



**REPORT of
CHIEF EXECUTIVE**

**to
NORTH WESTERN AREA PLANNING COMMITTEE
10 JULY 2017**

Application Number	FUL/MAL/17/00641
Location	Poultry Sheds Moors Farm Moors Farm Chase Little Totham
Proposal	Variation of conditions 6 & 7 on approved planning permission FUL/MAL/15/00439 (Change of use of existing agricultural poultry sheds to be used for the storage of reclaimed building materials)
Applicant	Mr J Purdy
Agent	Mr Peter Le Grys - Stanfords
Target Decision Date	4 August 2017
Case Officer	Spyros Mouratidis, TEL: 01621 875841
Parish	LITTLE TOTHAM
Reason for Referral to the Committee / Council	Member Call In

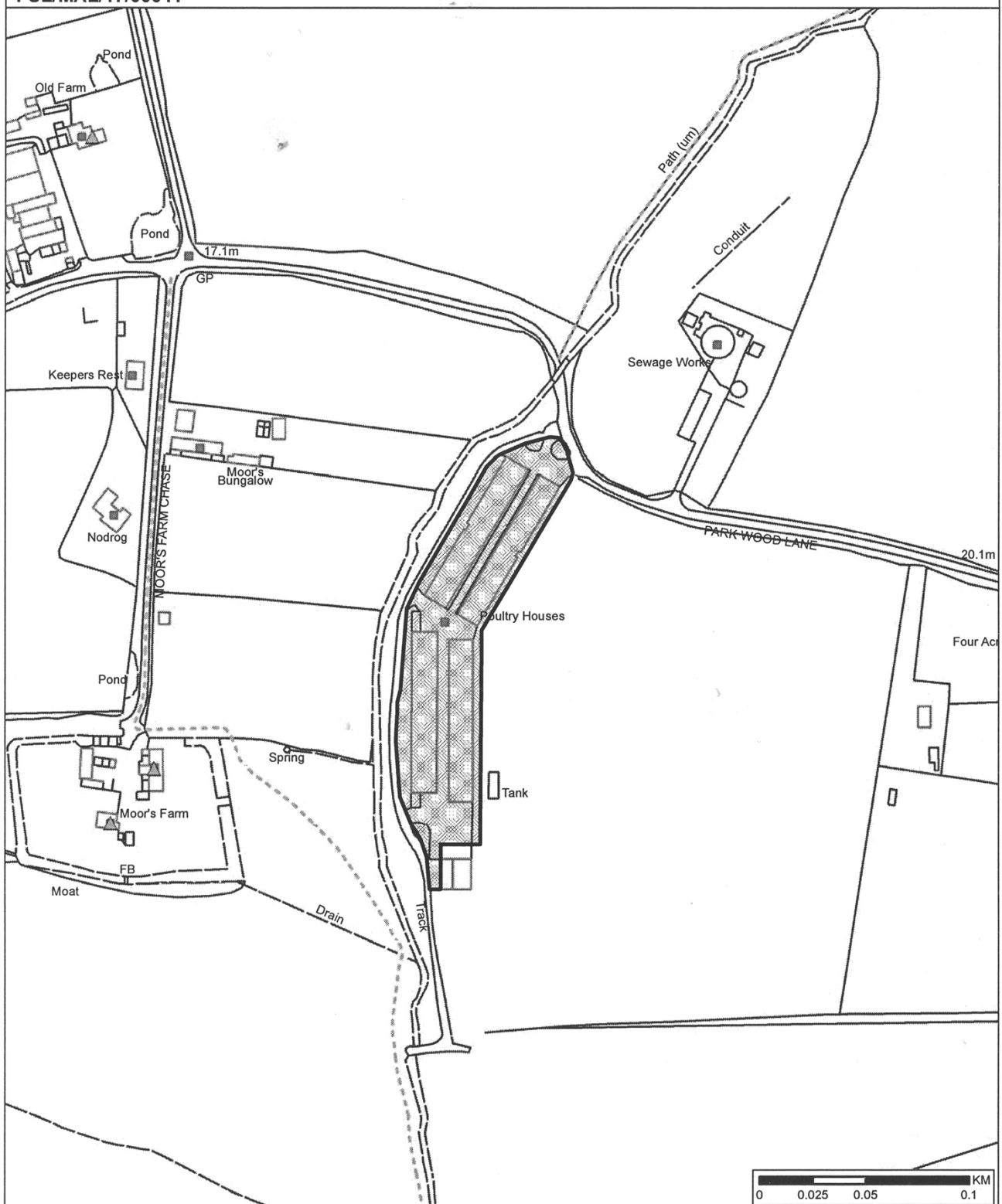
1. RECOMMENDATION

As the statutory consultation period for this application expires after the date of this meeting, the Chief Executive be authorised to **REFUSE** planning permission for the reasons as detailed in Section 8 of this report subject to the expiry of the publicity period and no new material considerations being received.

2. SITE MAP

Please see overleaf.

Poultry Sheds, Moors Farm, Moors Farm Chase, Little Totham
FUL/MAL/17/00641



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 Maldon District Council 100018588 2014



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Scale: 1:2,500

Organisation: Maldon District Council

Department: Department

Comments: North West Committee

Date: 28/06/2017

MSA Number: 100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 Planning permission is sought for the variation of conditions 6 and 7 of the approved planning permission FUL/MAL/15/00439 (Change of use of existing agricultural poultry sheds to be used for the storage of reclaimed building materials).
- 3.1.2 Condition 6 states that: “No goods, materials, plant, machinery, skips, containers, packaging or other similar items shall be stored or kept outside of the building”, and condition 7 states that: “In pursuant of Condition 6, no machinery, other than a forklift truck, shall be used outside the building”. It is proposed to vary condition 6 in order to allow external storage of up to 3m in height and to vary condition 7 to allow the use of a digger and a dumper truck on site.
- 3.1.3 The use of the site is already carried out without compliance to the above conditions and a breach of condition notice has been served to remedy the identified breach of planning control. A planning application (reference FUL/MAL/17/00349) for exactly the same proposed variation was refused by the Council on 24 May 2017.
- 3.1.4 The application site lies within a rural setting outside of any defined settlement boundary, to the southwest of the village of Little Totham. The site subject of this application comprises two poultry sheds and a barn set in a linear style with an open field to the east and a tree lined mature hedgerow boundary to the west. Vehicle access is from Park Wood Lane to the north of the site and leads between the poultry sheds to the rear (south) of the site.
- 3.1.5 There are residential properties to the west, east and north of the site, located in distances between 80m and 200m away from the site. One of the properties to the west is Moor’s Farmhouse, a complex containing two grade II listed buildings.

3.2 Conclusion

- 3.2.1 The use of the site without compliance to Conditions 6 and 7 of planning permission FUL/MAL/15/00439 has resulted in a development that is unacceptable in planning terms, due to its visual impact upon the intrinsic character and appearance of the area and the resultant noise pollution, which is detrimental to the amenity of the neighbouring residential occupiers. The application is not considered to have provided any mitigation to the identified harm or provide a sound planning argument including any relevant material planning considerations as to why permission should be granted. Therefore, the development is contrary to saved policies S2, CON5, CC6, CC19 and BE1 of the Replacement Local Plan, emerging policies S1, S8, D1, D2 and E4 of the submission Local Development Plan and advice contained within the National Planning Policy Framework.

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2012 including paragraphs:

- 14 - Presumption in favour of sustainable development
- 17 - Core Planning Principles
- 56-68 - Requiring Good Design
- 109-125 - Conserving and enhancing the natural environment

4.2 Maldon District Replacement Local Plan 2005 – Saved Policies:

- Policy S2 - Development outside development boundaries
- Policy CON5 - Pollution prevention
- Policy CC6 - Landscape Protection
- Policy CC19 - Rural Diversification
- Policy BE1 - Design of New Development and Landscaping

4.3 Maldon District Local Development Plan submitted to the Secretary of State for Examination-in-Public on 25 April 2014:

- Policy S1 - Sustainable Development
- Policy S8 - Settlement Boundaries and the Countryside
- Policy D1 - Design Quality and Built Environment
- Policy D2 - Climate Change & Environmental Impact of New Development
- Policy E4 - Agricultural and Rural Diversification

4.4 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

5.1.1 When the planning application FUL/MAL/15/00439 for the change of use of the site was considered, policy CC19 of the Replacement Local Plan (RLP) was the main consideration to establish whether the principle of development is acceptable. Policy CC19 states that proposals for change of use of rural buildings outside the defined development boundaries to employment uses will only be permitted if certain criteria are met. Two of the criteria set in policy CC19 relevant to this application, are:

- Criterion (e) - the proposed use will not harm the local environment through the creation of noise, dust, smoke, fumes, grit, vibration or any form of water, soil or air pollution; and
- Criterion (g) - no storage of raw materials or finished goods is to take place outside the building if it would be detrimental to the visual amenity of the area;

5.1.2 Furthermore, emerging policy E4 of the Local Development Plan (LDP) reiterates the importance of the above criteria.

5.1.3 It was considered that the development would comply with the above criteria subject to appropriate conditions, including conditions 6 and 7. Without compliance to these conditions the principle of the development is unacceptable; this is discussed further within the following section of this report.

5.1.4 In addition to the previous considerations, an application of the same nature was determined previously by the Council under reference FUL/MAL/17/00349. The Council refused to grant permission for the previous application because:

- 1. The use of the site without compliance to Conditions 6 of planning permission 15/00439/FUL has resulted in a development that is unacceptable in principle, due to its visual impact upon the intrinsic character and appearance of the area contrary to policies S2, CC6, CC19 and BE1 of the adopted Maldon District Replacement Local Plan, policies S1, S8, E4 and D1 of the Maldon District Submitted Local Development Plan and the guidance and provisions of the National Planning Policy Framework.*
- 2. The use of the site without compliance to Conditions 6 and 7 of planning permission 15/00439/FUL has resulted in noise pollution, which is detrimental to the amenity of the neighbouring residential occupiers contrary to saved policies CON5, CC19 and BE1 of the Replacement Local Plan and emerging policies D1 and D2 of the submission Local Development Plan and advice contained within the National Planning Policy Framework.*

5.1.5 It is not considered that there is any material difference between the current application and the one previously refused by the Council and therefore the principle of the development remains unacceptable.

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 sought 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. In order to comply with saved policy BE1 of the RLP, the proposal must be compatible with, or improve the surrounding location through its scale, height and choice of external materials. Similarly, the basis of policy D1 of the submitted LDP ensures that development will not have a detrimental impact on its surrounding area and local context and will actively seek opportunities for enhancement in the built environment.

5.2.3 As already mentioned, policy CC19 of the RLP states that the change of use of an existing agricultural building shall only be permitted if no storage of raw materials or finished goods is to take place outside the building if it would be detrimental to the visual amenity of the area. Moreover, policy BE1 of the RLP and D1 of the LDP seek to allow any development only if it is compatible with its surroundings and/or improves the surrounding location in terms of visual impact, among others, and that

outside defined development boundaries they make a positive contribution to the landscape and open countryside.

- 5.2.4 Furthermore, the site lies outside of any defined development boundary, within the countryside for planning policy purposes. According to saved policy S2 of the RLP and policies S1 and S8 of the emerging LDP the countryside will be protected for its landscape, natural resources and ecological value. Saved policy CC6 of the RLP seek to ensure that the District's landscape will be protected, conserved and enhanced and development proposals will not be permitted unless their location, siting, design, materials and landscaping achieve the above objective. These objectives are generally considered to be compliant with the NPPF.
- 5.2.5 When planning permission was granted it was considered that the visual impact of the change of use upon the character and appearance of the rural locality would not be detrimental. However, this consideration was subject to appropriate conditions being append to any grant of permission in order to restrict external storage and works to ensure the nature of the proposed use results in limited impact upon the intrinsic character of the area and respects the local context. The breach of planning control has a clear and demonstrable impact on the character and appearance of the area.
- 5.2.6 It is considered that by not complying with conditions 6 and 7 the impact of the development is unacceptable as it causes substantial and demonstrable harm upon the character and appearance of the countryside contrary to local and national planning policies.

5.3 Impact on Residential Amenity

- 5.3.1 Policy BE1 of the RLP protects neighbouring occupiers from unacceptable development which results in a loss of amenity in relation to overlooking, overpowering or undue reduction of light to the main windows of their property. Similarly, the basis of policy D1 of the submission LDP seeks to ensure that development will protect the amenity of its surrounding area. Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by, among others, preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability. This national guidance has been reflected on policy D2 of the emerging Local Development Plan. In addition policy CON5 of the Replacement Local Plan is consistent with the NPPF.
- 5.3.2 Save policy CC19 of the RLP, as previously mentioned in this report, states that the change of use of an existing agricultural building shall only be permitted if no storage of raw materials or finished goods is to take place outside the building if it would be detrimental to the visual amenity of the area. Moreover, policy BE1 of the RLP and D1 of the LDP seek to allow any development only if it is compatible with its surroundings and/or improves the surrounding location in terms of visual impact, among others, and that outside defined development boundaries they make a positive contribution to the landscape and open countryside.
- 5.3.3 Furthermore, saved policy CON5 of the RLP and emerging policy D2 of the LDP seek to ensure that development having an adverse impact on the environment by

means of pollution will be refused. It has to be noted that the term pollution is defined, as per the NPPF, anything that affects the quality of land, air, water or soils, which might lead to an adverse impact on human health, the natural environment or general amenity. Pollution can arise from a range of emissions, including smoke, fumes, gases, dust, steam, odour, noise and light.

- 5.3.4 When planning permission was granted for the change of use, it was considered that the distance of the site from neighbouring properties coupled with the appropriate conditions would render the scheme acceptable in terms of its impact upon the amenity of neighbouring residential occupiers. The breach of the conditions has resulted in unacceptable levels of noise pollution, to the detriment of the amenity of the residential properties in the vicinity of the site. The harm is exacerbated by the open nature of the rural locality, which allows any sound to travel in wider distances predominates due to the low levels of ambient noise. Furthermore, removing the conditions would allow further intensification of the site without the need for planning permission. This would exacerbate the harm highlighted above.
- 5.3.5 It is considered that by not complying with conditions 6 and 7 the development is detrimental upon the amenity of neighbouring residential occupiers contrary to local and national planning policies.

5.4 Other Material Considerations

- 5.4.1 The Court of Appeal in *R (on the application of XPL Ltd) v Harlow Council* (2016)EWCA Civ 378 approved the test of interpretation that a planning permission including its conditions must be read as a whole and be given the meaning a reasonable reader would give them without any special knowledge and without looking at any extrinsic material except in particular circumstances. Although there has been other development on the land included within Permission 15/00439 (and adjoining land) including the demolition of two of the poultry sheds, the stationing of a caravan and erection of a fence, these are not circumstances which affect the meaning of conditions 6 and 7. At the time of the permission and its implementation there were four poultry sheds. There are now two. The conditions continue to relate to each of the remaining buildings. There is no ambiguity in the wording.
- 5.4.2 It has been noted the in the Decision Notice of planning permission FUL/MAL/15/00439, the reason to impose condition 6 mentions policy E7 of the RLP. However, this policy is referring to the intensification of employment uses within development boundaries and is, as such, irrelevant to this development. Nevertheless, reading the committee report for the case it is evident why condition 6 has been imposed and that mentioning policy E7 of the RLP is a clerical error.

6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/15/00439** - Change of use of existing agricultural poultry sheds to be used for the storage of reclaimed building materials - APPROVED [02.09.2015].
- **16/00386/BC** - Enforcement case (Breach of conditions) - Breach of Condition Notice has been served [04.04.2017].

- **FUL/MAL/17/00349** - Variation of conditions 6 and 7 on approved planning permission FUL/MAL/15/00439 (Change of use of existing agricultural poultry sheds to be used for the storage of reclaimed building materials) – REFUSED [24.05.2017].

Reasons for refusal:

1. *The use of the site without compliance to Conditions 6 of planning permission 15/00439/FUL has resulted in a development that is unacceptable in principle, due to its visual impact upon the intrinsic character and appearance of the area contrary to policies S2, CC6, CC19 and BE1 of the adopted Maldon District Replacement Local Plan, policies S1, S8, E4 and D1 of the Maldon District Submitted Local Development Plan and the guidance and provisions of the National Planning Policy Framework.*
2. *The use of the site without compliance to Conditions 6 and 7 of planning permission 15/00439/FUL has resulted in noise pollution, which is detrimental to the amenity of the neighbouring residential occupiers contrary to saved policies CON5, CC19 and BE1 of the Replacement Local Plan and emerging policies D1 and D2 of the submission Local Development Plan and advice contained within the National Planning Policy Framework.*

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

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

Name of Parish / Town Council	Comment	Officer Response
Little Totham Parish Council	No response has been received by the date of this report – response for FUL/MAL/17/00349: Object - Visible storage of materials and waste products having a negative effect on the site surroundings and landscape. Use of vehicles on site causing disturbance to local residents.	

7.2 **Statutory Consultees and Other Organisations** (*summarised*)

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Environmental Health	No response has been received by the date of this report – response for FUL/MAL/17/00349:	

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
	Object – removal of conditions 7 and 7 may cause nuisance to neighbouring occupiers	

7.3 Representations received from Interested Parties (*summarised*)

7.3.1 No letters of representation have been received.

8. **REASONS FOR REFUSAL**

- 1 The use of the site without compliance to Conditions 6 of planning permission FUL/MAL/15/00439 has resulted in a development that is unacceptable in principle, due to its visual impact upon the intrinsic character and appearance of the area contrary to policies S2, CC6, CC19 and BE1 of the adopted Maldon District Replacement Local Plan, policies S1, S8, E4 and D1 of the Maldon District Submitted Local Development Plan and the guidance and provisions of the National Planning Policy Framework.
- 2 The use of the site without compliance to Conditions 6 and 7 of planning permission FUL/MAL/15/00439 has resulted in noise pollution, which is detrimental to the amenity of the neighbouring residential occupiers contrary to saved policies CON5, CC19 and BE1 of the Replacement Local Plan and emerging policies D1 and D2 of the submission Local Development Plan and advice contained within the National Planning Policy Framework.