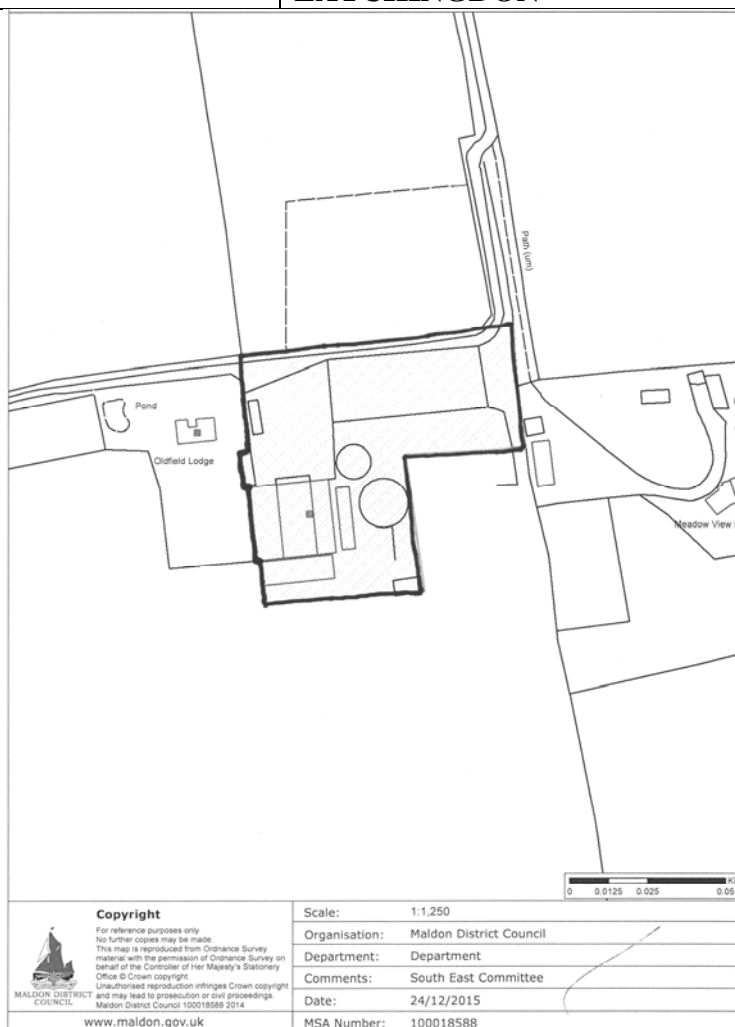




**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

**to
SOUTH EASTERN AREA PLANNING COMMITTEE
11 JANUARY 2016**

Application Number	FUL/MAL/15/00058
Location	AA Dog Rescue Oldfield Lodge Burnham Road Latchingdon
Proposal	Change of use to include dog rescue and equestrian - sui generis
Applicant	Ms Charlene Nathan
Agent	Chris Tivey Associates
Date Valid	1 July 2015
Target Date	26 August 2015
Case Officer	Nigel Hebden, TEL: 01621 875741
Parish	LATCHINGDON



Agenda Item no. **6**

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Our Vision: Working in Partnership to make the Maldon District a better place to live, work and enjoy

1. Recommendation

REFUSE for the reason as detailed in Section 9 of this report.

2. Introduction

2.1 This application was presented to the South Eastern Area Planning Committee on 19 October 2015 and it was resolved that consideration of the application be deferred for *“a maximum period of three months to allow for further information on the noise to be provided and a revised application to be submitted and referred to the Committee.”* This report provides an update summary (Section A) and the original committee report.

2.2 Update

2.2.1 Environmental Health

2.2.1.1 The Environmental Health service has received formal complaints from local residents about noise from the dog rescue centre. Environmental Health Officers visited the homes of residents and based on their observations and the diaries of noise incidents recorded by residents they concluded that there was a statutory nuisance arising from dogs barking at the rescue centre. On 24 November 2015 the Council served Noise Abatement Notices under Section 80 of the Environmental Protection Act 1990; the notices were served on the owners of AA Dog rescue. No appeal has been lodged against the notices within the requisite time. The date for compliance with the notices is 9 February 2016.

2.2.2 Further Representations

2.2.2.1 Since the October committee the Council has received the following representations of objection:-

Letters of Objection:

Mr and Mrs Wiffen: “Treetops”. Burnham Road, Latchingdon

Fiona and David Ashworth: Rosedale Farm, Latchingdon

Mrs Nightingdale: Meadow View Farm, Burnham Road, Latchingdon

Main reasons for Objection:

- Noise from the dogs barking is incessant as is the smell from dog waste.
- This is our home and we have no respite from the noise.
- Dogs bark all the time even at night and especially at feeding and exercise time.
- Is the dog waste ever collected or burnt?
- Concern about diseases especially as some dogs come from abroad.
- Concern about injury being caused to family by escaped dogs.
- Smoke from bonfires burning waste.
- Increased traffic down shared access track.

2.2.3 Further Information

2.2.3.1 The applicant and agent attended the meeting of the Committee held on 19 October 2015 and the agent was subsequently advised by email of the date of this committee meeting and the timetable for preparing reports. At the same time Environmental Health Officers repeated earlier advice on the scope of the acoustic work that would need to be carried out. On 15 December 2015 the Council received information that a new acoustic advisor was being retained.

2.2.4 Consideration

2.2.4.1 Since the Council considered the application the Council has received formal complaints from residents and it has been determined that the current noise from barking dogs is a statutory nuisance and as a result a Noise Abatement Notice has been served. This action under the terms of the Environmental Protection Act 1990 is entirely independent of the consideration of the planning application that is presently before the committee. However it does indicate that professional environmental health officers consider the barking to be actionable. The level of disturbance that is necessary to demonstrate a nuisance is higher than that would normally be considered to adversely affect residential amenity in planning terms.

2.2.4.2 The applicant and her agent were aware of the Council's resolution to defer consideration of the application to enable further work to be done to establish the noise levels and their characteristics and then what mitigation measures might be feasible. The agent was advised of the timetable for reporting this matter back to the Committee. At the time of preparing this report the Council has been advised that a new acoustic consultant has been retained but it is unlikely that he will be able to complete the necessary surveys and draw up mitigation proposals until well into January 2016.

2.2.4.3 The dog rescue centre has been operating at a level that has attracted complaints from local residents regarding the noise arising from dogs barking since August 2014. The Council has considered it expedient to serve an Enforcement Notice to secure the cessation of the use and removal of associated operational development. Whilst an acoustic report may be produced it is by no means certain that mitigation measures can be put in place that are effective and viable. The commissioning of this information is in the control of the applicant

2.2.5 Recommendation

2.2.5.1 It is recommended that the application be refused as set out in the recommendation at the end of this report.

3. Site Description

3.1 The application site is located some 300 metres to the south of Burnham Road, Latchingdon. Access is via an unmade private track which also serves three residential properties including one occupied by the applicant. The application relates

to an area of 0.48 hectare containing a number of former barns and linked structures including loose boxes, temporary structures, a mobile home and a caravan.

- 3.2 To the front of the barn is a car parking area in a loose gravel surface. To the rear of the site are open fields that are used for the grazing of horses. At the front of the site is a manege area. This is understood to be used for exercising of horses and dogs associated with the uses of the site.
- 3.3 Immediately to the west of the site is a dwelling (Oldfield Lodge) which is occupied by the applicant and a mobile home which it is understood is occupied by persons associated with the rescue centre. There are two other unrelated dwellings in the vicinity one 130 metres to the east and the other a similar distance to the west.

4. The Proposal

- 4.1 Retrospective planning permission is sought for the change of use of the site to a sui generis use as a dog care centre and equestrian centre. The Council has served an enforcement notice in respect of this use (see planning history below) and this application seeks to regularise matters. The site is currently being used for a dog rescue centre known as AA dog rescue. The AA website states that it is a not for profit organisation awaiting HMRC charity status although at the time of the 19th October 2015 Committee meeting the applicant confirmed that there was no application pending. The Centre takes in unwanted or stray dogs from the UK and Europe with a view to re-homing them with members of the public who are able to visit the site at opening times. There is a veterinary facility within a mobile home on site where dogs are treated for any ailments and standard procedures such as neutering or worming are carried out. A caravan is used by the night security guard.
- 4.2 The barn has been divided into 19 blocks used mainly for the keeping of rescue dogs. Two areas are also provided for storage. Externally there are 3 large areas to the rear of the building which each provide a number of smaller dog cages. Attached to the flank of the building is a stable block comprising 6 units. These each have further dog cages within. A stable block of 6 units is provided opposite this also for the keeping of dogs associated with the business.
- 4.3 The land around the stable building is used for the keeping of horses and also for runs for the dogs. There is also an office building which is a temporary structure, and a number of other outbuildings which are used in connection to the facilities on site, including a retail area which sells AA merchandise. There are no details of these buildings within the application or their uses as part of the rescue centre. It is stated that there are 1 full time and 6 part time jobs associated with the use which also has a volunteer workforce. The agent advises that the equestrian use is not commercial and only the applicant's own horses are kept on the site.
- 4.4 The dog rescue centre operates 7 days a week and is open to the public every day (except Tuesdays) between 0900-1300 and 1500-1800.

5. **Relevant Planning History**

- **02/00484/FUL** - New stable block of 12 loose boxes, menage, change of use of barn from agriculture to a mixed use of agriculture and storage ancillary to equestrian use, and change of use of part of second existing building to a tack room. Approved 12.06.2002.
- **03/01061/AGR** - Erection of agricultural building. Prior Approval Required. 31.10.2003.
- **03/01186/AGR** - Prior approval for the siting, design and external appearance of an agricultural building. Refused. 05.01.2004.
- **04/00272/AGR** - Erection of an agricultural building. Prior Approval Required. 19.03.2004.
- **14/00181/CU** - Enforcement Enquiry regarding current use. On 15 June 2015 the Council served a Planning Enforcement Notice on land which includes, but is greater than, the application site. The alleged breach of planning control is stated as *“Without planning permission the material change of use of the land from mixed agricultural and equestrian to mixed equestrian, retail and use as dog rescue.”* The terms of the notice require that the dog rescue and retail uses cease and that a caravan and materials be removed from the site. Following service of the notice an appeal against the notice was lodged and will be the subject of a hearing to be held on 27 April 2016.

6. **Consultation Replies**

Parish Council

Latchingdon Parish Council – Support the application as it appears not to affect any neighbouring properties.

External

Environment Agency – proposal falls outside the scope of the consultee.

Highway Authority – Acceptable subject to condition (surfacing of the parking and turning area)

Internal

Environmental Health - Insufficient information submitted with the application. The noise report and survey do not fully characterise the noise coming from the site. Therefore Environmental Health cannot comment further on the suitability of the use of the site without a fully comprehensive noise impact assessment.

Planning Policy – No comment to make.

7. **Letters of Representation**

Letters of Objection:

Marianne Jackson 19 Belton Lane Grantham Lincs
Mr E Alexander 17 Merton Place Chelmsford CM3 5YW
Victoria Barter 1 Avocet Way Heybridge Essex

Claire Koehl 34 Shakespeare Drive Maldon Essex
 David & Fiona Ashworth Rosedale Farm Rectory Lane Latchingdon
 Lindsey Edwards 120 Hainault Avenue Westcliff On Sea Essex
 Mrs C Ilesley 9 Springhouse Road Corringham Essex
 Kirsty Cole 14 Starling Way Stowmarket Suffolk
 Mr & Mrs Wells Birs Lodge Lower Burnham Road Latchingdon
 Mrs C Davis 28 Eastern Crescent Chelmsford Essex
 Barrington & Carol Wiffen Treetops Burnham Road Latchingdon
 Mr & Mrs Bragg 43 Templar Road Braintree Essex
 The Occupier Folly Faunts Cottage Little Totham Road Goldhanger
 Alfie Fowkes 139 Glendale Road Burnham On Crouch Essex
 Sean Baker Flat 10 Benteigh Court Greenstead Road Colchester
 Maria Fowkes 139 Glendale Road Burnham On Crouch Essex
 The Occupier 34 Shakespeare Drive Maldon CM9 6DP
 Mrs E Smith 101 Bourne Close Laindon Essex
 Mercedes Koehl 64 SARCEL Stisted Braintree
 Cassandra Collins 47 Goldhanger Road Heybridge Maldon
 Mrs S Aldous 76 Cleves Way Ashford Kent
 S Barter 85A Mill Road Maldon Essex
 M Barnes 1 Avocet Way Heybridge Maldon
 T Fittock 110 Swan Lane Runwell Wickford
 C Hampton The Orchard The Esplanade Mayland
 N Maunders 68 Braintree Road Witham Essex

Main reasons for Objection:

- Concerns about the conditions of the rescue centre, environments the dogs are kept in and lack of food and water for the animals and hygiene.
- Significant concerns for animal welfare including the level of care provided for medical operations and neutering.
- Concerns for spread of infections and compliance with DEFRA requirements.
- Should be limitations on the number of dogs allowed at the site.
- Smell and odour.
- Significant noise and increasing with the number of dogs; associated concerns with the quality of the noise report.
- Too many dogs kept at the site and for the number of kennels (in excess of 100 dogs and under 40 kennels).
- Concerns over the wellbeing of the dogs due to the conditions they are kept in
- Inadequate facilities.
- High numbers of dogs brought over from Spain (over 60 per month).
- Running for over two years with no planning permission.
- The veterinary practice (Oldfield Vets) is a visibly dirty caravan and not fit to perform operations.
- The vet clinic is not a part of this application.
- No planning permission has been granted for the vet clinic.
- Veterinary practice is not registered and the applicant is not a vet.
- This is not a charity but a profitable business selling dogs.
- The kennels flood each year.
- More staff at the site than claimed in the application – paid cash.
- Highway safety concerns including traffic generation, potential collisions at the road junction.

Main reasons for Objection continued:

- Site is overrun with rats.
- No design and access statement submitted.
- Lack of detail regarding the kennels, their design, capacity and their use
- No quarantine kennels shown.
- Current design of kennels is not suitable – rusty, damp, stable partitions, little natural light and inadequate water run off.
- Advertised and licenced as a boarding establishment only.
- Bills submitted with the application at for the unlawful vet practice not the rescue centre.
- Concerns about the legality of the company and its operations.
- Dogs have escaped from the site. Concern at risk to children and others in area.

Letters of Support:

Lindsay Stoneham 2 Beadel Close Witham Essex
Susan Flanders 8 Mill Cottages High Road Fobbing
Stacey Sparks 44 Albert Road South Woodham Ferrers Essex
James Marshall 80 Bramley Way Mayland Essex
Ms Jennifer M Calleja 4 Meriadoc Drive South Woodham Ferrers Essex
Sharon Kaye Oltamar 1C Calpe Alicante 03710
Sharon Nattrass 84 Broadoaks Grange Carlisle Cumbria
Jan Bridge Rosedale The Street Little Totham
Jean Yardley 9 Wordsworth Avenue Maldon Essex
Lois Chalk 3 Garbutt Road Upminster Essex
Susan Barnett 25 Goldhanger Road Heybridge Maldon
Linda Hardisty 5 Beeston Courts Basildon Essex
Maia Loughlin 5 Wordsworth Avenue Maldon Essex
Anne Beale 8 Bower Close St. Leonards On Sea East Sussex
Steve Andrews 86 Mill Lane Cressing Essex
Paulene Calleja 9 Reynolds Gate South Woodham Ferrers Essex
Mr & Mrs Weaver 104 Mapleford Sweep Basildon Essex
Mark Hedgecock 5 Larch Walk Heybridge Maldon
Mairead O'Connor 3 Park Anenue Eastwood Essex
Lisa Stilwell 38 Finchland View South Woodham Ferrers CM3 5GA
Ray Clifft 3 Sparrows Herne Basildon Essex
Jemma Wakeley 10 Honeysuckle Path Springfield Essex
Steven John Oneill 135 Little Cattins Harlow Essex
Shelia Oneill 135 Little Cattins Harlow Essex
Alan Stafford 25 Lyndhurst Drive Bicknacre CM3 4XL
Helen Wojcik 16 Alma Close Hadleigh Essex
Gary Harris 245 Bournemouth Park Road Southend On Sea Essex
Rebecca Hirst 25 Queenborough Road Southminster Essex
Joanna Dickson 11 Cairns Road Colchester Essex
Alice Pitts 28 Overmead Drive South Woodham Ferrers Essex
Amy Harris 245 Bournemouth Park Road Southend On Sea Essex
M Wright 80 Bramley Way Mayland Essex
Mrs P Saville 1 Meadow Mews South Woodham Ferrers Chelmsford
Emma Gunary 26 Gosbecks Road Colchester CO2 9JR
Jill Hermitage 49 Thundersley Grove Thundersley Essex
Ms T Lingard 30 Macdonald Avenue Westcliff On Sea Southend
Steven George 1 Little Fields Danbury CM3 4UR

Will Diggins Suite 4 Empire House Victoria Road Essex
 Ms Iona Stone 58 Juniper Road Colchester CO3 0RY
 Mrs H T Lunn 5 Mayflower Drive Maldon Essex
 Debbie Harris 254 Bournemouth Park Road Southend On Sea Essex
 Mrs A Braham 10 Douglas Grove Witham Essex
 Lavinia Carrington 83 Nipsells Chase Mayland Essex
 Karen Jones 27 Windfall Way Gloucester GL2 0RP
 India Lea 21 Dragon Close Burnham-On-Crouch Essex
 Sam Law 10 Davoll Court Marine Street London
 Louise Radford 52 Vicarage Road Mickleover Derby
 Karen Mobey 9 Victor New Close Wickford Essex
 Julie Tully 14 Pelham Place Stanford-Le-Hope Essex
 Glen Stafford 13 Ash Grove Burnham-On-Crouch Essex
 Pauline Greenwood 29 New Town Road Colchester CO1 2DH
 Rachel Crawford Helping Animals Almanzora Avenida Andalucia 1 La Alfoquia
 Clare Sedgbeer 520 Arterial Road Leigh On Sea Essex
 Samantha Tilley 23 Garden Close Althorne Essex
 Julian Raithby 2 Green Lane South Woodham Ferrers Essex
 Yvonne Baker 9 Crouch Park Poole's Lane Hullbridge
 Elian French 87 Wood Lane Kingsbury London
 Faye Baisden Longfield Mayes Lane Sandon Essex
 Peter Zear 4 Belchamps Way Hawkwell SS5 4NT
 Frances Simmonds 17 Maitland Road Wickford Essex
 Mrs Hayley Dean 24 Upway Rayleigh Essex
 Rachel Henderson-Cobb 54 Halcyon Close Witham Essex
 Graham Palmer Red Lyons Lodge Burnham Road Latchingdon
 Gilly & Chris Sandford 2 Church Cottages Church Road Frating
 Maxine Clarke The Wrekin The Chase Southminster
 Ashley Symeou 21 North Avenue Chelmsford Essex
 Catherine Graham 22 Ramsey Close Heybridge Maldon
 Joan Ann Perry 99 Peartree Walk Cheshunt Herts
 Lisa Walsh 5 Conyer Close Maldon Essex
 Jaimee Pattie 111A Maybank Road South Woodford London
 Mrs Tina Dobbins 16 Croxley Green Rickmansworth Herts
 Craig Metson 183 South Street Braintree Essex
 Linda & Paul Darrington 34 Grantham Road Great Horkesley Colchester
 Joanne Atkins 6 Chatsworth Road West Mersea Colchester
 Meriel Kennedy 31 Hambro Hill Rayleigh Essex
 Miss Rebecca Pitts Flat 9 Tollington House 598-602 Holloway Road
 Mrs Ingrid J Pitts 28 Overmead Drive South Woodham Ferrers Essex
 Mrs Sally Lea 21 Dragon Close Burnham-On-Crouch Essex
 Pamala Richardson 28 Roberts Close Sittingbourne Kent
 Richard M Stylianou-Steed Carrer Cervantes 11 Villalonga 46720
 Michael Tappenden 4 Meriadoc Drive South Woodham Ferrers Essex
 Sarah Woodcock 6 Overmead Drive South Woodham Ferrers Essex
 Samantha Becker 2 The Aspens Barley Meadow Southminster
 James Bridge 48 Glendale Road Burnham-On-Crouch Essex
 Emma Broadbent 20 Institute Road Coopers Ale Epping
 Victoria Cooke 3 Bakers Cottages Hyde Lane Danbury
 Pauline Corrie 14 Emanuel Road Langdon Hills Basildon
 Ann Field Naivasha Burses Way Hutton

Lindsey Hare 72 Queensmere Benfleet Essex
 Kate Hofman Flat 10 Davoll Court Marine Street
 Mr Graham Lea 21 Dragon Close Burnham-On-Crouch Essex
 Eloise Newman 9A Broadmark Parade Rustington West Sussex
 Mr Duncan Bilney Woodstock Main Road Woodham Ferrers
 Mrs Gillian Shead 31 Dorset Gardens Rochford Essex
 Angela Moran 89C Hullbridge Road South Woodham Ferrers Essex
 Jason French 194A Purves Road London NW10 5TG
 Jenna Miller 33 White Elm Road Bicknacre CM3 4LU
 Katharine East Bankside Bramble Crescent Daws Heath
 S Lockington 1 Holkham Avenue South Woodham Ferrers Essex
 Megan Southern 2 Tanners Way South Woodham Ferrers Essex
 Karen Mansfield 3 Standen Avenue South Woodham Ferrers Essex
 Kerry Spence 34 Coronation Close Great Wakering Essex
 Mrs Jill Stubbington 20 Dalys Road Rochford Essex
 Lesley Morgan 18 Meadway River Dover
 Melanie Davies 37 Morton Crescent Bradwell Great Yarmouth
 Stephanie Ellis 24 Coast Road West Mersea Essex
 Christina Mitchell Tydings Esplanade Maylandsea
 Caswell Becker 2 The Aspens Barley Meadows Southminster
 Nerina O'Brien 64 Cliffsea Grove Leigh On Sea SS9 1NQ
 Wendy Atalay 11 Cherston Gardens Loughton Essex
 Iain MacLeod 11 South Crescent Southend-on-Sea SS2 6TB
 Nichola Russell 2 Rantree Fold Basildon Essex
 Les Rowe 18 Queens Ride Crowthorne Berkshire
 Mikala Pearce Flat 1, 19 Central Avenue Southend-on-Sea Essex
 Lynne Halvorsen 14 Derek Gardens Southend-on-Sea Essex
 Michael Sedgbeer 520 Arterial Road Leigh-on-Sea Essex
 Sara Clarke 34 The Westerings Hockley Essex
 Susan Johnson 61 Clyde Crescent Rayleigh Essex
 Helen Aiken 44 Trenchard Crescent Chelmsford Essex
 Belinda Inwood The Pines Coxford Down Micheldever
 S Coleman 59 Stambridge Road Rochford SS4 1DY
 Tracy Taylor Casa Bonita 26 Los Gibaos Urcal
 Annette Crittall Villa Tranquila Calle San Miguel 52 Zarzadilla De Totana
 Dawn Ashley 15 Hedge Lane Hadleigh Essex
 Hannah Bye 15 The Bight South Woodham Ferrers Essex
 Caroline Rhys-Lewis 31 Victoria Road Colchester CO3 3NT
 Thomas Crews Bramble Lodge 399A Baddow Road Chelmsford
 Kerry McGee 2 Maple Villas The Chase Burnham Road
 Joanna Langston 26 Northcote Road Gravesend Kent
 Debbie Barker Wheatsheaf House Fambridge Road Roundbush
 Kerry Quinn 53 Mountview Crescent St Lawrence Essex

Main reasons for Support:

- Care and commitment shown to dogs at the centre.
- Dedicated staff, professional and hard working team with commitment to animal care.
- Supporting care of dogs from Spain.
- Provide help to animals and also people who are looking for a companion.
- Valuable service and benefits to the community.

Main reasons for Support continued:

- Support the local community through educating young offenders and schools with weekly visits and programs.
- Valuable interaction between dogs and children.
- Excellent service to the animals including exercise and recuperation areas.
- Success in finding dogs new homes.
- Need to consider how many dogs lives have been saved by the site.
- The rescue centre saves dogs and rehomes them.
- Need for a rescue and rehoming centre in this part of the district.
- Many volunteers for the centre.
- Ideal location for the proposal.
- Continued advice and support from AADR once dogs have been rehomed.
- Great plans to improve the facilities provided at the rescue centre.
- Clean and tidy facilities.
- Dogs are given food and water and regular walks.

8. Assessment of Proposal

Policy Issues

(i) Relevant Development Plan Policies

Adopted Maldon District Replacement Local Plan

The Maldon District Replacement Local Plan (RLP) was adopted in November 2005 and the 'saved policies' still form the statutory Development Plan for the District. However, as the RLP was prepared prior to the Planning and Compulsory Purchase Act 2004, in accordance with paragraph 215 of the National Planning Policy Framework, due weight should only be given to relevant 'saved policies' according to their degree of consistency with the NPPF.

- S2 Development outside development boundaries.
- CON5 Pollution Prevention.
- CC6 Landscape Protection.
- CC19 Rural Diversification.
- E6 Protection of existing employment uses.
- BE1 Design of new development and landscaping.
- T1 Sustainable Transport and location of new development.
- T2 Transport infrastructure in new developments.
- T8 Vehicle Parking Standards.

(ii) Maldon District Local Development Plan (LDP)

The LDP was submitted to the Secretary of State for Examination in Public on 25 April 2014. The NPPF (paragraph 216) states that decision makers should give weight to relevant policies in emerging plans (such as the submitted Maldon District LDP), according to the stage of preparation, the extent of unresolved objections to relevant policies, and the degree of consistency with the NPPF. The more advanced the stage of preparation, the greater the weight that can be given.

The Secretary of State has now formally decided to call-in the Maldon District LDP under Section 21 of the Planning and Compulsory Purchase Act 2004. The Department for Communities and Local Government (DCLG) has now appointed a project lead to project manage the process.

However, the Council has undertaken a full assessment of the Five Year Housing Land Supply in the District and it is concluded that the Council is able to demonstrate a supply of specific deliverable sites sufficient to provide for more than five years' worth of housing against the Council's identified housing requirements. According to the Council's latest Five Year Land Supply Statement (July 2015), 2,468 dwellings are deemed to be deliverable over the next five years (including allowance for a 5% local slippage rate which has been applied to the total number of housing deemed deliverable in the next five years). This represents a total of 6.95 years' worth of housing land supply against an identified housing target of 1,776 dwellings over the next five years (including allowance for a 5% buffer which has also been applied to the five year requirement in accordance with NPPF paragraph 47).

As a result, the Council maintains that significant material weight must be provided to relevant policies (with modifications) which have been subject to hearing sessions (with the exception of Policy H6), given that they are at such an advanced stage.

The following emerging policies are considered relevant to this application:

- S1 Sustainable Development.
- S7 Prosperous Rural Communities.
- S8 Settlement Boundaries and the Countryside.
- D1 Design Quality and Built Environment.
- D2 Climate Change and Environmental Impact of New Development.
- E1 Employment.
- E3 Community Services and Facilities.
- E4 Agricultural and Rural Diversification.
- N2 Natural Environment and Biodiversity.
- T1 Sustainable Transport.
- T2 Accessibility.

(iii) Government Guidance

- **The National Planning Policy Framework (NPPF).** The NPPF supports a strong rural economy (Section 3) and para 123 requires that policies and decisions should avoid giving rise to significant adverse impacts on health and quality of life.

8.1 Principle of Development

- 8.1.1 The submitted Maldon District Local Development Plan (LDP) represents the most up to date policy position of the council and includes policies which are NPPF compliant. The LDP policies are afforded weighed given the advanced stage of plan preparation in accordance with paragraph 216 of the NPPF. Policy S1 reflects the presumption in favour of sustainable development contained in the NPPF. The current development plan is the Replacement Local Plan.

- 8.1.2 The application site is located outside of a settlement as defined by these local policy documents. It is in a location where the principle of development unrelated to agriculture is generally unacceptable unless material considerations indicate otherwise. This includes the presumption on favour of sustainable development which is examined below.
- 8.1.3 The proposal, a retrospective change of use of a former equestrian site, may be acceptable if the requirements of policy CC19 and BE1 of the local plan and E4 of the LDP are met. These policies are examined below in addition to other relevant material considerations. .

8.2 Employment considerations – Rural Diversification

- 8.2.1 Policy CC19 of the local plan allows for the diversification of rural sites and businesses in certain circumstances. Part 1 of the policy lists 10 criteria that must be met. Comparable criteria are also included in policy E4 of the LDP.
- 8.2.2 The application seeks to regularise the existing use of the buildings, formerly stables and barns and land for the dog rescue centre in addition to the existing equestrian use of the site. There are also other structures at the site which are both permanent and temporary. Whilst it is understood that one of these may be used as a veterinary clinic / surgery, the submission does not indicate that this forms part of the proposal. There are also no plans to show this building or how it relates to the use of the site and barn and stable as a rescue centre. Furthermore, the clinic is understood to take place in a caravan rather than a former agricultural building which may well have been placed on the site specifically for the veterinary clinic. Therefore, this would fall outside of the ambit of policy CC19, as would the remaining outbuildings on the site. This is examined further below. The 10 criteria applicable to the use of the barn and stable can be examined as follows:

(a) The building to be used is of permanent, substantial and sound construction;
The barn appears to be of a permanent and solid construction suitable for use for equestrian and dog rescue purposes. The additional structures linked to the barn and the stable block, all of which are currently in use as part of the dog rescue use of the site, also appear of solid and sound construction.

b) The building is of a suitable type and scale for re-use for employment purposes;
The proposed use is a sui generis that is to say it does not fall within any of the general use classes and so would not be regarded as an employment use as such. However, the application does state that the use does offer some employment opportunities. Issues have been raised within letters of objection received regarding the status of the AA Dog Rescue as a business or charity. The legal status of the organisation running the rescue centre is not a material planning consideration however clearly the potential impacts of the use are.

(c) Any building work respects the building's historic or architectural importance or contribution to local character;
There is no historic or architectural interest to the buildings which are being used as part of the dog rescue.

(d) The traffic to be generated by the new use can be safely accommodated by the site access and the local road system;

The Highway Authority has not raised any objection to the proposal on the grounds of highway safety. The access is down an unmade track which slows traffic and the site is some distance from the public highway.

(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;

Local residents have expressed concerns regarding noise arising from barking dogs. This is considered in more detail below.

(f) There is sufficient room in the curtilage of the building to park any vehicles of those who will work or visit there and also to service its use, all without detriment to the visual amenity of the countryside;

An area of car parking has been provided in front of the building (stated as being for 20 vehicles) but this could benefit from being formalised

(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;

Not applicable in this case although some materials such as old bedding are stored in skips. This could be resolved by condition.

(h) No new fences, walls or other structures associated with the use of the building or the definition of its curtilage or any sub-division of it will be erected if they would harm the visual amenity of the countryside;

None proposed.

(i) The use of the building would not lead to the dispersal of activity on such a scale as to prejudice the vitality of nearby towns or villages;

Not applicable

(j) The visual impact of any proposals, including associated highway works required by the development, will be kept to a minimum.

The use is supported by a mobile homes and caravan which are visually intrusive

8.3 Noise, Disturbance and Impact on Residential Amenity

8.3.1 The application has included a noise report which has been assessed by the Environmental Health service. It is considered that the background ambient duration measurement appears too brief to accurately show the background noise levels through the day. Too short a measurement will over-represent the noise levels. Therefore longer background measurement must be taken to give a correct representation.

8.3.2 Similarly the Leq parameter was used to measure the noise from the dogs. This will average the noise out over a period of time and under-represent the noise levels. Dog barking is high volume and very sporadic which can be as disturbing as a continuous level of noise. Therefore the level will occupy the top percentile of total noise at any one time. Because of this a suitable parameter such as Lmax should be used.

- 8.3.3 In addition, not enough time has been spent on site to fully establish all incidents of noise from the dogs. This would include other feeding times, when people visit and exercising, all of which is known to cause the dogs to bark. The applicant's noise consultant has responded stating that he considers that whilst the period of measurement was limited it covered the worst case scenario when ambient background noise levels were at their lowest. The Environmental health service is considering this rebuttal and any further update will be given before or at the meeting.
- 8.3.4 The applicant has been asked whether she would accept a limit on the number of dogs that would be kept on site at any one time. She has indicated she would accept a limit of 80 dogs and 20 puppies together with 6 horses. This is what the site is said to accommodate at present and therefore any harm currently caused would continue. A number of complaints have been received from adjoining residents in relation to noise disturbance. Council officers, when visiting the site, have witnessed a demonstrable level of noise and disturbance from the dogs.
- 8.3.5 Due to the limited information submitted as part of the noise report it is considered that it is not possible frame and impose suitable conditions to protect the amenity of adjoining residents

8.4 Conclusion

- 8.4.1 The application follows an enforcement investigation into the establishment of a dog rescue centre following complaints of noise. The council has considered it expedient to serve a Planning Enforcement Notice and this is now the subject of an appeal. The development makes use of existing agricultural and equine buildings however due to the noise nuisance caused by the barking of dogs and general activity the policy requirements of policies CC19, BE1 and CON5 are not met. There would be no objection to the equestrian use.

9. Recommendation

REFUSE for the following reason:

- 1 The application relates to the continuation of the use of the land as a dog rescue centre. From the information provided the Council concludes that the use causes harm by way of noise and general disturbance to the occupiers of nearby residential properties to the detriment of their standard of accommodation. Therefore, the development does not comply with the requirements of policies BE1, CC19 and CON5 of the adopted Maldon District Replacement Local Plan, policies D1 and D2 of the submission Local Development Plan and para 123 of the National Planning Policy Framework.

Other Considerations

An Enforcement notice has been served not only in respect of the change of use of the land (the subject of this application) but also in respect of a number of caravans and structures. This application does not relate to those alleged breaches of planning.

POSITIVE AND PROACTIVE STATEMENT

Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012 - Positive and Proactive Statement:

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant/Agent. Unfortunately, it has not been possible to resolve those matters within the timescale allocated for the determination of this planning application. However, the Local Planning Authority has clearly set out, within its report, the steps necessary to remedy the harm identified within the reasons for refusal – which may lead to the submission of a more acceptable proposal in the future. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.