitable first floor accommodation. The main changes would involve the following:

Front Elevation

- Replacement of scalloped bargeboards with straight edged bargeboards
- Addition of decorative features on gable ends

Southern Side Elevation

- Design change to the pillars

Northern Side Elevation

- No amendments proposed

Rear Elevation

- Addition of a first floor balcony
- New full-length windows and doors with Juliet balcony in both gable ends
- Replacement of scalloped bargeboards with straight edged bargeboards
- Amendments to size and design of the support columns

Roof Plan

- Addition of two gable end dormer windows and two roof lights, one on each gable end roof facing the front door, on the front roof slope
- Addition of and two gable end dormer windows and two roof lights on the southern side roof slope
- Addition of two gable end dormer windows and four roof lights on the norther side roof slope
- Addition of a dormer window / gable end. Addition of two roof lights on the rear roof slope

Ground Floor Plan

- Master bedroom, ensuite and dressing room to become living room and cupboards
- Bedroom 2 and ensuite to become TV room and cupboard
- Inclusion of circular stairwell in living area to provide access to new first floor

New First Floor Plan

- 3 bedrooms with ensuites
- Second kitchen
- Laundry/storage room
- Living area
- Access to first floor balcony

3.1.8 The application form also states the proposal includes the raising of the brick plinth, however the height of the plinth is the same as that previously approved on drawing no. R10 Rev G.

3.1.9 There is an inconsistency in the submitted drawings. It is noted that the proposals include access at first floor level onto the proposed balcony on the rear elevation. Whilst the elevation and floor plans show this as a full height dormer extending to floor level, thus providing level access from the living area to the balcony, the roof plan shows a dormer window with no balcony access.

3.1.10 Additional information regarding photovoltaic (PV) panels was submitted by the applicant on 1 February 2024, prepared by Easy PV. Whilst the submitted document includes the proposed roof layout these drawings are not to scale and no revised elevations or roof plans were submitted.

Background

3.1.11 Planning permission was granted for the “*Proposed construction of a single storey self build live/work dwelling*” under reference number 21/00628/FUL which was approved on 15 October 2021. This was followed by a S73 application, reference

21/01240/VAR, for a “*Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)*”, approved on 15 October 2021. A further application, reference 23/00749/FUL, for the “*Amendment of condition 2 of 21/01240/VAR. Alterations to scale of the dwelling, the fenestration, design and materials*” was approved on 21 September 2023.

3.1.12 The current application seeks a variation to condition 1 and removal of condition 12 of application reference 23/00749/FUL.

3.1.13 It is noted that the Committee reports for the previous variation applications (21/01240/VAR and 23/00749/FUL) both noted that although the original permission (21/00628/FUL) was for a live work unit, it was deemed that the development was not a live work unit in planning terms because it only contained a study which was not an unusual situation in any residential dwelling. The current application is consistent with the previous applications.

3.2 Conclusion

3.2.1 The proposed alterations to the previously approved dwelling are not considered to have an unacceptable impact on the site and surrounding area to a degree that would warrant refusal of the application. The changes would not detrimentally impact the amenity of the neighbouring occupiers and would not impact on the level of parking and amenity space provision to be provided.

3.2.2 However, the application and subsequent variation applications are variations of the original application (21/00628/FUL) which means that the applicant is limited by the description in the 2021 application namely, a single storey self build live work dwelling. Accordingly, no variation application could be legally granted that would make the building a two storey building, which is what the current proposals are for.

3.2.3 The proposal falls outside the parameters of a section 73 application and cannot legally be granted, therefore it must be refused.

4. MAIN RELEVANT POLICIES

4.1 National Planning Policy Framework 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
- 60 – 84 Delivering a sufficient supply of homes
- 108 – 117 Promoting sustainable transport
- 123 – 127 Making effective use of land
- 131 – 141 Achieving well-designed places
- 180 – 194 Conserving and enhancing the natural environment

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

- Policy S1 Sustainable Development
- Policy S8 Settlement Boundaries and the Countryside
- Policy D1 Design Quality and Built Environment
- Policy D2 Climate Change and the Environmental Impact of New Development
- Policy H2 Housing Mix
- Policy H4 Effective Use of Land
- Policy E1 Employment
- Policy S7 Prosperous Rural Communities
- Policy N2 Natural Environment and Biodiversity
- Policy T1 Sustainable Transport
- Policy T2 Accessibility
- Policy I1 Infrastructure and Services

4.3 Relevant Planning Guidance / Documents:

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

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 Planning permission for residential development was granted under the terms of application 21/00628/FUL and subsequently varied under applications 21/01240/VAR and 23/00749/FUL.

Does the proposal fall within the parameters of a Section 73 application?

- 5.1.3 Lord Justice Lewison in a recent court judgment in the Court of Appeal between John Leslie Finney and Welsh Ministers, Carmarthenshire County Council and Energiekontor (UK) Limited [2019] EWCA Civ 1868 established the purposes of a Section 73 application. In particular Lord Justice Lewison stated that “*On receipt of such an application section 73 (2) says that the planning authority must "consider only the question of conditions". It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development... It is notable, however, that if the planning authority considers that the conditions should not be altered, it may not grant permission with an altered description but subject to the same conditions. On the contrary it is required by section 73 (2) (b) to refuse the application. That requirement emphasises the underlying philosophy of section 73 (2) that it is only the conditions that matter.*”

- 5.1.4 The above judgement has been further endorsed recently in the case of *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor* [2023] EWHC 142 where the High Court stated that *“section 73 is clearly intended to be a provision which enables a developer to make a section 73 application to remove or vary a condition, provided of course that the application does not conflict with the operative part of the planning permission”*.
- 5.1.5 On the basis of the above judgement, it is clear that permission for a Section 73 application shall only be granted for the same development and any variation shall only relate to the conditions imposed to the original permission. To assess this, a review of the original permission and subsequent variations is necessary.
- 5.1.6 The original permission, 21/00628/FUL granted 15 October 2021, was for the *“Proposed construction of a single storey self build live/work dwelling”*. The submitted Planning Statement, stated that that single storey accessible home was required as *“My wife is predicted by doctors due to a very serious back injury earlier in life to be in a wheelchair, so it has been designed specifically for accessible living”* and that it was important *“for that home to be especially built for her, and all her future care needs”*. Conditions were attached to the application requiring compliance with the approved plans and removal of permitted development rights for a dormer window or other form of addition or opening to the roof. The approved plans accorded with the description as the proposed building was for a single storey dwelling, with all accommodation at ground floor level.
- 5.1.7 A subsequent application, 21/01240/VAR, to vary condition 2 (plans) and remove condition 8 (use of the garage) was then submitted. The amendments to the scheme included changes to the fenestration and blocking up the garage door and new openings for a window and door to serve the new utility room. The amendments to the scheme were considered relatively minor, affecting only the elevations and fenestration, and as such would not detract from the design of the scheme as approved. There was no increase in the size or scale of the building or any part thereof. The application was approved on 8 April 2022.
- 5.1.8 A further application, 23/00749/FUL, was submitted to vary condition 2 of application 21/01240/VAR, and included alterations to the scale of the dwelling, the fenestration, design of the dwelling and the materials used in its construction. There were several areas on the building where the dimensions of the building would be impacted as a result of the changes proposed including raising the ridge height of the building in parts and increasing the extent / depth of the gable projections, resulting in the dwelling having a bulkier appearance than the previously approved design. However, the increases, whilst not an overly positive alteration, would not increase the scale and bulk of the dwelling to a degree that would result in demonstrable harm that would warrant an objection. It was also considered that the overall design was not as good a quality as the previous scheme, however it was not considered to result in material harm to the character and appearance of the area. The application was approved on 21 September 2023.
- 5.1.9 Although application 23/00749/FUL was submitted as a full application, it was clear from the description of works contained in the application form that the development sought to vary condition 2 of permission 21/01240/VAR. Following advice from the Council’s Lead Specialist Legal it was considered that the application could be determined as a Variation of Condition under Section 73 of the Town and Country Planning Act 1990.

- 5.1.10 The current application seeks to vary condition 1 and remove condition 12 of approved application 23/00749/FUL (Amendment of condition 2 of 21/01240/VAR). The two previous applications, 21/01240/VAR and 23/00749/FUL, were variations of the original 2021 application. This means that the applicant is limited by the description in the 2021 application namely, a one storey dwelling. The current proposals seek to change the appearance of the roof by the addition of dormers and other alterations to the roof with a view to creating a second storey. By virtue of the development to the roof and inclusion of a first floor, the current proposals would alter the development as described in the original application. The Council's Lead Specialist Legal has confirmed that no variation application could be legally granted that would make the building a two storey dwelling. Accordingly, the application cannot be approved as it goes beyond the provisions of section 73.
- 5.1.11 Prior to the application being validated, Officers advised the applicant on several occasions that the application could not be approved for the above reason and provided advice on ways to overcome this issue. The applicant chose to disregard this advice and continue with the application.
- 5.1.12 This section 73 application would alter the development as described in the original application and therefore conflicts with the operative part of the planning permission, being a single storey dwelling. The proposal therefore falls outside the parameters of a section 73 application and cannot legally be granted; it must be refused.

5.2 Design and Impact on the Character of the Area

- 5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.
- 5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. 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).
- 5.2.3 The Committee Report for the previous variation (23/0749/FUL) included a number of amendments which were considered to result in a lower quality design than the original proposals. In particular, the proposals included raising the ridge height of the building in parts and increasing the extent/depth of the gable projections, resulting in dwelling having a bulkier appearance than the previously approved design. In addition, the alterations to the fenestration, including their design and the decorative detailing above, were considered unfortunate as they diluted the architectural merit of the scheme and reduced the level of architectural detailing provided. Notwithstanding this, the increased bulk and overall design were not considered to result in material harm to the character and appearance of the area and the application was recommended for approval and subsequently approved.
- 5.2.4 The current proposals, by virtue of the bulk of the building having already been increased through the previous application, are not considered to increase the scale and bulk of the building in a harmful manner. Indeed, the addition of dormer windows and roof lights serve to break up the roof mass and provide some visual interest in what would otherwise be a vast, blank roofscape.

5.2.5 The replacement of the previously approved ornate bargeboard with the straightedged bargeboard is considered acceptable as it retains visual interest on the large gable ends.

5.3 Impact on Residential Amenity

5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight.

5.3.2 The dwelling known as Riversleigh lies over 40 metres to the south of the site and the dwelling known as Orchard House lies over 80 metres to the north of the site. Due to the significant separation distance the introduction of dormer windows, roof lights and a first floor balcony, it is not considered that proposed development would result in an impact on the residential amenity of neighbouring sites by way of a loss of light or a loss of privacy, nor is it considered to be overbearing.

5.4 Access, Parking and Highway Safety

5.4.1 Policies D1 and T2 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards, which are expressed as minimum standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.

5.4.2 There are no alterations to the access arrangements or level of parking to be provided at the site in comparison to the previous permission. Therefore, no concerns are raised on this matter.

5.5 Private Amenity Space and Landscaping

5.5.1 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 Essex Design Guide Supplementary Planning Document (SPD) advises a suitable garden size for each type of dwellinghouse, namely 100sqm of private amenity space for dwellings with three or more bedrooms.

5.5.2 The proposed amendments would not impact on the level of amenity space to be provided. Therefore, no objection is raised.

6. ANY RELEVANT SITE HISTORY

- **23/00749/FUL** - Amendment of condition 2 of 21/01240/VAR. Alterations to scale of the dwelling, the fenestration, design and materials. Approved 21.09.2023
- **23/00564/NMA** – Non-material amendment following grant of planning permission 21/01240/VAR (Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)). Amendment sought: Alterations to fenestration and external. Refused 24.07.2023
- **23/00266/VAR** - Variation of condition 2 (plans) and removal of condition 13 (dormer windows) on approved Planning Permission 21/01240/VAR (Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)). Withdrawn 23.05.2023

- **23/05015/DET** - Compliance with conditions notification 21/01240/VAR Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling) Condition 3 - Materials, Condition 4 - Hard and soft Landscaping, Condition 5- Boundary Treatment, Condition 6 -Cycle Parking, Condition 7 - Parking spaces, Condition 9 - Surface water drainage, Condition 15- Biodiversity Enhancement and Mitigation. Condition 16- Biodiversity Enhancement Strategy for Protected and Priority species. Condition cleared 03.04.2023.
- **22/05055/DET** - Compliance with conditions notification 21/01240/VAR (Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling)) Condition 3 - Materials, Condition 4 - Landscaping, Condition 5- Boundary Treatment, Condition 6 - Cycle Parking, Condition 7 - Parking Spaces, Condition 8 - Surface Water Drainage, Condition 9 - Foul Drainage, Condition 15 - Biodiversity Strategy, Condition 16 - External Lighting. Conditions part discharged part refused 25.08.2022
- **21/01240/VAR** - Variation on condition 2 and removal of condition 8 on approved planning application 21/00628/FUL (Proposed construction of a single storey self build live/work dwelling). Approved 08.04.2022
- **21/00628/FUL** - Proposed construction of a single storey self build live/work dwelling. Approved 15.10.2021
- **21/00102/FUL** - Construction of a single storey dwelling. Withdrawn 26.05.2021
- **18/00816/HRN** - Hedgerow removal notice for clearance either side of entrance. Area 1 (Southern side) - 2.5m. Area 2 (Northern side) - 3m. Allowed to proceed 21.09.2018
- **17/01060/DD** - T1 - Elm - Fell. T2 - Wild Pear - Fell. T3 - Wild Pear - Fell. Can works proceed under 5 day D&D ****5 Day Notice****. Approved 16.10.2017
- **17/01043/AGR** - Prior notification for permeable hardstanding, with edging stones. Refused 12.10.2017
- **17/00736/FUL** - Proposed construction of a new detached single storey dwelling. Application withdrawn 05.09.2017

Applications within the wider site:

- **23/00798/FUL** - Retention of the agricultural building known as The Apple Store to C3 residential, to form a 2 bed bungalow. No external alterations apart from 2 additional windows. Declined to Determine issued 23.08.2023 and reissued 21.09.2023
- **23/00796/FUL** - Retain structure for mixed use. Agricultural storage, office, reception/rec area, cake and jam making studio. Current application.
- **23/00782/FUL** - Renewal of existing consent. Declined to Determine issued 18.08.2023 and reissued 21.09.2023
- **23/00664/FUL** - Renewal of existing consent. Declined to Determine issued 02.08.2023 and reissued 21.09.2023
- **23/00076/FUL** - Change of use from agricultural building to 2 bedroom bungalow (C3 Use) and alterations to fenestration. Refused 15 September 2023

- **20/00733/FUL** - An equestrian arena to ride in the wet winter months. The arena is to be made of an equestrian sand mix. – Approved 12.11.2020
- **20/00574/FUL** - Variation of condition 2 on approved planning permission 18/00280/FUL (Construction of an apple storage barn). Approved 10.08.2020
- **20/00345/FUL** - Variation of condition 2 and 8 on approved planning permission 18/00839/FUL (Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses) – Approved 01.07.2020
- **20/05040/DET** - Compliance with conditions notification 18/00280/FUL (Construction of an apple storage barn) Condition 3 – Materials. Discharged 23.07.2020
- **18/00839/FUL** - Change of use of land to equestrian and erection of building to be used for storage of agricultural machinery and stabling of six horses – Approved 20.06.2019
- **18/00280/FUL** - Construction of an apple storage barn – Approved 23.05.2018

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

Name of Parish / Town Council	Comment	Officer Response
Mayland Parish Council	Object – The conditions placed on approved planning permission 23/00749/FUL and 21/01240/VAR should be upheld as they were put in place for a reason. One reason these conditions were in place was to prevent the building being made into a two storey dwelling.	Noted, however S73 of the Town and Country Planning Act 1990 allows for applications to be made in order to vary conditions.

7.2 **Representations received from Interested Parties**

7.2.1 No letters of representation have been received to date.

8. **PROPOSED REASON FOR REFUSAL**

1 The proposed development by virtue of the inclusion of dormer windows and other alterations to the roof together with the inclusion of first floor accommodation would create a two storey dwelling. The development of a two storey dwelling would conflict with the operative part of the original planning permission (21/00628/FUL) which was for a single storey self build live/work dwelling. As the proposal would alter the development as described in the original application it falls outside the parameters of a section 73 application and cannot legally be granted and is therefore refused.