

**CIRCULATED PRIOR
TO THE MEETING**



**REPORT of
ASSISTANT DIRECTOR: PLANNING AND IMPLEMENTATION**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
TUESDAY 14TH JANUARY 2025**

MEMBERS' UPDATE

AGENDA ITEM NO. 5

24/00253/FUL – Land Rear of The Green Man Inn, Green Man Lane, Little Braxted

Application Number	24/00253/FUL
Location	Land rear of The Green Man Inn, Green Man Lane, Little Braxted
Proposal	Construction of a detached five bedroomed house
Applicant	Mr J Purdy
Agent	Ms Alice Quinn – Smart Planning Ltd
Target Decision Date	17.01.2025
Case Officer	J.Kirkaldy
Parish	Little Braxted
Reason for Referral to the Committee / Council	Member Call In by Cllr S J N Morgan on the basis of LDP policies S8 and D1 (Settlement Boundaries and the Countryside, Design Quality and Built Environment).

- **Section 4 Relevant Policies (pages 12 and 13)**

On the 12th December 2024 the Government published an amended version of the National Planning Policy Framework. The paragraphs below have been updated to reflect the amended version.

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
- 39 Decision making
- 48-51 Determining applications
- 56 – 59 Planning conditions and obligations
- 82 – 84 Rural Housing
- 109 – 118 Promoting sustainable transport
- 124 -130 Making effective use of land
- 131 – 141 Achieving well designed places
- 161 – 186 Meeting the challenge of climate change, flooding and coastal change.
- 187 – 201 Conserving the natural environment
- 202 – 214 Conserving and enhancing the historic environment

- **Section 5 Principle of Development (pages 13 to 16)**

5.1.5 Five Year Housing Land Supply (5YLS)

On the 12th December 2024 the Government published an amended version of the National Planning Policy Framework. Paragraph 231 of that framework covers any transition arrangements for the new version and states:

“The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication.”

Paragraph 78 of the Framework states that, “Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

1. 5% to ensure choice and competition in the market for land;”

Footnote 39 of Paragraph 78 states; “Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five-year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning practice guidance.”

Maldon District Council had prepared and published a 5 Year Housing Land Availability Report on the 28th May 2024 which set out the District had a 6.35 year supply of housing. The amended version of the National Planning Policy Framework makes it clear that the changes within it took effect on the 12th December 2024 and there is no transitional period. This means that the Council must have regard to its content from that date alongside the revised National Standard Method for calculating the district’s Housing Target set out in National Planning Policy Guidance. This alters the yearly housing target for the district from 276 to 569 homes per year. The Council must also put a 5% buffer onto the 5-year housing land supply. The overall effect of these changes means that the 5-year supply for Maldon District now stands at 2.70 years.

This means that Paragraph 11d of the National Planning Policy Framework as revised, otherwise known as the ‘tilted balance’ is engaged which states.

“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 strong reason for refusing the development proposed;
- 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.”

Footnote 8 states.

“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 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.”

In summary, if the Development plan is more than five years old, and the council cannot demonstrate a 5-year housing land supply, the balance tilts more in favour of approving development which is sustainable, makes efficient use of land, provides affordable housing and/or is well designed. However, planning policies in the local plan should not be treated as out of date just because they pre-date the new NPPF – such policies should be considered in light of their consistency with the revised Framework.

5.1.12 Sustainable Development

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. 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. 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. Furthermore, given that, as of the 12th of December 2024 the Council can no longer demonstrate a 5 year housing land supply, the tilted balance (para 5.1.5) is engaged. The implication is that the plan is therefore not delivering to the District’s new housing targets and in this respect, the most important policies for delivering housing is not in conformity with the NPPF nor, taken as a whole, consistent with the Government policy of delivering housing. Notwithstanding, what is relevant is para ii) of 11d which states....’ 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.” Paragraph 11d (ii) is relevant to the consideration of this application as set out in the following assessment (*refer to paragraphs 5.1.13 to 5.1.21 of the Committee report*).

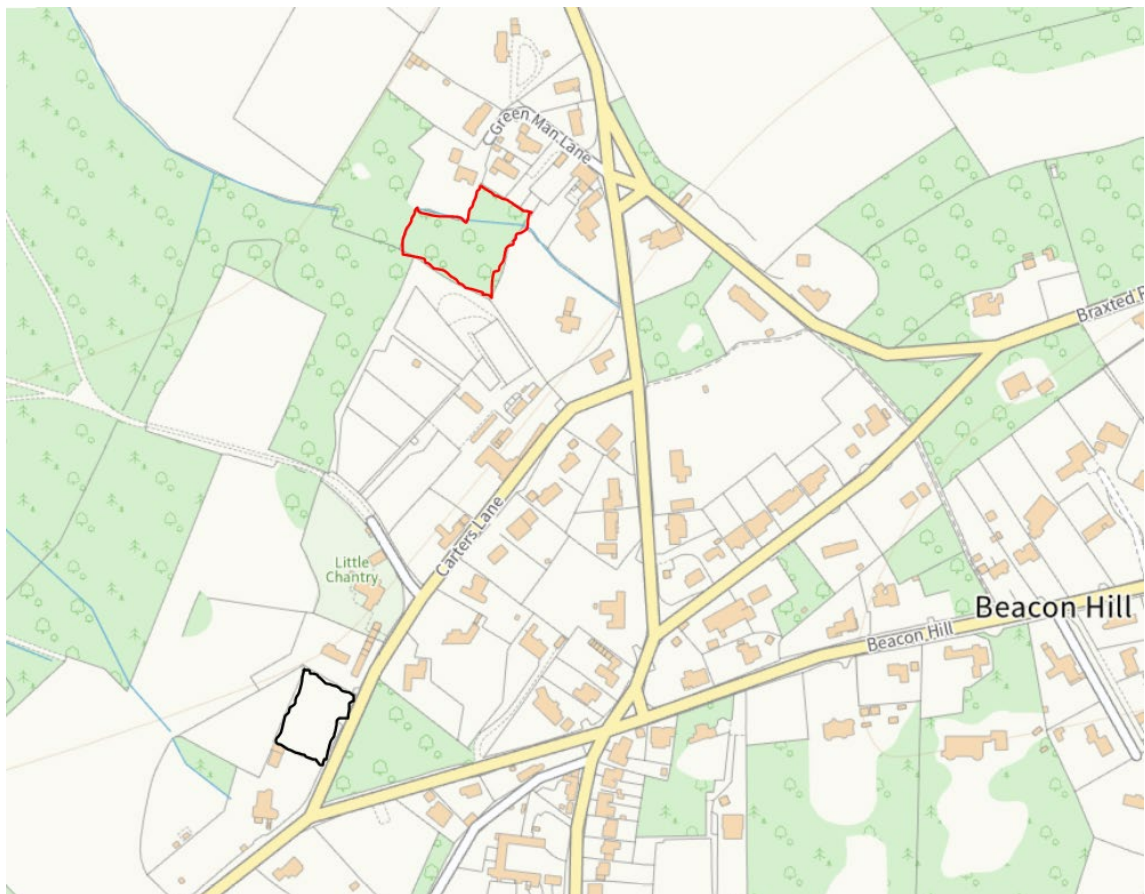
5.1.22 Summary of Principle of Development

Given that the site is outside a settlement boundary and does not meet any criterion for being acceptable with regard to Policy S8, the proposal does not accord with the policy. Furthermore, the site is not considered to be accessible as future occupants would be heavily reliant on the use of the private vehicle to access facilities and services with no tangible benefits to the wider community.

- Significant weight is given to the recent (9th December 2024) dismissed appeal decision (APP/X1545/W/24/3342289) for the ‘development of existing garden with a new detached dwelling’ at Land at Carters Lane, Wickham Bishops, approximately 0.5 miles to the south of the site. The Inspector acknowledged that the appeal site is within walking distance of Wickham Bishops shops and facilities at Witham Road, and bus stop on Kelvedon Road. However, the Inspector commented that, *most likely*

walking and cycling routes to these facilities, via Carters Lane and Tiptree Road, are rural roads with no footways or lighting, for at least the first 300m or so. The verges to these sections of road are narrow at best, and some parts are banked or overgrown, so that pedestrians would have little choice but to walk on the carriageway. Cyclists too would be potentially vulnerable in these conditions. 16. I appreciate that a 30 mph speed limit applies, but even so, traffic moving at that speed can cause serious injury. Although Carters Lane is quite quiet, it is not disputed that Tiptree Road is significantly busier. Neither of roads serving appeal site can be said to provide for reasonably safe connections for regular use either on foot or by bicycle. In this regard the development would be contrary to the aims of Policy T2 with regard to ensuring that developments benefit from safe and convenient opportunities for sustainable travel.

Map – illustrating current application site (outlined in red) and site subject to appeal (outlined in black) (APP/X1545/W/24/3342289)



The NPPF (December 2024) does not alter the position of Officers that the site is in an unsustainable location and would not benefit from safe and convenient opportunities for sustainable travel.

5.8 Natural Environment and Biodiversity

- 5.8.6 The applicant subsequently provided a GCN District Level Licensing Impact Assessment and Conservation Payment Certificate (provisional). The Council's Ecology Consultant was reconsulted and raised a further holding objection stating that, 'Whilst we welcome the additional documents, we highlight that a Great Crested Newt District Level Licencing Impact Assessment and Conservation Payment Certificate (IACPC), that is countersigned by Natural England, is still required to be

demonstrated by the appellant'. Therefore, the Council's Ecology Consultant was not satisfied that sufficient ecological information on Great Crested Newt (European Protected Species) had been provided which is required to enable the LPA to demonstrate its compliance with statutory duties included its biodiversity duty under s40 Natural Environment and Rural Communities (NERC) Act 2006 (as amended). Following this objection, the applicants have subsequently submitted a countersigned IACPC in December 2024. The Council's Ecology Consultant has been reconsulted, however, at time of drafting this update no response had been received. A verbal update will be provided at the meeting.

5.8.8 The proposal accords with the NPPF and Policy S1, N1 and N2 of the approved LDP.

5.10 Planning Balance

5.10.1 One of the key priorities within the NPPF (December 2024) 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. Given the scale of development (one dwelling), limited contributions have been identified in relation to the social and economic objectives of sustainable development. Occupants of the proposed dwelling would be reliant heavily on the private vehicle to access services and facilities for day-to-day needs given the location of the site and poor public transport connections. The proposed development would result in further development in the countryside, hence there is an adverse impact by the development on the environmental objective of sustainable development. Insufficient ecology information has been submitted to provide certainty of the likely impacts to protected species (Great Crested Newts).

5.10.2 In a balancing exercise and having considered the NPPF (December 2024), it is still considered that the harms of the proposal outweigh the benefits and as such the development is unsustainable. The benefits of the development cannot outweigh the conflict with policies, S1, S2, S8, D1, H4, N1, N2, T1 and T2 of the approved LDP.

7.2 Internal Consultees (summarised)

Name of Consultee	Comment	Officer Response
Ecology Consultant	Initially submitted a holding objection due to insufficient ecological information on Great Crested Newt (European Protected Species). The applicants subsequently provided a countersigned by Natural England Great Crested Newt District Level Licencing Impact Assessment and Conservation Payment Certificate (IACPC). The Ecology Consultant was reconsulted. At time of drafting this update no response had been received a verbal update	Noted and discussed in paragraph 5.7

	will be provided at the meeting.	
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- **Section 8 - PROPOSED REASONS FOR REFUSAL**

1. The site is located outside of a defined settlement boundary and is in open countryside, where policy constraints apply. Future occupants of the site would be heavily reliant on the use of the car to gain access to everyday services and facilities and employment opportunities and as such the proposal does not provide a sustainable form of development. The proposal does not accord with the Council's spatial strategy contrary to Policies S1, Page 26 S8, D1, H4, T1 and T2 of the Maldon District Local Development Plan (2017) and guidance set out in the National Planning Policy Framework.
2. Insufficient ecological information has been submitted to assess the impact of the proposed development on protected and Priority species, specifically Great Crested Newts. The proposed development would therefore be contrary to Policies S1, D1, and N2 of the approved Maldon District Local Development Plan (2017) and Government advice contained within the National Planning Policy Framework and Circular 06/2005.

Other matters

In an email received from Councillor Morgan dated 14th January 2025 relating to the current application 24/00253/FUL, he comments, '*I will be interested to learn why the changes to the NPPF and 5YHLS were not considered sufficient to amend your reasons for refusal on this application but were in respect of your objection to the Church Road appeal*'.

'The Land at and rear of 9 Church Road, Wickham Bishops' planning application (reference 23/00123/OUT) is currently subject to an ongoing appeal (APP/X1545/W/23/3333081). The application was for '*Outline planning permission with the matters of access for consideration for the demolition of 9 Church Road, creation of new access and the development of up to 50 dwellings including associated car parking, open space and landscaping*'.

The application was refused for the following reasons:

1. *The site lies outside the settlement boundary and the benefits of the development, most notably the over provision of affordable housing, would not outweigh the adverse impacts of the development. Therefore, the development is contrary to Policies S1, S8, and D1 of the Maldon District Local Development Plan as well as Policies WBen 02, WBen 03, WBen 04, WBF 02, WBF 03, WBH 01 of the Wickham Bishops Neighbourhood Development Plan.*
2. *In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 the proposal includes inadequate provision to secure the delivery of affordable housing to meet the identified need in the locality, address the Council's strategic objectives on affordable housing and supporting a mixed and balanced community, contrary to Policies S1, H1 and I1 of the Maldon District Local Development Plan and Government advice contained within the National Planning Policy Framework.*
3. *In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the completion, management and maintenance of the public open space, the provision of any necessary contribution towards health care provision, securing any necessary contribution towards Early Years and Childcare, primary and secondary school placements, provision for school transport contribution and the provision of a contribution to library improvements, the impact of the development cannot be*

mitigated contrary to Policies S1, D1, N1, N3, I1 and T2 of the Maldon District Local Development Plan and Government advice contained within the National Planning Policy Framework.

4. In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990, securing a necessary financial contribution towards Essex Coast Recreational disturbance Avoidance and Mitigation Strategy or an appropriate mitigation strategy to overcome the impacts of the development on the European designated nature conservation sites, the development would have an adverse impact on those European designated nature conservation sites, contrary to Policies S1 and I1 of the Maldon District Local Development Plan, the NPPF and Policy WBen 01 of the Wickham Bishops Neighbourhood Development Plan.

The Planning Inspectorate (PINs) recently invited the Council to consider whether the NPPF amendments (December 2024) had relevance to the Council's case (letter dated 13th December 2024). In the Council's response to PINs, it stated that,

3.0.10 In relation to the appeal in question, given that the Council can no longer demonstrate a 5 year housing land supply, it is clear that paragraph 11d would apply. The Council's assessment of the applications in its planning report does not identify any harm to protected areas or assets of particular importance, or any other adverse impacts as set out in the ensuing paragraphs that would provide a strong reason for refusing the development proposed. It therefore stands that the assessment in the Council's Statement of Case carries significantly less weight now, than before the 12th December publication of the revised National Planning Policy Framework.

3.0.11 Given the significant changes to the Council's Housing Land Supply brought about as a result of the fundamental changes to the updated NPPF and PPG, the Council considers that it can no longer reasonably defend its position regarding Housing Land Supply and the previously cited conflict with policies S1, S8 and D1 of the Maldon District Local Development Plan, as well as the stated policies of the Wickham Bishops Neighbourhood Development Plan. Accordingly, the Council therefore confirms that it will no longer be pursuing Reason for Refusal 1 of 23/00123/OUTM.

4.0.2 Reasons for Refusal 2, 3 and 4 (Section 106 matters) remain outstanding insofar as Heads of Terms have been set out within the Appellants SoC but no draft agreement has yet been provided. The Council reserves its right to comment on the draft agreement in due course.

The current application being considered (24/00253/FUL) at Land rear of Green Man Public House, Braxted differs from that of the above application/appeal at Land rear of 9 Church Road for Wickham Bishops (23/00123/OUTM) for the following reasons:

- Although the site (Land rear of 9 Church Road, Wickham Bishops) lies outside of the settlement boundary defined by Policy S8 it was not refused on grounds of sustainability/accessibility (see above reasons for refusal). The Committee report (23/00123/OUTM) referred to a previous appeal decision on the site where the Planning Inspector concluded that, '*recognise that given its rural location that Wickham Bishops is not unique in having access to limited facilities and residents who are reliant on the car to meet their day to day needs. As the appellant has highlighted Policy S8 of the LDP classifies Wickham Bishops as a larger village for the location of development, second within the settlement hierarchy after Maldon, Heybridge and Burnham-on-Crouch. Therefore, whilst recognising that the development would be outside of the DSB [settlement boundary], given the location of the site in the context of this predominantly rural district I consider that the proposal would be located within one of its more sustainable locations. I do not*

consider that the proposal would be isolated from the rest of the village and I consider that the site is located within one of the villages which, given the rural nature of the district, is more sustainable. As a result the proposal would be in accordance with policies S1, S2, H4, D1, D2 and T1 of the LDP.'

- The application site (24/00253/FUL) 'Land rear of Green Man Public House' is situated approximately 1 mile to north east of the site 'Land rear of 9 Church Road, Wickham Bishops'. These sites would each utilise different roads to access the services and facilities in Wickham Bishops. They are therefore not comparable in terms of sustainability/accessibility. As noted above, in the assessing of the application being considered (24/00253/FUL) significant weight has been given to the recent appeal decision at Carters Lane (APP/X1545/W/24/3342289) where the Inspector referred to the walking and cycling routes into Wickham Bishops stating that neither of the roads (specifically referring to Tiptree Road and Carters Lane) serving appeal site can be said to provide for reasonably safe connections for regular use either on foot or by bicycle and therefore the development would be contrary to the aims of Policy T2 with regard to ensuring that developments benefit from safe and convenient opportunities for sustainable travel. As prospective occupants of the site at 'Land rear of Green Man Public House' would also likely utilise Carters Lane or Tiptree Road if walking or cycling to access the facilities in Wickham Bishops, Officers have drawn similar conclusions to that of the Inspector regarding the accessibility of the site.