



Department for  
Communities and  
Local Government

Our ref: APP/X1545/W/15/3009772

Gladman Developments Limited  
Gladman House  
Alexandria Way  
Congleton  
Cheshire  
CW12 1LB

20 April 2017

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GLADMAN DEVELOPMENTS LTD  
SOUTHMINSTER ROAD, BURNHAM-ON-CROUCH, ESSEX CM0 8QF  
APPLICATION REF: OUT/MAL/14/00845**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Peter Rose BA MRTPI DMS MCMI, who held a public local inquiry on 6 days between 22 March to 9 November 2016 into your appeal against the decision of Maldon District Council ("the Council") to refuse your application for planning permission for up to 80 dwellings with associated site access, highways, open space, landscaping, land reserved for provision of local shop and associated works, in accordance with application ref: OUT/MAL/14/00845, dated 2 September 2014.
2. On 11 November 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to allow the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Matters arising since the close of the inquiry**

5. Following the close of the inquiry, the Secretary of State received representations from your company in a letter dated 15 November 2016. The Secretary of State is satisfied that the issues raised do not affect his decision, and no new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A copy of this letter may be obtained on written request to the address at the foot of the first page of this letter.
6. Your Company also made an application for a partial award of costs against Maldon District Council (IR10). This application is the subject of a separate decision letter.

## **Policy and statutory considerations**

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the saved provisions of the Maldon District Replacement Local Plan November 2005 (the Local Plan). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR26-29. However, for the reasons given at IR218-222 and explained further at paragraph 22 below, the Secretary of State agrees with the Inspector at IR224 that the Local Plan is significantly out-of-date.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the other noise policy and guidance set out at IR46-59.

## ***Emerging plans***

10. The Secretary of State notes that the current form of the emerging Maldon District Local Development Plan 2014-2029, (the LDP) has yet to be finally examined and adopted (IR32). He notes that the appeal site lies outside the defined settlement boundary of the emerging LDP (IR30) and he agrees with the Inspector that the emerging policies of most relevance to this case include those set out at IR30-31.
11. The Secretary of State further notes that the Neighbourhood Plan (NP) for Burnham-on-Crouch is also under preparation (IR33-35), but that it has not been relied upon in the evidence of the main parties to this appeal who have agreed that no matters directly relevant to the appeal turn on its content (IR35).
12. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Further examination hearings were held into the LDP in January 2017, following the close of the inquiry into this case, but no firm conclusions have yet been reached. The Secretary of State therefore agrees with the Inspector that it can only be afforded limited weight (IR224).

## **Main issues**

13. The Secretary of State agrees with the Inspector that the main remaining issues between the parties are those set out at IR24.

### *Noise in relation to future living conditions*

14. The Secretary of State agrees with the Inspector at IR153-156 regarding the relevance of development plan policies to the appeal scheme, and the position on national policy. For the reasons given by the Inspector at IR157-162, the Secretary of State is satisfied that the appellant's survey follows an acceptable methodology and that the results provide a fair, reasonable and robust assessment (IR163). The Secretary of State also agrees with the Inspector's assessment at IR164-167 that, in the absence of mitigation, much of the site's existing noise environment would be inappropriate for residential development (IR164). Like the Inspector, he is satisfied that the suite of standards identified in the appellant's proposed planning condition, generally reflecting both WHO (IR57) and BS (IR49-50) guidance, would represent an appropriate benchmark for this development and so would define what would be a satisfactory living environment in these circumstances (IR165).
15. The Secretary of State notes that the main impact of noise would be to exposed properties along the northern frontage closest to the wedding venue (IR169). In terms of external living areas (IR171-172), the Secretary of State accepts that the intervening built form would be likely to generally mitigate direct noise impact (IR172). Turning to internal living areas, he agrees with the Inspector's reasoning at IR173-178 that a combination of closed windows, high specification glazing and alternative ventilation would mitigate internal noise levels (IR174-175), while the proposed dwellings further into the site would be likely to achieve reasonable living conditions with windows open (IR178). As for sporadic noise disturbance from patrons exiting the venue, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR179 that these would be addressed by other mitigation as proposed.
16. Overall, the Secretary of State agrees with the Inspector at IR180-181 that the rigour of the appellant's noise assessment and the potential range of mitigation available lead to the conclusion that there would be a reasonable prospect of a residential development achieving compliance with the WHO Guidelines, BS 8233:2014 and NR25 (IR181). Furthermore, for the reasons given at IR182-186, the Secretary of State agrees with the Inspector's conclusion at IR187 that the appeal decision does not turn on the presence or otherwise of a specific noise barrier.
17. With regard to the key characteristics of the application, the Secretary of State agrees with the Inspector at IR188-192 that a plot-by-plot assessment would ensure that any parts of the site not found to be capable of providing an appropriate noise environment relative to the specified standards would not accommodate dwellings and only noise-compliant homes would be developed (IR189). He also accepts that this approach would be consistent with expectations towards proactive decision-making set out in paragraph 187 of the Framework (IR190).
18. Overall, therefore, the Secretary of State agrees with the Inspector's summary and findings at IR193-203. He acknowledges that, as general inaudibility would not be achieved, there is a possibility that some background noise as subjectively perceived will cause moderate annoyance (IR195). However, he agrees with the Inspector that, in principle, with the mitigation indicated, the likely level, character and frequency of noise

would be unlikely to cause significant harm to general living conditions (IR201). The Secretary of State also agrees that the noise would only be experienced on specific occasions and that, for the remainder of the time, a very pleasant semi-rural residential environment would be enjoyed (IR202).

19. Thus, the Secretary of State agrees with the Inspector's three sequential findings at IR204 and his conclusion at IR206 that that the proposed development would not expose future residents to unacceptable levels of noise harmful to their living conditions. However, he recognises that it would require a high quality, acoustic-led design solution as proposed (IR205). Accordingly, he agrees that, with that proviso, the development would not be contrary to Policy BE1 or Policy CON5 of the Local Plan, to Policy D2 of the LDP or to the expectations of the Framework (IR206).

*Noise in relation to the future operation of Mangapp Manor as a wedding venue*

20. For the reasons given at IR207-212, the Secretary of State agrees with the Inspector's conclusions at IR213 that, whilst there could be some short-term inconvenience to the setting of the venue during the construction works, the immediate impact of the works themselves during development would not be significantly harmful. He also agrees that, provided the new dwellings are designed and built to the appropriate acoustic standards and the operator exercises due diligence to ensure that the wedding venue operates in accordance with the existing terms of its licence, no significant harm would arise to the existing and continuing operation of the wedding venue in that regard.

*Other representations*

21. The Secretary of State has carefully considered the Inspector's reasoning and conclusions at IR214-217, and agrees that none of the matters raised by local interested parties would represent significant harm.

*Status of the development plan*

22. For the reasons given at IR218-222, the Secretary of State agrees with the Inspector's conclusions at IR224 that the Local Plan is significantly out-of-date in relation both to its relevant housing supply policies and to the manner of its protection of the countryside.

*Five-year housing land supply and sustainable development*

23. The Secretary of State agrees with the Inspector (IR226-227) that there is no evidence with which to disagree with the Council's position that it is able to demonstrate a five-year supply of housing land. Nonetheless, he also agrees with the Inspector that this does not negate any potential housing benefits arising from the development proposed, as the Framework's commitment to significantly boost housing supply extends beyond the current five-year period and the presumption in favour of sustainable development applies (IR228).
24. Hence, for the reasons given at IR235-246, the Secretary of State agrees with the Inspector that the scheme would fulfil the social dimension of sustainable development by providing considerable housing benefits, in terms of both the market and affordable provision (IR237-238); that the economic benefits of the scheme would be consistent with the economic dimension of sustainability (IR239); and that, although the scheme would incur loss of an open field, the site carries no recognition as a particularly valued landscape (IR240) while the development would provide publicly available open space, pedestrian and cycle links, and enhanced biodiversity (IR240). Furthermore, the physical

presence of the development would be likely to reduce some of the direct noise impact upon existing dwellings to the south (IR241); while the scheme would also benefit from the wider sustainability characteristics of Burnham-on-Crouch (IR243). In conclusion, the Secretary of State agrees with the Inspector at IR246 that the proposed scheme would offer substantial economic and social benefits, and that any environmental harm, including the impact of noise, would be very limited.

### **Planning conditions**

25. The Secretary of State has given consideration to the Inspector's analysis at IR253-266, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

### **Planning obligations**

26. Having had regard to the Inspector's analysis at IR229-233, the planning obligation dated 24 March 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy (CIL) Regulations 2010, as amended, the Secretary of State agrees with the Inspector that the obligation complies with Regulations 122 and 123 and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.

### **Planning balance and overall conclusion**

27. For the reasons given above, the Secretary of State considers that, whilst the appeal scheme is in accordance with Policies BE1 and CON5 of the development plan, it is not in accordance with the development plan overall in that it would lie outside the defined development boundaries. However, as the Secretary of State has no evidence to dispute the Council's assertion that it is able to demonstrate a five-year supply of housing land and he considers that the Local Plan is significantly out-of-date in relation to its relevant housing supply policies, he has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan or whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the Framework policies as a whole.

28. The Secretary of State is satisfied that, subject to the plot-by-plot assessment proposed, the scheme would not give rise to significant harm in relation to noise or any other matters, and that it would yield considerable economic, social and environmental benefits. He gives limited weight to the harm in relation to noise and to the loss of an open field against the significant weight he attributes to the social, economic and environmental benefits, in particular the affordable housing provision. He therefore concludes, in accordance with paragraph 14 of the Framework, that any adverse impacts of the scheme would not significantly and demonstrably outweigh the benefits. He is satisfied that the proposed scheme would constitute sustainable development and that material considerations indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal be allowed and planning permission granted.

## **Formal decision**

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your appeal and grants planning permission subject to the conditions set out in Annex A to this decision letter for up to 80 dwellings with associated site access, highways, open space, landscaping, land reserved for provision of local shop and associated works, in accordance with application ref: OUT/MAL/14/00845, dated 2 September 2014.
30. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
32. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
33. A copy of this letter has been sent to Maldon District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

## **ANNEX A: SCHEDULE OF CONDITIONS**

### **Time limit**

1. Details of the appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') shall be submitted to and be approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission, and the submission for approval shall include full details of the number of dwellings to be developed and which shall not exceed 80 (eighty).
3. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

### **Drawings and other details**

4. The development hereby permitted shall be carried out in accordance with the following approved drawings so far submitted: Location Plan Ref: 6046-L-02C dated May 2015, and Proposed Access Arrangement drawing Ref:1868-GA-12/C dated March 2015.
5. The development shall be carried out in full accordance with the plans and all other particulars relating to the reserved matters and all such other matters for which approval shall be obtained from the Local Planning Authority in writing before any development is begun.

### **Pre-commencement**

6. No development shall commence until a fully detailed scheme of mitigation for protecting the living conditions of future occupiers of the proposed dwellings from noise arising in connection with events at Mangapp Manor and from local road noise has been submitted to and been approved in writing by the Local Planning Authority.

The scheme shall reflect a plot-by-plot assessment of each dwelling proposed and its setting, and shall relate solely to mitigation measures to be deployed within the appeal site to which this permission relates.

The scheme shall detail specific plot-by-plot mitigation measures bespoke to each dwelling, and relevant wider site layout considerations, and shall be designed so as to ensure that the following noise criteria shall not be exceeded in relation to any dwelling upon the first occupation of that dwelling, and the approved measures shall be retained thereafter:

- 1) Noise during the day-time period (0700-2300), when considering the total ambient noise levels, in external living areas of the proposed development which are to be expressly defined by the submission and are to be approved in writing by the Local Planning Authority, shall not be measured to exceed the World Health Organisation (WHO) Guidelines for Community Noise, 1999 (the WHO Guidelines) and BS 8233:2014 guidance of 50 dB(A) LAeq16hour.
- 2) Noise during the day-time period (0700-2300) and night-time period (2300-0700), when considering the total ambient noise levels, in internal living areas of the proposed development, shall not be measured to exceed the following requirements of the WHO Guidelines and BS 8233:2014:

1. 35 dBLAeq16 hour during the day-time in bedrooms and living rooms;
  2. 30 dBLAeq8 hour during the night-time in bedrooms;
  3. 45 dBLAmaxfast during the night-time in bedrooms, and;
  4. 40 dBLAeq16 hour during the day-time in dining areas.
- 3) Noise from events at Mangapp Manor during the day-time period (0700-2300) in proposed external living areas, to be defined by the submission and to be approved in writing by the Local Planning Authority, shall not be measured to exceed relevant LA90 background noise levels as set out in Wardell Armstrong's Noise Assessment Report dated June 2015 by more than 5 dB(A) over a 15 minute period.
- 4) Noise from events at Mangapp Manor during the night-time period (2300-0700) shall not be measured to exceed Noise Rating Curve 25 (NR25) in any octave band within bedrooms and living rooms of the proposed development.
7. No development shall take place until an Arboricultural Method Statement (AMS) has been submitted to and been approved in writing by the Local Planning Authority. The AMS shall detail trees and hedgerows to be retained and contain a Tree Protection Plan (TPP) for the duration of the works. The development shall be carried out in accordance with the approved AMS, and no trees within or overhanging the site shall be felled, cut back, damaged or removed, unless as identified in the AMS. If within five years from the completion of the development an existing tree is removed, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, a replacement tree shall be planted within the site in accordance with details to be approved in writing by the Local Planning Authority.
8. No development, and including any site clearance works, shall take place until fencing and ground protection are in place to protect any particular trees or hedges as detailed in the TPP and such measures shall be maintained for the duration of the works.
9. No development shall take place until such time as a scheme to demonstrate that surface water can be managed on site through sustainable drainage measures, and without causing flood risk to the site and surrounding area, has been submitted to, and been approved in writing by, the Local Planning Authority. The scheme shall demonstrate that:
- 1) run off rates from the site will not exceed greenfield run off rates;
  - 2) storage will be provided on site for a 1 in 100 year storm event, inclusive of climate change;
  - 3) storage will be provided utilising sustainable drainage techniques wherever possible, and;
  - 4) any flows exceeding the drainage network will be routed away from buildings and towards areas of open space.

The scheme to be approved shall be fully implemented prior to the first occupation of the first dwelling on site and shall be subsequently maintained in accordance with a maintenance and management scheme for the lifetime of the development that shall be submitted to and be approved in writing by the Local Planning Authority prior to commencement of the development.



10. No development shall take place, including any ground works or demolition, until a Construction Method Statement (CMS) has been submitted to and been approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for the following:
- 1) construction site access details;
  - 2) parking of vehicles of site operatives and visitors;
  - 3) loading and unloading of plant and materials;
  - 4) storage of plant and materials used in constructing the development, and;
  - 5) measures to prevent the transfer of mud and debris onto the highway, and including arrangements for wheel and underbody washing facilities of vehicles.

No works shall be undertaken except as in accordance with the details to be approved pursuant to the CMS.

11. The CMS to be approved pursuant to Condition 10 shall also include reasonable arrangements for minimising inconvenience and environmental disturbance to operators and users of Mangapp Manor during the course of the works, including consideration of general hours of operation, and shall also include details of arrangements with regard to dissemination of relevant site works information to operators of both Mangapp Manor and to other nearby occupiers, both prior to and during site works.
12. No development, including any site clearance or groundworks of any kind, shall take place within the site until after written approval by the Local Planning Authority of a programme of archaeological work by an accredited archaeological contractor. The programme shall include a written scheme of investigation and the development shall be carried out in accordance with the details as approved.

### **Pre-occupancy**

13. Prior to first occupation of any dwelling, the applicant shall submit full design details to be approved in writing by the Local Planning Authority of the proposed access as shown in principle on WSP drawing Ref: 1868-GA-12/C, dated March 2015, and of associated works, and including full details of all visibility splays and related matters. The approved details shall be implemented prior to first occupation.
14. In the event that contamination is found at any time when carrying out the approved development and such contamination was not previously identified to the Local Planning Authority, the matter must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must then be undertaken of the contamination and be submitted in writing for approval to the Local Planning Authority, and any agreed programme of action be implemented, including any necessary remediation, as required and approved in writing by the Local Planning Authority.
15. Upon the first occupation of each dwelling the occupier shall be provided with a Residential Travel Information Pack for sustainable transport, the detailed form and content of which shall have previously been submitted to and been approved in writing by the Local Planning Authority.
16. The development shall be undertaken in accordance with the terms and specifications contained within the applicant's Ecological Appraisal dated August 2014.

17. Prior to the first occupation of any dwelling, a strategy to facilitate superfast broadband for future occupants of the site shall be submitted to and be approved in writing by the Local Planning Authority. The development of the site shall be carried out in accordance with the strategy and the strategy shall be implemented in accordance with a programme as approved.

**Other**

18. The land which is reserved for the potential development of a new local shop shall be retained for that purpose for a period of two years after the approval of the final reserved matter. If after that time development of the shop has not commenced, this land shall be made available for an alternative land use to be agreed in writing by the Local Planning Authority.

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# Report to the Secretary of State for Communities and Local Government

by Peter Rose BA MRTPI DMS MCMI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 18 January 2017

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Town and Country Planning Act 1990

Maldon District Council

Appeal made by

Gladman Developments Ltd

Inquiry held on 22, 23 and 24 March, and 27 June, and 8 and 9 November 2016

Southminster Road, Burnham-on-Crouch, Essex CMO 8QF

File Ref: APP/X1545/W/15/3009772

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**File Ref: APP/X1545/W/15/3009772**

**Southminster Road, Burnham-on-Crouch, Essex CMO 8QF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Maldon District Council.
- The application Ref: OUT/MAL/14/00845, dated 2 September 2014, was refused by notice dated 26 January 2015.
- The development proposed is up to 80 dwellings with associated site access, highways, open space, landscaping, land reserved for provision of local shop and associated works.

**Summary of Recommendation: that the appeal is allowed**

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**1. PROCEDURAL MATTERS**

*Appeal recovery*

1. The appeal was recovered for determination by the Secretary of State by letter dated 11 November 2016 for the reason that 'the appeal involves a proposal for residential development of over 25 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local authority but the relevant plan has not yet been made'.

*Adjournments*

2. The Inquiry opened on 22 March 2016 but was unable to complete within the allocated time. The Inquiry then resumed on 27 June but was further adjourned to allow statutory publicity of the resumed proceedings. The Inquiry further resumed on 8 November and was subsequently completed as required. The Inquiry sat on six days.

*Site address*

3. It was agreed at the Inquiry that the site description in this decision should reflect details set out in Section D of the appeal form.

*The application subject to appeal*

4. The application seeks outline planning permission with all matters other than access reserved for further approval.
5. A Development Framework has been submitted as drawing Ref: 6046-L-01 I, dated August 2015. Although I have regard to this drawing in my consideration, its status remains illustrative.

*Unilateral undertaking*

6. A unilateral undertaking made under section 106 of the Town and Country Planning Act 1990 was submitted and has been signed and executed as a deed dated 24 March 2015.

*Addendum to Statement of Common Ground*

7. An Addendum to the original Statement of Common Ground dated March 2016 has been submitted signed and dated 29 September 2016. This has relevance to the respective positions of the main parties in relation to five-year housing land

supply and, in particular, refers to the appellant's decision not to dispute the Council's ability to demonstrate adequate provision in this respect.

#### *Site visit*

8. An accompanied visit was undertaken on 9 November 2016 on the final day of the Inquiry. At the June resumption, however, concerns were raised on behalf of the operator of the Mangapp Manor wedding/function venue that its seasonal marquee would be dismantled by the time of the accompanied visit. With the agreement of the main parties, I undertook an unaccompanied inspection of the marquee on 1 August and photographs of the structure I observed in situ have been placed before the Inquiry. I also undertook a preliminary and unaccompanied visit prior to the Inquiry on 21 March when I viewed the site and its surroundings from public areas.
9. I consider the appeal on the above basis.

### **2. APPLICATION FOR COSTS**

10. At the Inquiry an application for costs was made by Gladman Developments Ltd against Maldon District Council. This application is the subject of a separate Report.

### **3. THE PROPOSAL**

11. The proposal is to develop up to 80 dwellings and associated facilities. The appellant's illustrative Development Framework indicates in broad terms a landscape buffer along the northern boundary with housing to be developed to the south.
12. A number of revisions have been submitted to the details considered by the Council at the time of its decision. These are as set out in paragraph 1.15 of the original Statement of Common Ground.
13. The revisions include Location Plan Ref: 6046-L-02C dated May 2015, which defines adjacent land also owned by the appellant to the west, and Proposed Access Arrangement drawing Ref: 1868-GA-12/C, dated March 2015. Written explanation has been offered of the changes, including a slight adjustment to the position of the access but which would remain opposite the cemetery. Whilst these changes have not been subject to formal publicity, it is agreed common ground between the parties that the changes are so slight as not to affect the application before me. I agree they are not material, and do not consider any interests would be prejudiced by consideration of the appeal on that basis.

### **4. THE SITE AND SURROUNDINGS**

14. The appeal site comprises some 3.71 hectares of open land to the west of Southminster Road, and lies some distance beyond Burnham Town Centre. The site has been used as horse paddocks and for agriculture and contains various hedgerows and other sporadic trees and planting. Access is from Southminster Road. The site faces Burnham Cemetery to the east and is adjacent to a post-war housing development to the south. Rear gardens of the dwellings in Beauchamps are adjacent to the southern boundary of the site and residential properties along Mangapp Chase face towards the site's western boundary. Further dwellings lie to the south-east beyond Southminster Road. A public

footpath lies to the north of the appeal site and beyond which is Mangapp Manor. Mangapps Railway Museum lies to the north-west.

15. On 13 March 2008, the Council granted planning permission for the erection of a marquee at Mangapp Manor, some 250 square metres in area, to be used for wedding receptions and functions for 6 months of the year between 1 May and 31 October (Permission Ref: FUL/MAL/08/00027). Condition 5 requires no amplified sound or music to take place on site other than within the marquee. Condition 7 requires the use only to be open between 08.00 and 0000 hours. Condition 8 states that all amplified or other music associated with the use shall cease at 23.30, and Condition 15 places a limitation of no more than 150 persons attending an event at any one time.
16. The marquee is of a temporary single-storey fabric form. Whilst its main entrance faces south towards the appeal site, the marquee lies some distance north of the boundary which is marked by hedges and other planting. The main car park and access lies to the south, and adjacent to the boundary. Notwithstanding the marquee, wedding functions extend outdoors, and the Council's evidence suggests some 27 to 44 events have occurred annually.
17. A premises licence for Mangapp Manor has also been granted by the Council (Ref: 08/00109/LAPRE 239 dated April 2008) under the Licensing Act 2003. Condition 1 of Annex 2 requires the licence holder to make arrangements to assess noise emission at the external boundary of the premises and to take such steps as necessary to reduce the level of noise emission where it is likely to cause disturbance to local residents. Conditions 2 and 3 require the licence holder to request at the end of regulated entertainment that customers should leave the premises and the area quietly and as quickly as possible having due regard to public safety. Condition 4 requires that noise from the premises shall be kept at such a level so as not to cause a nuisance, in the opinion of the Environmental Health officer of the Council, to any surrounding residential premises.

## **5. MATTERS AGREED BETWEEN THE COUNCIL AND THE APPELLANT**

18. There is extensive common ground between the Council and the appellant, set out in the original Statement of Common Ground and in its subsequent Addendum.
19. The Council's decision notice dated 26 January 2015 cites four reasons for refusal, but only Reason 1 remains in dispute. Reason 2 concerns additional pressure on local primary education, and Reasons 3 and 4 relate to local traffic conditions, and none are being sustained by the authority.
20. Reason 1 concerns the impact of two nearby existing noise sources, Mangapps Railway Museum and the Mangapp Manor wedding venue, upon the living conditions of future residents. The Council's decision also suggests the development may impact upon the future operations of these businesses in the event of complaints from occupiers of the new dwellings, but the Council has since further qualified these concerns as relating solely to noise in connection with the Mangapp Manor wedding venue.
21. Further, the Addendum states that, for the purposes of this appeal, the appellant is not contesting the Council's latest evidence of being able to demonstrate a

five-year supply of housing land. Whilst the appellant is challenging this position in relation to another appeal elsewhere in the District, the approach is being taken in this instance partly in response to the Council's acceptance that noise is the sole determinative issue for this particular appeal. No specific evidence was presented by the appellant to the resumed Inquiry in relation to housing supply.

22. Notwithstanding the position in relation to five-year land supply, the Addendum further states that relevant housing policies in the adopted Local Plan are, in any case, out-of-date and it is common ground that paragraph 14 of the National Planning Policy Framework (the Framework) is thereby engaged.
23. The Council's planning evidence states that the authority does not take issue with the locational sustainability of the appeal site, or with the principle of development outside the defined settlement boundary, or with the effect of the proposal upon local character and appearance. The Council also does not dispute potential benefits of the scheme, particularly in terms of housing provision.
24. The remaining matters of dispute between the main parties are therefore agreed to be:
  - 1) whether the development of dwellings at the appeal site would expose future occupiers to unacceptable levels of noise harmful to their living conditions, and;
  - 2) whether noise from the Mangapp Manor wedding venue would run the risk that the existing business would be subject to unreasonable restrictions in order to safeguard the living conditions of future residents.

## **6. PLANNING POLICY**

25. The development plan includes saved provisions of the Maldon District Replacement Local Plan November 2005 (the Local Plan) and its proposed replacement, the Maldon District Pre-Submission Local Development Plan 2014-2029, 2014 (the LDP). A Neighbourhood Plan for Burnham-on-Crouch is also under preparation but not yet made.

### *Local Plan*

26. Policy BE1 refers to the design of new development and states that development proposals will be permitted if they are compatible with their surroundings.
27. Policy CON5 refers to pollution prevention arising from development having an adverse impact on the environment. The Council accepted at the Inquiry that this policy does not apply.
28. The appeal site lies outside the defined development boundaries and, in such locations, Policy S2 states that the countryside will be protected for its own sake.
29. Policy H1 states that new housing will not be allowed outside development boundaries unless it complies with other policies in the Local Plan.

### *Emerging Plan (the LDP)*

30. The appeal site also lies outside the defined settlement boundary of the emerging LDP and which expresses similar aims to the Local Plan. Policy S8 identifies Burnham-on-Crouch as one of three 'main settlements' in the first of a four-tier



settlement hierarchy. It commits to supporting sustainable developments within the defined settlement boundaries. It states that the countryside will be protected for its landscape, natural resources, ecological value and intrinsic character and beauty. Development outside defined settlement boundaries will only be granted where, amongst other criteria, the intrinsic character and beauty of the countryside are not adversely impacted.

- 31. Policy D2 of the LDP refers to the need for all development to minimise its impact on the environment.
- 32. The LDP in its current form has yet to be finally examined and adopted, and remains to be assessed within the context of the Framework.

*Neighbourhood Plan*

- 33. By way of an update, the Council advised the Inquiry on 8 November of the Burnham-on-Crouch Neighbourhood Plan Draft for Reg 16 Consultation October 2016 (the NP).
- 34. The NP does not allocate the appeal site for housing development. A key principle for Burnham-on-Crouch is accommodating housing developments which include sufficient capacity to realistically meet the needs of its existing growing and ageing population. To this end, the NP identifies a target of some 450 dwellings during the period of 2014-2029 to be delivered through three allocated sites.
- 35. The NP is not relied upon in the evidence of the main parties and both agreed that no matters directly relevant to the appeal turn on its content.

*National Planning Policy Framework (the Framework)*

- 36. Paragraph 17 of the Framework identifies a core principle of the planning system to be securing a good standard of amenity for existing and future occupants of land and buildings.
- 37. Paragraph 109 states that the planning system should prevent new development from being put at an unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution.
- 38. Paragraph 123 states that planning decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development, and should recognise that existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.

*Planning Practice Guidance (the Guidance)*

- 39. The government's Guidance advises that noise needs to be considered when new developments would be sensitive to the prevailing acoustic environment but that noise is not expected to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.
- 40. Decision-taking should take account of the acoustic environment by identifying the overall effect of the noise exposure relative to the significant observed adverse effect level, defined to be the level of noise exposure above which significant adverse effects on health and quality of life occur, and relative to the

lowest observed adverse effect level, defined to be the level of noise exposure above which adverse effects on health and quality of life can be detected for the given situation.

41. Above the lowest observed adverse effect level, noise starts to cause small changes in behaviour and attitude. Noise above the significant observed adverse effect level causes a material change in behaviour. The Guidance states that if the exposure is above this level the planning process should be used to avoid this effect occurring, by use of appropriate mitigation, including design and layout. Such decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for such exposure to be caused.
42. The Guidance advises that where the observed adverse effect is noticeable and intrusive, it is appropriate to mitigate and reduce to a minimum. The circumstances are identified to include a need to close windows some of the time because of the noise and potential for some sleep disturbance.
43. Where a significant observed adverse effect is noticeable and disruptive, defined to include avoiding certain activities during periods of intrusion, where there is no alternative ventilation and, significantly, having to keep windows closed most of the time, development should be avoided.
44. The Guidance also advises that if external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so they can be enjoyed as intended.
45. The Guidance states that the potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. This is because existing noise levels from the business, even if intermittent (for example, a live music venue), may be regarded as unacceptable by new residents and subject to enforcement action. To help avoid such instances, appropriate mitigation should be considered, including optimising the sound insulation provided by the new development's building envelope.

## **7. OTHER NOISE POLICY AND GUIDANCE**

### *Noise Policy Statement for England*

46. The first aim of the government's **Noise Policy Statement for England** March 2010 (the NPSE) is to avoid significant adverse impacts on health and quality of life from noise within the context of government policy on sustainable development. The second aim is to mitigate and minimise adverse impacts on health and quality of life from noise, also within the context of government policy on sustainable development.

### *Noise standards and technical advice*

47. The focus of the Council's objection, and of the appellant's rebuttal, relates to various noise-specific standards and guidance.
48. Both parties acknowledge in their evidence, however, an absence of any one noise standard specifically applicable to the scheme, not least because of the various sources and acoustic character of the subject sound itself, but also due to

human reaction to it. Reference is instead made to a range of possible guidance and accompanying indicators.

49. In relation to background sound level, **BS 4142:2014** states the objective is not simply to ascertain a lowest background sound level, but rather to quantify what is typical during particular time periods. It recognises the significance of meteorological conditions. It also states that other guidance and criteria can inform the appropriateness of both introducing a new noise-sensitive receptor and the extent of noise mitigation required.
50. **BS 8233:2014** identifies a requirement for an ambient noise level of 35 dBLAeq during the day in living rooms and 40 dBLAeq in dining rooms, 35 dBLAeq in bedrooms up until 2300 hours and 30 dBLAeq after 2300 hours.
51. The Noise Council's **Code of Practice on Environmental Noise Control at Concerts**, 1995, (**the ENCC guidance**), defines a music event to include a concert or similar event where live or recorded music is performed. Paragraph 1.4 expressly states, however, that the Code is not designed to address the question of environmental noise arising from discotheques, clubs and public houses, all of which I consider, in varying degrees, to have some similarities with the planning character of a wedding or similar function.
52. The ENCC guidance states that for indoor venues for up to about 30 events per calendar year a Music Noise Level (MNL) not exceeding the background noise by more than 5 dB(A) over a fifteen minute period is recommended for events finishing no later than 2300 hours. For events continuing beyond that time, the music noise should not be audible within noise-sensitive premises with windows open in a typical manner of ventilation. It further states that use of inaudibility as a guideline is not universally accepted as an appropriate method of control and that insufficient evidence is available to give more precise guidance.
53. The Institute of Acoustics' **Good Practice Guide on the Control of Noise from Pubs and Clubs**, March 2003 (**the IOA Guide**), advises that where entertainment takes place on a regular basis, noise should not be audible inside noise-sensitive property at any time and, where less frequently, should not be audible inside noise-sensitive property between 2300 and 0700. At the planning stage, access roads and car parks should be kept as far away as possible from noise-sensitive premises. It advises that noise from car parks and access roads normally only becomes an issue when patrons are leaving a venue during the later part of the evening or at night.
54. Reference has also been made to the **Noise from Pubs and Clubs Final Report**, 2005, undertaken by Hepworth Acoustics on behalf of the University of Salford (**the Salford report**), and to a later study in 2011. The report refers to attempts to produce criteria and the inconclusive outcomes. It advises that noise from pubs and clubs be assessed using a variety of schemes, but there is no strong evidence that any one rating scheme is optimal.
55. The report, amongst other matters, highlights the complexities of predicting subjective reaction to noise and identifies a range of factors relevant to listener perception, including overall noise level, background noise level, subject differences, music type, bass boost, bass beat and context (day/night/audibility). Its evidence showed many bars playing music with noise levels of 90-95 dBLAeq and also suggested that a substantial proportion of pub noise may be caused by

low frequency components which are not well characterised by a single measurement of LAeq.

56. The report questions the case for inaudibility, but also refers to the use of **Noise Rating (NR) Curves** as a commonly used design criteria. It advises that use of appropriate NR curve criteria enables noise mitigation measures to be specified and that compliance with an NR curve should mean that the noise spectrum does not exceed the curve in any frequency band.
57. The indications of the World Health Organisation (WHO) set out in its **Guidelines for Community Noise, 1999 (the WHO Guidelines)** are that, for a good sleep, it is believed that indoor sound pressure levels should not exceed approximately 45 db L<sub>Amax</sub> more than 10-15 times a night. It refers to evidence that most studies show an increase in the percentage of awakenings at values of 55-60 dBA. It also highlights the significance of intermittent noise and recommends such character be taken into account when setting night-time limits for noise exposure. It recommends that special attention be given to noise sources in an environment with a low background noise level. It also states that it should be possible to sleep with a bedroom window slightly open, a reduction from outside to inside of some 15 dB.
58. The WHO Guidelines also state that, to protect the majority of people from being seriously annoyed during the day-time, the outdoor sound level from steady, continuous noise should not exceed 55 dB LAeq in outdoor living areas. To protect the majority of people from being moderately annoyed during the day-time, the outdoor sound level should not exceed 50 dB LAeq. Further, where this is practical and feasible, the lower outdoor sound level should be considered the maximum desirable sound level for new development. Indoor thresholds are recommended similar to BS 8233:2014.
59. WHO also refers to the vulnerability of particular groups to sleep disturbance. This may include the young and the old, people with ill-health, and also residents who may work unsocial hours.

## **8. THE CASE FOR GLADMAN DEVELOPMENTS LTD**

### *The Council's objection*

60. The Council's case is that the appeal scheme would be subject to excessive noise from the wedding venue. That is the case that the appellant has to meet.

### *Relevant policy*

61. National planning policy does not require development to be subject to no noise. Paragraphs 118 and 123 of the Framework both refer to whether noise would give rise to significant adverse impacts on health and quality of life, and refer to NPSE. NPSE does not prohibit the occurrence of adverse noise effects. If the impacts are between the Lowest Observed Adverse Effect Level and the Significant Observed Adverse Effect Level, then adverse effects should be mitigated and minimised. The Guidance gives further detail, providing that noise should not be addressed in isolation, and that mitigation can comprise barriers and optimising building insulation.
62. The Council cannot identify any development plan policy which is directly relevant. Policy CON5 does not refer to noise pollution, but to other forms of

pollution, as reference in the supporting text to PPG23, not PPG24, demonstrates. Policy BE1 relates to development which would create noise, and not development which would be subject to noise. As a result, the decision in this case on the noise issue can only rely upon national policy and guidance.

*Mangapp Manor*

63. The Council points to the past noise complaints received. The evidence is that the complaints made to the Council came from two properties only. The Council received no complaints in 2015, and there is no evidence of the Council receiving any complaints in 2016.
64. Further, the Council investigated the complaints which it has received and has not taken any action pursuant to statutory nuisance under the Environmental Protection Act 1990. If the Council is satisfied that there is a statutory nuisance, then the Environmental Protection Act 1990 provides that the authority must take action to abate the nuisance and prohibit its recurrence. The Council has no discretion in matters of statutory nuisance. The only possible inference to draw is that the Council, acting responsibly, is satisfied that Mangapp Manor does not cause a statutory nuisance to existing residents.
65. Condition 1 of Annex 2 of the entertainment licence requires the operator to take steps to ensure that the operations would not cause disturbance to local residents, and this has two implications. Firstly, the reference in the condition is not to nuisance, but to disturbance, so the condition imposes a test which is stricter, from the point of view of the operator, than the law relating to nuisance. Secondly, the condition does not just relate to residents who were in place when the licence was first granted.
66. The Council's noise witness also told the Inspector, in answer to an Inspector question, that Mangapp Manor could operate within the terms of its licence so as not to cause justifiable complaint.
67. The Council has taken no enforcement action in respect of the licence conditions, even though such would not necessarily depend upon the Council proving a nuisance. That is a clear indication that complaints which have been received do not show that a serious problem arises from the function venue.

*Surveys of existing noise*

68. The appellant has submitted a detailed noise survey and accompanying assessment set out in Wardell Armstrong's Noise Assessment Report dated June 2015 (**the June 2015 noise assessment**). This assessment is perfectly fit-for-purpose. It was undertaken over a 16 day period, which captured a range of conditions, allowing a reliable assessment of 'typical' conditions to be obtained, as BS 4142:2014 recommends. The background noise levels would have been calculated omitting periods when the event noise was occurring. The Council's criticism that the assessment was undertaken in unsuitable weather conditions does not withstand scrutiny.
69. Contrary to the Council's assertions, the appellant's assessment did capture noise from patrons leaving the weddings, including the closing of vehicle doors and vehicle movement. Those noises were also subjectively assessed by a technician on those occasions in attendance.

70. The Council's alternative background noise measurements are of no benefit because they were taken in March when the wedding venue does not operate. Conditions in which background noise measurements are taken must be consistent with the conditions applicable when the venue operates.
71. The Council also uses its background measurements to inform points about noise in the evening period, when residents of the appeal scheme might wish to use their outdoor living areas. The Council's evidence presents a background noise level arrived at by considering the period from 1900 to midnight, but that period includes one hour of the night-time period, the hour from 2300 to midnight. As a quieter period, it is clear that the inclusion of that hour has the effect of dragging down the average. It is inappropriate to mix and match time periods in that way and a point about evening noise cannot be legitimately made by including a contribution from the night-time period.

*Relevant standards and other guidance*

72. No one piece of guidance or standard will provide criteria against which to judge the appeal scheme.
73. The appellant invites the following approach to the testing of the noise impacts of the wedding venue upon the appeal scheme:

External living areas

For the assessment of event noise upon the external areas of the appeal scheme, the ENCC guidance should be used. This sets guidance of noise impacts from events that occur 'about' 30 times per year, a frequency appropriate to Mangapp Manor. There is no basis for saying, as the Council does, that because the Manor operates only between May and October, the number of weddings ought to be multiplied up as if they existed year-round. The guidance is suitable to apply to events involving amplified music played in a lightweight structure. If the criterion of requiring music noise not to exceed backgrounds by more than 5 dB is applied, then building orientation and/or provision of a barrier/bund or both would allow this standard to be met. Given the relative infrequency of events, it is of no significance that the licence allows music to persist for up to 30 minutes beyond 2300.

Internal living areas

For the assessment of event noise on internal areas during both the day-time and night-time periods, the appellant recommends considering Noise Rating (NR) curve criteria, and drawing from the Salford Report, the IOC Guide and the ENCC guidance. NR curve criteria take into account noise across the frequency spectrum and limit each frequency band. The appellant's view, supported by robust reasoning which was not challenged in detail, is that NR25 would provide a good standard of protection for people within habitable rooms in both the day-time and night-time.

People/vehicle noise

For the assessment of people and vehicle noise on internal areas when weddings finish at 2330, the appellant recommends considering WHO and BS 8233:2014 levels, together with the Salford research. Those

documents provide levels for both LAeq and LMax. Even so, the impact of these particular noise sources would actually be mitigated by the other measures already proposed.

*Application of the standards*

74. The Council deploys a misreading of the guidance.
75. BS 8233:2014 and WHO refer to two time periods: a sixteen hour period from 0700 to 2300 ('day-time') and an eight hour period 2300 to 0700 ('night-time'). Each time period has its own guideline applicable to it, unless the guidance says otherwise. So, for outdoor areas, the WHO guidance uses a sixteen hour LAeq limit of 55 or 50 dBLAeq for the day-time period. For sleep protection, it uses a 30 dBLAeq limit and a 45 dBLAmax limit for the eight hour night period. When the guidelines are fluid as to the time period to which they apply, they say so.
76. There is an attempt by the Council to re-write the guidance in relation to outdoor living areas. Table 1 of the ENCC document provides guideline figures relating to the whole of a day-time period. It does not prescribe a separate and lower guideline figure for the 'evening' period, whether referred to as 1900 to 2100 or as some other pre-2300 period. The fact that 'evening' is not even defined is a clear indication that no separate limit for that period exists. The sub-heading 'Annoyance' on page xii of the WHO guidance simply does not have the effect of creating a lower evening limit.
77. The Council refers to the ENCC indication that for events which occur or continue after 2300, inaudibility should be the guideline figure. The IOA Guide also refers to inaudibility where music is played 'regularly'. That reference to regularity must be to year-round circumstances.
78. In any event, inaudibility is not a suitable criterion to use. It is impossible to test or assess when the building to be protected does not exist. The ENCC guidance explains in note 1 to paragraph 3.2 that inaudibility is not universally accepted as a criterion and the Salford Report illustrates the difficulties that it poses.
79. In testing the impacts of Mangapp Manor noise upon the appeal scheme by reference to LMax levels, the Council refers to the LMax level of 78.1 dBLAmax derived from the noise measurements, corrected (by adding 3 dB) to allow for amplification from façade reflection. This figure was measured on 2 June between 0000 and 0700, but there was no wedding on that day.
80. There is also concern expressed by the Council regarding the absence of evidence relating to the number of occasions when LMax levels during an event exceeded 45 dBLAmax. The question was put by reference to the pre-2300 period, but only actually applies to the post-2300 period for reasons of not using criteria applicable to the day-time when addressing night-time, and vice versa. In any event, the 45 dBLAmax level is an internal level. As mitigation can lead to the position where the highest LMax level can be mitigated so that the internal 45dB LMax level is not exceeded, the number of instances of noise outside the premises which cause the internal level to exceed 45 dBLAmax becomes irrelevant.
81. There is also an issue between the parties as to whether it is acceptable to have some residents of the appeal scheme who might feel as though they need to close windows in order to mitigate noise impacts. The Guidance expressly

recognises that closing windows can be an acceptable means of mitigation and only raises concerns when people could be expected to keep windows closed for most of the time.

#### *Proposed mitigation*

82. The appeal scheme might well be exposed to excessive noise from Mangapp Manor if no mitigation were to be provided, but the appellant recognises that mitigation will be required and could form all or any of the following measures:

##### *Layout and design*

This would involve designing a layout at reserved matters stage which would provide mitigation for outdoor areas by means of interposing built form between the outdoor living areas and the marquee which, combined with distance, would reduce the LAeq level at the outdoor areas to 29 dBLAeq.

##### *Incorporation of a noise barrier*

This would involve the provision of a barrier comprising a fence, bund or both. The Council previously agreed that a number of new documents which did not form part of the original submission could be substituted into the appeal application without prejudice to any party, and this included identification of a possible noise barrier. No prejudice is caused to anyone by the Inquiry proceeding on the basis that a bund or fence might be contemplated as a means of mitigation. The fact that a bund or fence (if the fence were to be over 2.0m in height) would require planning permission is not relevant. This is because the noise condition proposed by the appellant is drafted so as to be a Grampian-type requirement, and so it is not an issue if the discharge of the condition did turn out to be dependent on a scheme of works which required a further grant of planning permission.

##### *Fenestration*

The appellant's submission is that standard double glazing could deal with the protection of internal areas across most of the site, but that there might be a need for higher specification in places. Acoustic ventilation may have to be provided in a number of units.

83. Figure 4 of the June 2015 noise assessment illustrates where mitigation is likely to be needed for both wedding noise and for local traffic noise. Figure 4 relates to an earlier iteration of the Development Framework, and a deeper unbuilt buffer along the northern boundary would also now be proposed.

84. The June 2015 noise assessment also addressed low frequency noise with reference to NR curves, and the appellant's evidence has explained how the wedding venue noise could be mitigated by reference to those assessment tools.

#### *Summary of noise*

85. In order to arrive at the definitive position on what type or types of mitigation are required, the appellant suggests that there should be a plot-by-plot assessment of noise issues at reserved matters stage.



86. Overall, the appellant's approach to noise issues is robust and shows that development of the appeal site can proceed without causing unacceptable impacts upon future residents of the appeal scheme.

*Benefits and the planning balance*

87. Noise is not an issue to be addressed in isolation, but should be assessed alongside the economic, social and other environmental dimensions of the proposed development.
88. The scheme would contribute significantly to the social aspect of sustainability by increasing housing supply and could provide an appropriate mix of dwelling sizes and types. It would also provide the full proportion of affordable housing required by policy (30%).
89. The sustainability characteristics of Burnham-on-Crouch as a location for new development, and of the appeal site itself, are not an issue. It is close to the settlement's facilities and accessible by non-car modes of travel.
90. The appeal scheme would help attract younger socially and economically active people to Burnham, approximately 105 in number.
91. The appeal scheme would be delivered over a three year build period, so the benefits could be realised quickly.
92. The appeal scheme contributes well to the economic aspects of sustainability. It would generate a construction spend of about £8.05m which would support 75 FTE jobs over a three year build period. The scheme would generate household expenditure of about £2.1m per annum, Council Tax revenues of about £960,000, and New Homes Bonus payments of about £750,000 over a three year period.
93. The proposal is also consistent with the environmental dimensions of sustainability. For the reasons given, noise is not an impediment to the development of the site, and the scheme will enhance biodiversity.
94. The various contributions to sustainability would combine to bring significant benefits. The limited adverse noise impacts would not significantly and demonstrably outweigh the benefits of the appeal scheme. As this is a case where the first limb of the decision-making test in paragraph 14 of the Framework is engaged, the result is that the appeal scheme comprises sustainable development.
95. The appeal scheme ought to be allowed to proceed in the public interest.

## **9. THE CASE FOR MALDON DISTRICT COUNCIL**

*The Council's objection*

96. For the purposes of this appeal, the appellant accepts the Council is able to demonstrate a 6.04 year supply of deliverable housing land. It follows that it is not necessary to develop the appeal site to boost significantly the supply of market and affordable housing in Maldon District. As affordable housing is delivered as a specified proportion of all housing, a five-year housing land supply will boost significantly the supply of both market and affordable housing.

97. Noise from wedding events at Mangapp Manor would be likely to have a significant adverse impact on the quality of life of future residents as evidenced by the likelihood of noise levels in excess of relevant standards and guidelines.
98. Those impacts could not be satisfactorily attenuated through the design of the scheme, whether by layout and/or provision of an acoustic barrier and/or double-glazed windows that are sealed shut and augmented by acoustic ventilation.
99. The appellant's approach involves an inconsistent, selective and incorrect application of different standards, and attenuation that is contested and unsupported by compelling evidence.
100. A further impact concerns possible implications for operation of Mangapp Manor as a wedding venue.

*Relevant policy*

101. The scheme conflicts with Policy BE1 of the Local Plan.
102. Noise pollution for future residents constitutes a weighty environmental consideration in the sustainability balance consistent with paragraph 123 of the Framework.
103. The scheme would also be contrary to paragraph 123 by exposing an existing business to complaints about noise that could prejudice its future viability and local economic growth and prosperity.

*Mangapp Manor*

104. The Council considers that the likelihood of complaints from future residents arising from noise disturbance poses a potential threat to Mangapp Manor as a wedding venue.

*Surveys of existing noise*

105. The Council questions the reliability of the appellant's noise survey in various regards, including in relation to local weather conditions on particular days, and the absence of key data relating to the frequency and quality of noise events, and of any noise log presented in evidence.

*Relevant standards and other guidance*

106. The Council refers in detail to the WHO Guidelines for indoor and outdoor living areas, but maintains they are to be applied with discretion, having regard to a range of other relevant considerations.
107. WHO advises that, for a good night's sleep, the equivalent sound level should not exceed 30 dB(A) for continuous background noise, and individual noise events exceeding 45 dB(A) should be avoided. So, if the residents of houses on the appeal site would experience a breach of either limit some disturbance of sleep is to be expected.
108. Sleep disturbance from intermittent noise events increases with the maximum noise level. Even if the total equivalent noise level is fairly low, the maximum noise level is a better indicator of disturbance to sleep and a small number of noise events with a high maximum sound pressure level will affect sleep.

Accordingly, in applying the WHO Guidelines to determine whether noise will disturb sleep it is necessary to take into account both the maximum sound pressure level and the number of noise events. So if the maximum noise levels emitted from Mangapp Manor during the evening are very high compared with the  $L_{eq16}$  value and/or there are a relatively large number of such events, that is an indicator that sleep is liable to be disturbed. It is necessary to measure both  $L_{Amax}$  and the frequency with which high sound pressure levels occur.

109. When the background noise is low, noise exceeding 45 dBL $A_{max}$  should be limited, if possible, and for sensitive persons an even lower limit is preferred. Noise mitigation targeted on the first part of the night is believed to be an effective means for helping people fall asleep. Therefore if the development would be inhabited by sensitive individuals, consideration should be given to the tightening of the indoor and outdoor  $L_{Amax}$  limits that are specified by WHO for early in the evening.
110. During day-time few people are highly annoyed at  $L_{Aeq}$  levels below 55 dB(A) and few are moderately annoyed at  $L_{Aeq}$  levels below 50 dB(A), but sound levels during the 'evening and night' should be 5-10 dB lower than during the day. Therefore, during the evening and night the value for serious annoyance is 45- 50 dB(A) and for moderate annoyance 40-45 dB(A). 'Evening' is not a term of art, and may be taken to cover the period 1900-2100.
111. Special attention should also be given to noise sources in an environment with low background noise levels, and to noise sources with low frequency components.
112. The standard set out in BS 8233:2014 follows WHO and identifies 35 dBL $A_{eq16hour}$  as an acceptable internal ambient noise level for living rooms and bedrooms between 0700 and 2300, and 30 dBL $A_{eq8hour}$  for bedrooms between 2300 to 0700.
113. The standard advises that regular individual noise events can cause sleep disturbance and that a guideline value may be set in terms of  $L_{Amax}$ . This underlines the need to measure the frequency with which high maximum sound pressure levels occur, as well as the fact that they do occur and their maximum level.
114. Where development is considered 'necessary or desirable', despite external noise levels above WHO guidelines, the internal levels may be relaxed by up to 5 dB and reasonable internal noise levels still be achieved. Whether development is necessary or desirable depends on the planning policy context and is not a matter of acoustics.
115. The ENCC advice is that between 0900-2300, a MNL for indoor venues used for up to about 30 events per calendar year should not exceed the background noise by more than 5 dB(A) over a 15 minute period. This is recommended for events finishing no later than 2300 hours and, strictly speaking, this standard does not apply to noise generated by Mangapp Manor because events finish after 2300.
116. In the case of events continuing or held between 2300 and 0900 music should not be audible within noise sensitive premises with windows open in a typical manner for ventilation. The standard is applied to indoor and outdoor environments.

117. The IOA Guide advises that, for premises where entertainment takes place on a regular basis, music and associated sources should not be audible inside noise sensitive property at any time. This advice was agreed by the appellant's noise witness to be relevant on the basis that noise every weekend between 1 May and 31 October is 'regular'.
118. For premises where entertainment takes place less frequently, music and associated sources should not be audible inside noise-sensitive property between 2300 and 0700. For other times appropriate criteria need to be developed which balance the rights of people seeking and providing entertainment with those who may be disturbed by the noise.
119. The attraction of the IOA Guide is that it is also easy to apply and realistic in circumstances where it is obvious that unusual noise is likely to be generated and audible at a late hour by sensitive receptors.

*Application of the standards*

120. A number of key metrics are presented by the appellant. These include a measurement of 74.6 dBLA<sub>max</sub> representative of the maximum noise level that would be received by houses in the eastern part of the site, i.e. at Monitoring Location 3 (ML3), and a measurement of 78.1 dBLA<sub>max</sub> representative of the maximum noise level that would be received by houses in the northern part of the site, i.e. at ML1. This was agreed in cross-examination by the appellant's noise witness on the express understanding that 78.1 dBLA<sub>max</sub> did not occur when a wedding took place. To assess night-time noise in bedrooms, 3 dB(A) must be added to the above figure giving levels of 77.6 and 81.1 dBLA<sub>max</sub>.
121. The appellant did not measure the number of times dBLA<sub>max</sub> exceeded 45 dBLA<sub>max</sub>. It is not known how many times those LA<sub>max</sub> values were attained. Moreover, similar and even higher values during the day-time could have occurred during the 'evening'. Such levels could potentially interfere with sleep because some people want to go to bed before 2300.
122. The average measured night-time noise level at ML1 is 42 dBLA<sub>eq</sub>, and some night-time values at ML1 are recorded significantly greater. The average LA<sub>eq16hour</sub> at ML1 is stated to be 46 dBLA<sub>eq</sub>, with a range of 43 to 54 dBLA<sub>eq16 hour</sub>, but corrected to 48 dBLA<sub>eq</sub>.
123. The average LA<sub>90</sub> noise level cited by the appellant is 34 dBLA<sub>90</sub> between 1900 and 2300 over the 16 day measurement period. It was agreed 2 June should be excluded because of the weather and that this would reduce the background noise to 33 dBLA<sub>90</sub>. The appellant's recorded LA<sub>90</sub> night-time values are broadly comparable with the Council's lower night time L<sub>90</sub> levels (of about 26 dBLA<sub>90</sub>), notwithstanding that the night-time measurements span a slightly different time period.
124. Applying the appellant's key metrics as above to the identified standards reveals the following:

External living areas

1. WHO average day-time levels do not constitute seriously or moderately annoying impacts.

2. Applying early evening and night-time reductions to the WHO standard (1900-2100 and 45 dBL<sub>Aeq</sub>16) produces 'moderate annoyance'.
3. It is submitted the proper application of the standard requires the guidelines therein to be recalibrated in reducing the day-time standard by 5-10 dB(A).
4. ENCC day-time 46 dBL<sub>Aeq</sub>/48 dBL<sub>Aeq</sub> 1900-2300 exceeds 34 dBL<sub>A90</sub> 1900-2300 by more than 5 dB(A) and therefore attenuation is required to reduce the differential to 5 dB(A) or less.
5. Outdoor living areas at night-time will also require attenuation so that noise from Mangapp Manor is inaudible.

#### Internal living areas

##### Daytime noise in living rooms:

1. WHO and BS8233 require 35 dBL<sub>Aeq</sub>16 hour, but free-field levels at façade range between 51 and 61 dBL<sub>Aeq</sub>, and attenuation is required.

##### Night-time noise in bedrooms

1. With windows closed, and assuming the façade provides attenuation of about 32-35 dB(A), the noise level in bedrooms will be about 30 dBL<sub>Aeq</sub>, but the 45 dBL<sub>Amax</sub> value will be exceeded (recorded values are 78 and 81 dBL<sub>Amax</sub>). Therefore loud impulses from music will be heard in bedrooms. It is unclear how serious the failure of the standard is because no record has been made of the frequency of L<sub>Amax</sub> events and their distribution throughout the evening.
2. With windows open, and assuming an attenuation of 10-15 dB(A), the specified night-time noise levels of 45 and 55 dBL<sub>Aeq</sub> and 78 and 81 dBL<sub>Amax</sub> exceed the standard of 45 dBL<sub>Aeq</sub> and 60 dBL<sub>Amax</sub> during the evening period.
3. In short, both background noise and impulses from music will be heard in bedrooms.
4. Applying the ENCC guidance, music will be audible within houses with windows open, so the standard of inaudibility is failed.
5. Applying the IOA guide, music will be audible inside noise sensitive properties and specifically 2300-0700 and so the standard is failed.

#### People/vehicle noise

1. The Council's noise witness advised that he did not consider there to be any helpful technical or other guidance to assist in directly assessing the particular impacts specifically associated with the car park and of people noise.

### *Proposed mitigation*

#### External living areas

125. Whilst compliance is asserted with the ENCC guidance (+5 dB above background) by developing a 3.5m high noise barrier, no calculations have put into evidence. The assertion has not been tested and cannot be relied upon.
126. Alternatively, it is suggested that outdoor living areas could be located on the screened side to reduce noise levels to about 27 dBLAeq but such calculations are not in evidence and the degree of attenuation is liable to be reduced by gaps between dwellings.
127. People will want to use their gardens in the evening and at 'night' in the summer and there is serious doubt as to whether the ENCC guidance can be achieved.
128. It is doubtful whether a 5m high barrier could reduce background levels to inaudible.

#### Internal living areas

129. The appellant concedes acoustic ventilation is required to remove the need to open windows, and this demonstrates a problem with the location of the appeal site next to a noise source.
130. The Council also questions whether that form of mitigation would actually secure compliance with WHO/BS 8233:2014 in bedrooms in view of the values of LAmax, uncertainty as to frequency of high sound pressure level events, their distribution, the importance of early evening to the quality of sleep, and the presence of vulnerable residents for whom a lower standard ought to be applied.
131. The WHO and ENCC 'windows open' standards are failed, as is inaudibility.
132. If people are not expecting to hear night-time music at this quiet location and experience it, some are likely to be intolerant of it. It will be seen to harm their amenity, and there will be complaints.
133. In any case, Burnham-on-Crouch is not the kind of place where acoustic ventilation ought to be necessary or encouraged. The need for that kind of attenuation is clear evidence that the site is at best sub-optimal and probably unsuitable for housing.

#### Acoustic barrier

134. This would be a substantial structure, but is not described as part of the original application, is not shown on the illustrative layout, and is not mentioned in the Design and Access Statement.
135. The structure could have a marked impact on local amenity. It could certainly affect the outlook of new houses it wraps around, and also the outlook from Mangapp Manor and existing dwellings.
136. A barrier had not been contemplated prior to the June 2015 noise assessment, has not been advertised, and amending the scheme in this way would cause prejudice.

137. It is not appropriate to deal with the bund/fence by condition or as a reserved matter. It requires a fresh application.

*Mitigation by layout*

138. This approach runs directly contrary to the layout indicated by the Development Framework drawing Ref: No 6046-L-01-G (now superseded), and had not been contemplated before June 2015. An acoustic-led approach could be appropriate for development next to a railway line or similar, but not in edge of market town/rural locations, such as Burnham-on-Crouch.

*Appellant's proposed noise condition*

139. This condition is not tried and tested and fails the tests of precision and enforceability.
140. In view of the objections to incorporating an acoustic barrier into the scheme and the absence of calculations to support the attenuation that is claimed, it also fails the test of reasonableness.

*Summary of noise*

141. The appeal site is located next to a proven noise source.
142. Standards are failed in relation to outdoor and indoor living areas even before any consideration is given to lowering of standards in early evening having regard to the legitimate needs of vulnerable groups.
143. The absence of the number and distribution of LAmax readings means the appellant's data is incomplete. Assumptions underpinning the proposed mitigation are opaque and remain to be validated.
144. Absent a need for further housing land to deliver a five-year supply, and absent any other compelling benefit, the proper decision, having regard to the obvious risk of harm, is for residential development to avoid the site and for the appeal to be dismissed.

*Benefits and the planning balance*

145. Whilst acknowledging broad general benefits of the proposal, the development conflicts with Policy BE1 of the Local Plan and section 38(6) of the Planning and Compulsory Purchase Act 2004 thereby presumes against the scheme. The Council also disputes mitigation as benefits, and questions how the undertaking's contributions may specifically serve the local area.

## **10. OTHER REPRESENTATIONS**

146. The representations made by those who appeared at the Inquiry are summarised first, then the representations made in writing.
147. **Councillor Tania Ward** is a Member of Burnham Town Council. She expressed a number of concerns. These included the scheme's location outside the settlement boundary contrary to both the LDP and Neighbourhood Plan. Concerns are raised that future occupants would be subject to noise from adjacent businesses (the Mangapp Railway Museum and wedding venue) and this may have implications for their future operation. The scale of development is also considered to be excessive relative to the character of the town.

148. **Andrew Stringer** is an employee of Mangapp Manor and presented a sketch plan showing the key relationships between the different components of the wedding venue, and its relationship to the appeal site. Mr Stringer outlined his concerns for the future of the business should the development proceed. Two particular concerns are raised. The first is that complaints regarding noise may require action such as to curtail the operation of the business. The second is that, during the period of construction, customers would be deterred by the presence of an adjacent building site. The fear expressed to the Inquiry is that the business may need to close.
149. **David Lagden** is a local resident who attended in support of local concerns, and spoke of noise disturbance from the wedding venue.
150. Other written representations were received in response to the appeal, including from **Pigeon Land Limited**, who control a further development site at Burnham West and who consider the appeal proposal not to be sustainable development. A number of representations have been received from local residents, including **Christine Smart, Kiona O'Brien, and Jade Clark**. These relate to various matters, including the effect upon existing residents' living conditions, and upon highway safety.
151. The representations made to the Council by statutory consultees and members of the public in its determination of the application are summarised in the officer's report. Aside from the statutory responses and responses internal to the authority, some 19 letters of objection appear to have been received. The points made substantially relate to matters which have been referred to above, but a number of other detailed issues are also raised. These include general points relating to street-lighting, flooding, drainage, health and safety, loss of identity, future employment, available services, air quality, and property devaluation. I have also noted the technical observations of the Essex County Fire and Rescue Service.

## 11. INSPECTOR'S FINDINGS

152. My use of parentheses [n] in the sections which follow indicates reference to paragraphs above summarising the submitted evidence and from which key findings are drawn.

### 1. Noise in relation to future living conditions

#### *Relevant policy*

153. Whilst Policy BE1 of the Local Plan refers to the compatibility of development with its surroundings, my reading is that its purpose essentially relates to the implications arising from development rather than for development. I am not satisfied of its relevance to the appeal scheme.
154. I accept that Policy CON5 is not relevant. [27]
155. Policy D2 of the LDP refers to the need for all development to minimise its impact on the environment, including minimising noise pollution, and I find this not to be directly relevant for similar reasons as Policy BE1.
156. National policy is clear that:



1. inaudibility is not a required standard for new housing environments; [39-43, 45-46]
2. where noise is an observed adverse effect, consideration of mitigation is an appropriate way forward; [39-43, 45-46]
3. it is not unreasonable to expect windows to be closed at certain times in order to mitigate noise, and; [42-43]
4. contrary to the appellant's view that everything in this decision turns on noise, noise is not expected to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development. [39]

### *Surveys of existing noise*

157. The Council considers the appellant's survey presents unduly high background noise levels and its own 6-day survey undertaken in March 2016 suggests a lower background reading of 26 dBLA90.
158. I do not find the results of the appellant's June 2015 noise assessment to be undermined by the concerns raised regarding the unattended nature of parts of the survey, or by possible interference by inappropriate weather conditions.
159. The monitoring period covered 16 days and 3 wedding events and was partly attended. The weather conditions during the attended monitoring were found to be within acceptable limits. Whilst information has been provided by the Council relating to historical weather evidence from an internet web site, the location of the particular station is unclear. In this regard, I am also mindful of relevant advice set out in section 6.4, note 2 of BS 4142:2014 regarding the particular significance of local weather conditions.
160. The appellant's noise witness explained that, in order to be robust, the assessment only actually needed to encompass one typical wedding event, but several were captured. The Council does not allege that the weddings on those occasions were untypically quiet, and I note some reasonable degree of consistency between key data on different days.
161. Recorded data for the events held on 5th and 6th June were found to be the highest measurements and these have been taken as a basis for the assessment. An average measured night-time noise level at ML1 is identified as 42 dB, and an average 16hourLAeq of 46 dB, corrected to 48 dB.
162. The Council's survey related to a different period outside the operating months of the wedding venue and was undertaken in the absence of any events. There would have been less vegetation on trees and shrubs at that time, and the darker evenings would have meant that there was less birdsong. This suggests such circumstances would not be comparable to those likely to be expected at times when the venue operates.
163. I am satisfied the appellant's survey follows an acceptable methodology and that the results provide a fair, reasonable and robust assessment.

*Relevant standards and other guidance*

164. I find that, in the absence of mitigation, much of the site's existing noise environment would be inappropriate for residential development with reference to existing noise levels and relative to the standards and guidance identified.
165. It is common ground that no one standard applies to the issues in dispute. There are a range dimensions to the noise generation and a range of receptor considerations. Nevertheless, given the thorough and in-depth review of possible standards and guidance presented in evidence and examined by both the main parties at the Inquiry, I am satisfied that the suite of standards identified in the appellant's proposed planning condition, generally reflecting both WHO and BS guidance, would represent an appropriate benchmark for this development and would so define what would be a satisfactory living environment in these circumstances. I accept that the condition as initially presented would require further refinement in its detailed wording with regard to precision and enforceability, but I find that its underlying terms would be appropriate and its requirements reasonable.
166. Further, I also note evidence of the use of a similar condition by other planning authorities, and also in a not dissimilar form in a recent appeal decision Ref: APP/C1625/W/15/3011370 dated 17 February 2016. That appeal related to another outline application for development of up to 59 dwellings and associated facilities at Chestnut Park, Kingswood, Gloucestershire GL12 8RG.
167. As aspirational as inaudibility may be, I find inaudibility is neither reasonable as an overall standard, nor consistent with national policy. [39-43, 45-46]

*Application of the standards and proposed mitigation*

*General*

168. The relative proximity of proposed and existing dwellings to the marquee offers some relevant context, and agreed distances have been provided by the main parties. The closest existing residential building to the west of the appeal site beyond Mangapp Manor is some 208m from the marquee and some 101m from the car park. Corresponding distances to the property's garden are some 183m and 80m. The closest residential building proposed to the south would be likely to be some 118m from the marquee and some 23m from the car park, with corresponding distances from the garden some 108m and 13m. The closest existing dwelling to the south of the appeal site in Beauchamps lies some 290m from the marquee and some 142m from the car park.
169. The site is some 130m deep along its eastern frontage and widens slightly to the west. ML1 lies adjacent to the northern boundary, ML2 some significant distance to the south-west. As expected, LAeq levels were generally lower at ML2 reflecting greater distance from the marquee and car park. This indicates that noise disturbance during wedding functions would be likely to recede with distance south across the site and is generally consistent with the appellant's Figure 4 of its June 2015 noise assessment. Figure 4 indicates that the main impact of noise would be to exposed properties along the northern frontage closest to the wedding venue and, from the evidence presented, I agree.

170. I also note the scheme is not expressly proposed for occupation by any particular categories of vulnerable residents as recognised by WHO, but appreciate that future occupation could include children, elderly residents and unwell persons as part of the general local population.

#### External living areas

171. The measurements indicate that noise from the wedding event would meet the lower 50 dBLAeq guideline above which people may become moderately annoyed. The June 2015 noise assessment indicates that the 46 dBLAeq noise level from wedding events is also of a similar level to ambient noise levels from sources other than the wedding. Day-time noise levels in the northern part of the site range between 43 and 54 dBLAeq16hour with no wedding events taking place.
172. Prediction calculations are said to indicate that the proposed dwellings would reduce music noise levels to approximately 27 dBLAeq for outdoor living areas on the screened side of dwellings (with no view of Mangapp Manor), and with further detailed allowance to be made for the possible presence of gaps. Similarly, the June 2015 noise assessment indicates that a 3.5m high acoustic barrier would reduce noise from wedding events to 38 dBLAeq which would also meet the +5 dB criterion of the ENCC. Whilst those source details have not been tested, I accept the principle that intervening built form would be likely to generally mitigate direct noise impact.

#### Internal living areas

173. I agree that NR curves provide a helpful tool in these circumstances, in accordance with the recognition given by the 2005 Salford report, by enabling the character and acceptability of noise to be assessed at different frequencies and at different sound pressure levels.
174. The appellant's evidence is that mitigation would reduce internal noise levels below the generally accepted good standard of NR25 with windows closed, and this finding has not been substantively challenged by the evidence before me. High specification glazing could ensure that noise from wedding events would be further reduced in noise sensitive rooms with windows closed.
175. On occasions, closed windows may be acceptable, but alternative ventilation would also be proposed in some dwellings.
176. Given the relative infrequency of weddings and the fact that music has to end by 2330 and that the premises cannot be open to the public after midnight, I find there is little prospect of people feeling as though they have to keep windows closed for much of the time by reason of the wedding venue.
177. Whilst closed windows and alternative ventilation are legitimate forms of mitigation, I also have little evidence beyond Figure 4 to suggest their deployment within the development would need to be particularly extensive or would otherwise detract from the wider living conditions of residents. It also follows that I do not accept any suggestion that the development would be

largely characterised by dwellings with double-glazed windows 'sealed shut'. Nonetheless, in order to maximise the benefits of the attractive local environment, whether in Burnham-on-Crouch or elsewhere, the need for such measures should still be minimised through sensitive and responsive design.

178. The interiors of properties not adjacent to the northern boundary would benefit from screening by intervening dwellings, and the impact of noise would decrease with distance from the source. The appellant's evidence suggests partial screening would achieve approximately 5 dB(A) reduction, full screening approximately 10 dB(A). I accept from the evidence provided that, given intervening distance and built form, proposed dwellings further into the site would be likely to achieve reasonable living conditions with windows open.

#### People/vehicle noise

179. I recognise there is a possibility of some sporadic noise disturbance from patrons exiting the venue when ambient noise levels are low and when nearby residents are seeking to sleep. The extent of such disturbance is difficult to predict and quantify, and to specifically mitigate, and would significantly depend upon the behaviour of the persons involved. On occasions, I accept this could be intrusive and disruptive to sleep. Even if patrons exit quietly, some noise, albeit not necessarily disruptive, is likely to arise in connection with vehicles, but such impact would still be addressed by other mitigation as proposed.

#### Overall

180. The Council's challenge is substantially about whether the proposed scheme is capable of compliance with various standards. The full and precise answers to those questions would remain to be demonstrated as part of the site-by-site assessment, but the implication of the condition as proposed by the appellant is that only dwellings compliant with the relevant standards would proceed.
181. Nevertheless, in the context of an outline application to which no one standard directly and neatly applies, the rigour of the appellant's noise assessment and the potential range of mitigation available, lead me to conclude there would be a reasonable prospect of a residential development achieving compliance with the WHO Guidelines, BS 8233:2014 and NR25. Notwithstanding outstanding questions regarding the direct relevance of these standards to music noise arising from Mangapp Manor, I consider these to be broadly appropriate criteria from the evidence presented.

#### *Possible prejudice*

182. The description of the application as publicised by the Council, and as subsequently publicised for the purposes of this appeal, does not expressly refer to a noise bund, fence or other related engineering or building operations, and no such details have been formally submitted for my determination.
183. Rather, as part of a further revised application subsequently submitted to the Council prior to this appeal but not subject to this appeal, the possible contribution of such an acoustic barrier has emerged as a potential part of a yet-to-be-defined and clarified package of noise mitigation.

184. Should this appeal be allowed, a condition would follow requiring suitable mitigation to be designed and approved. The appellant has identified a noise barrier, in the form of a landscaped bund and/or fence as one possible feature to be considered as part of the wider, detailed design. That said, the appellant's noise witness also indicated under examination that the same level of mitigation was likely to be achieved simply through sensitive design and layout of the housing and attendant features and structures.
185. The Council is quite right in its concerns that, should an appeal be allowed necessarily requiring such a particular structure, there could be a danger that local interests might be prejudiced given the absence of appropriate prior publicity and subsequent consideration. Such concerns would not, however, be the effect of a decision to allow the development in the terms before this appeal. Rather, if a noise barrier were to be proposed, that would form part of the reserved matters to be formally submitted and publicised in due course, or be subject to a separate application for planning permission to be similarly publicised as appropriate.
186. Should a noise barrier of whatever form and design emerge as part of the submitted mitigation, and should objection be raised by interested local parties, it would then be for the authority to consider those concerns with regard to the wider planning merits of the scheme.
187. This appeal decision does not turn on the presence or otherwise of a specific noise barrier, and nor are such details formally submitted for approval as part of this process.

*Key characteristics of the application subject to appeal*

188. I give considerable regard as part of my decision to the context provided by the following key features of the submission:
1. the scale of development is not defined in absolute terms but by reference to a maximum threshold of 'up to 80 dwellings'. Subject to submission of reserved matters, this could be 80, or it could be less;
  2. the application is in outline form with all matters of design and layout remaining to be approved;
  3. with the discretion afforded by 2., the appellant proposes a plot-by-plot assessment of each dwelling in terms of noise mitigation and associated design, and;
  4. the site is of considerable extent, thereby affording the future design significant scope and flexibility both to accommodate appropriate mitigation and to maximise the possible number of noise-compliant dwellings. Consideration of noise and of plot circumstances and of required mitigation would undoubtedly vary across the site.
189. The implication is that, should this appeal be allowed, the application offers sufficient discretion in its terms to ensure that, following the necessary plot-by-plot assessment, any parts of the site not found to be capable of providing an appropriate noise environment relative to the specified standards

would not accommodate dwellings and only noise-compliant homes would be developed. This, in turn, would also mean that the accompanying benefits of a housing development, whilst possibly less than accompanying the upper limit of 80 dwellings, would still be realised. In effect, any remaining doubts regarding the residential environment to be created would not necessitate rejection of the proposal at this outline stage simply because 80 dwellings could not proceed.

190. I find this approach would also be consistent with the expectations towards proactive decision-making set out in paragraph 187 of the Framework. This states that local planning authorities should look for solutions rather than problems, and that decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.
191. Notwithstanding the various technical submissions made and other objective evidence offered, it was also agreed ground that it still remains difficult to determine whether noise from a wedding venue would cause annoyance to particular future receptors. Annoyance is subjective and noise levels that may be tolerated by some will be considered unacceptable by others.
192. Further, notwithstanding the very detailed assessment and application of various guidance and standards presented in evidence by both the main parties, no one piece of detailed advice is directly and exclusively applicable to the circumstances of this scheme, and the weight to be attached to any specific individual guidance must also be tempered accordingly.

*Summary of noise in relation to future living conditions*

193. I acknowledge the detailed concerns raised by the authority, and that detailed technical questions would remain to be answered through subsequent submissions. The suitability of each individual dwelling proposed remains to be demonstrated with the benefit of full and detailed plot-by-plot assessments and commensurate designs as proposed.
194. I find that the appellant's approach of responding to a worst case scenario as it relates to internal impacts would significantly address the Council's concern regarding the significance of the particular number of LMax events.
195. I acknowledge that general inaudibility would not be achieved, and that some background noise may well be evident at different times and at different points within the appeal site, and that possibilities for moderate annoyance, as subjectively perceived, may exist.
196. I recognise a possibility of some disturbance to sleep in early evening, and the relevance of the WHO Guidelines in this regard. Residents may seek to sleep before 2300 and, subject to the particular circumstances, may hear some residual background noise from the venue. Even so, I find it inappropriate to apply a post-2300 requirement to that period as a general rule because that is not what the standard says.
197. I find that the discussion as to whether a temporary use during part of the year may be regarded as a regular use does not necessarily detract from the

substance of the standard itself. The wedding function may not be regular in a year-round sense, but is certainly not a one-off occurrence. Similarly, I find the fact that the wedding venue may continue to operate until 2330/0000 does not unduly invalid a standard which relates to a period expiring at 2300.

198. Questions are raised regarding the particular appropriateness of some of the guidelines quoted to music and to other aspects of the noise generated. Whilst they may be not expressly designed for such purposes, the general relevance was implicitly acknowledged by the evidence submitted and, besides, no other, more appropriate alternatives were presented to the Inquiry.
199. I find that the prospect of some late night/early morning disturbance in connection with patrons exiting the site remains, and acknowledge the likelihood of double-glazing and mechanical ventilation to a yet undefined number of properties along the northern side of the site.
200. Nevertheless, and notwithstanding these detailed concerns, I have to assess and weigh all these matters in a wider, overall context. An assessment has to be made in the round reflecting the myriad considerations, issues and possible guidance and standards identified. The Council's various detailed criticisms, whilst valid in varying degrees, ultimately do not, individually or cumulatively, lead me to conclude me that, in principle, a development in the terms proposed would be incapable of creating a satisfactory residential environment for future occupiers. The weight of evidence is that careful and responsive design prior to submission of reserved matters should be capable of addressing such concerns across much, if not all, of the site. Forecast effects remain to be demonstrated through plot-by-plot detailed design and noise modelling but I find that the balance of evidence weighs in favour of reasonable standards being generally achieved.
201. The scheme would place dwellings closer to the wedding venue and, whilst some degree of noise may still be audible at certain times and in certain locations, I find that, in principle, the likely level, character and frequency of noise would be unlikely to cause significant harm to general living conditions with the mitigation indicated.
202. It is also relevant to consider that any residual noise from the venue would only be experienced on specific occasions throughout the week, only in summer months, and that the remainder of the time (the majority of the summer days and all the non-summer period), a very pleasant semi-rural residential environment would be created and enjoyed. If the scheme were to be rejected, those and other benefits applicable most of the time would be forsaken to the cause of possible occasional, limited harm at other periods when the venue may operate.
203. I accept there may be some plots which may be unable to meet the specified standards but that does not undermine principle of what is being sought by this application: a development of up to 80 dwellings. If a plot cannot be designed to meet the standards, it would simply be one less and a further physical opportunity for mitigation by design and to so raise the residual environmental quality. Any such failure would not represent a universal flaw in the principle of the development as proposed but would be plot-specific.

204. In summary, I am drawn to the acceptability of this scheme with regard to noise implications by the evidence of three sequential findings:

1. the appellant's noise survey provides a robust definition of background noise levels and thereby an appropriate basis by which to assess the introduction of further noise-sensitive residential use;
2. the proposed condition offers a reasonable and suitably rigorous definition of an acceptable future housing environment relative to the picture presented in the noise survey, and;
3. the plot-by-plot assessment of each dwelling as proposed relative to a range of practical noise mitigation measures identified would provide the means through which the acceptable residential environment defined by the planning condition may be demonstrated and delivered.

205. I find these three sets of findings, taken together, provide a coherent and persuasive basis for the development to proceed, but only on the clear recognition that it would require a high quality, acoustic-led design solution as proposed.

206. I therefore conclude that the proposed development would not expose future residents to unacceptable levels of noise harmful to their living conditions. Accordingly, the development would not be contrary to Policy BE1 or Policy CON5 of the Local Plan, or contrary to Policy D2 of the LDP, or contrary to the expectations of the Framework. Further, unacceptable risks arising in connection with noise, as identified by the Framework would not arise. [37-38]

## **2. Noise in relation to the future operation of Mangapp Manor as a wedding venue**

207. In terms of complaints regarding noise from new residents and implications for the future of the business, I am mindful of the mitigation proposed as part of the scheme, and of the consistency of this approach with the expectations towards existing businesses of both the Framework [38] and the Guidance [45].

208. I note the Council's suggestion that it would be unreasonable for a discotheque to operate at a sound level of below 90 dBA but there is no such suggestion as part of this planning appeal of any changes to the wedding venue's current operation. I further note that a noise limiter has been previously installed at the premises originally set to 90 dBA.

209. The venue would need to be operated in a reasonable manner as already expected by both its existing licence and the relevant planning permission. I am also mindful that, notwithstanding complaints made directly to the operator, there is only a relatively limited history of complaints made to the Council over a significant period, and that no prolonged investigation has been undertaken by the authority, and that no formal action has previously been taken. All these factors are relevant considerations in assessing the likelihood of future harm.

210. The noise condition proposed by the appellant would expressly relate to the appeal site and to mitigation measures to be provided as part of the



development. It would not seek to impose upon the operation of Mangapp Manor and the noise assessment presented reflects the existing operation of the venue.

211. If the proposed dwellings are physically designed to provide an acceptable living environment in accordance with the suggested condition and which reflects the existing identified site conditions, I am unable to identify any significant adverse implications arising for the existing operation of the wedding venue.
212. In terms of construction works, I recognise there would be likely to be some temporary disruption to the local environment, but such impacts are an inevitable consequence of most built development, particularly building operations of the scale proposed. Even so, the appellant has agreed to review such impacts as they would relate to Mangapp Manor as part of a Construction Method Statement (CMS) to be agreed by the local planning authority. Works are unlikely to be proceeding into the evening, and could be reasonably limited as part of the CMS on Sundays and Saturday afternoons. I also note that the boundary between the appeal site and Mangapp Manor contains significant hedgerows and other planting. Whilst this would not obscure higher structures such as cranes, it would help to screen and enclose lower level works.
213. In summary, I accept there could be some short-term inconvenience to the setting of the venue in connection with the works, and that the subsequent presence of houses would require continuing diligence by the operator in accordance with the existing terms of the licence to ensure functions do not cause a disturbance. Nevertheless, I do not consider the immediate impact of the works themselves during development to be significantly harmful and, provided the new dwellings are designed and built to the appropriate acoustic standards, I do not consider any significant harm would arise to the existing and continuing operation of the wedding venue in that regard.

### **3. Other representations**

214. I have carefully considered all other matters raised by local interested parties, both at the Inquiry and in written submissions.
215. I particularly note concerns expressed regarding highway safety. These are not raised as objections by the Council and the authority considers outstanding issues may be addressed by conditions as recommended. Should this appeal be allowed, the same would also apply to a number of further detailed matters raised, including ecology and drainage.
216. I also note the Council raises no concerns regarding the proposed density of development, referring to a similar and compatible density to existing housing to the south. I similarly find no significant harm in relation to matters of character and appearance.
217. I have little reason to conclude that any other issues raised in advance of submission of reserved matters represent significant harm sufficient to preclude development in principle, and I have regard to all other matters as set out in Annex C and as raised at the Inquiry.

#### **4. Status of the development plan**

218. The Local Plan dates from 2005 and it is necessary to consider whether policies remain up-to-date relative to the terms of the Framework. The Local Plan was prepared in conformity with the Strategic Plan for the South East and the Essex and Southend-on-Sea Replacement Structure Plan. These documents were superseded by the East of England Regional Spatial Strategy which has itself since been revoked. The Local Plan was initially intended to cover the period from April 2001 to October 2008, with some extension to 2011, and also reflected previous Planning Policy Guidance Notes (PPG's) and Planning Policy Statements (PPS's) subsequently replaced by the Framework.
219. The Framework at paragraph 47 seeks to boost significantly the supply of housing and to ensure that Local Plans meet objectively assessed needs for market and affordable housing. In contrast, the Local Plan identifies Maldon as an area of future housing restraint. It was formulated against a radically different national policy context and the Framework now instead places considerable emphasis on the policy imperative of increasing the supply of housing.
220. The Local Plan saving direction advises that, from 2 November 2008, extended policies should be read in context. It states that, where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions.
221. In keeping with the Structure Plan's view of the District as an area of 'planning restraint upon further housing development', the Local Plan states that the scale of housing provision is not intended to require release of greenfield sites outside the adopted development boundaries. Whilst Policy H1 similarly indicates, amongst other matters, that new housing will not be allowed outside development boundaries, that position is also informed by a constrained level of need identified in the previously revoked structure plan and by accompanying demographic evidence from the 1990's.
222. Policy S2 establishes that outside the defined development boundaries, the countryside will be protected for its own sake. The Framework's aim towards the countryside is materially different in its emphasis. Rather, a core planning principle is instead now defined to be to recognise the intrinsic character and beauty of the countryside.
223. The NP is at a very early stage of preparation and, whilst the LDP is more advanced, it has yet to be fully examined and adopted.
224. I therefore find the Local Plan to be significantly out-of-date in relation to its relevant housing supply policies, and in relation to the manner of its protection of the countryside, and that the emerging status of the LDP and NP are such that they can only be afforded limited weight in accordance with the advice of paragraph 216 of the Framework.

## **5. Other matters**

### *1. Five-year housing land supply*

225. The Framework requires the local planning authority to identify and update annually a supply of specific deliverable housing sites sufficient to provide five years' worth of housing relative to its full objectively assessed needs for market and affordable housing.
226. Notwithstanding the absence of a statutorily adopted, up-to-date local plan, the Council considers it is able to demonstrate a five-year supply of housing land. In particular, the Council refers to its Maldon District Council Five Year Housing Land Supply Statement 2015/16 August 2016, and to the accompanying Maldon District Council Five Year Housing Land Supply Advisory Note August 2016. The Statement identifies a five-year supply for the period of 2015-2020 of some 6.04 years accommodating some 2353 dwellings. This reflects the Sedgefield methodology and a 5% buffer.
227. The appellant is not disputing, for the purposes of this appeal, the Council's latest position, and I have no up-to-date evidence leading me to conclude otherwise.
228. The existence of a five-year supply is an important material consideration within the terms of section 38(6) of the Planning and Compulsory Purchase Act 2004 and to which I have due regard. Nevertheless, that is not to negate any potential housing benefits of the development proposed. Policy S2 of the LDP refers to minimum emerging housing requirements. Further, the Framework's commitment to significantly boost housing supply would extend beyond the current five-year period. The Framework's presumption in favour of sustainable development, to which I return, also applies whether or not a five-year supply of housing can be demonstrated.

### *2. Unilateral undertaking*

229. The unilateral undertaking makes commitments to various matters to mitigate the impact of the development beyond issues of noise, including contributions in relation to health, open space, pedestrian and cycle links and in relation to Traffic Regulation Orders. I note the clarification given by NHS England that the relevant contribution for health as stated in paragraph 1.1.21(i) should be £26,340, and I consider the undertaking on that basis. I also note confirmation given by the main parties that no contribution is required in relation to education.
230. The undertaking also makes significant provision for affordable housing. I have noted the Council's concerns regarding the rate of delivery of affordable housing set out in paragraph 4.2 of Schedule 2. The appellant has explained how this particular threshold is necessary to ensure a physically integrated development and I find that approach to be reasonable.
231. The Council has provided evidence of compliance with the relevant provisions set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 and this is not disputed. I also have regard to the Framework, and to the relevant advice of both the Guidance, and of the Planning Inspectorate's Procedural Guide Planning Appeals - England, published 5 August 2016.

232. I find the undertaking to be generally fit-for-purpose and note that no other issues are raised by the authority.

233. Accordingly, I take into account the commitments and accompanying terms as outlined above as considerations of my decision.

### *3. Environmental Impact Assessment*

234. The scheme has been subject to a Screening Opinion by the Council dated 9 June 2014 pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and which determined that the proposal did not require submission of an Environmental Impact Assessment.

### *4. Sustainable development*

235. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.

236. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole. At the heart of the Framework in paragraph 14 is a presumption in favour of sustainable development. The Framework further identifies economic, social and environmental dimensions to sustainable development.

237. The scheme would undoubtedly provide considerable housing benefits, in terms of both affordable and market provision, and such benefits would be consistent with the social dimension of sustainable development. This would include up to 80 homes of which 30%, up to 24, would be affordable, and in full accordance with the requirements of Policy H9 of the Local Plan. The appellant maintains the scheme would be capable of an early delivery within a three-year build period, and has suggested a planning condition to this effect. An appropriate housing mix would also remain to be defined.

238. The Council has succeeded in delivering only 35 units of affordable housing in the past two monitoring years. This compares to a requirement for affordable housing of some 154 units per annum as set out in the Council's Strategic Housing Market Assessment Final Report September 2014. I concur with the Statement of Common Ground that the affordable housing contribution deserves significant weight, a sentiment repeated in the subsequent Addendum.

239. The investment represented by the development would be consistent with the economic dimension. The undisputed economic benefits would include investment in construction and related employment for its duration. Benefits would include an increase in local household spending and demand for services, and financial contributions to the Council through Council Tax and New Homes Bonus payments. [92] Whilst the Council questions how that money would be spent as a benefit to the local area, the fact remains that additional resources would become available to the authority as a direct consequence of this development.

240. In environmental terms, the scheme would incur loss of an open field but, notwithstanding the representations of interested local parties, that is not a matter of objection for the authority, no specific landscape features of particular significance are identified, and the site carries no designation or other recognition

as a particularly valued landscape for the purposes of the Framework. The scheme would also make allowance for a possible new shop for the benefit of local residents, publicly available open space, pedestrian and cycle links, and would provide for enhanced biodiversity.

241. In environmental terms, I am also satisfied that the physical presence of the development as a built form would be likely to reduce some direct noise impact upon existing dwellings to the south. These dwellings appear to pre-date the marquee and I have no evidence that they were not designed to withstand any significant noise.
242. Whilst technically outside the settlement boundary of Burnham-on-Crouch as defined in both the Local Plan and the LDP, the site is adjacent to its formally defined northern boundary in both documents, and physically forms part of the wider settlement.
243. The clarification accompanying Policy S8 in the LDP describes the District's defined 'Main settlements', including Burnham-on-Crouch, as settlements with a range of services and opportunities for employment, retail and education serving a wide catchment area and containing good public transport links. The fact that the appeal site may technically lie outside the defined settlement boundary does not negate these undoubted sustainability characteristics on the ground which would inevitably apply to the appeal site as part of the wider settlement of Burnham-on-Crouch.
244. I find the only significant potential area of conflict with the definition of sustainable development set out in the Framework would be if any significant residual noise disturbance post-mitigation would be occasioned by any of the new residents during the relatively limited number of hours throughout the year when the wedding venue may be operating. The extent of such a potential impact would be limited in accordance with the plot-by-plot assessment and accompanying design solution to be pursued.
245. For all these reasons, I am unable to concur with the Council's assessment that the scheme is for a housing development which is not needed and in what is an unsuitable location.
246. I therefore conclude, having regard to the expectations of the Framework as a whole, that the proposed scheme would offer substantial economic and social benefits, and that any environmental harm would be very limited.

## **6. Overall planning balance**

247. The robustness of the appellant's noise survey and accompanying assessment, the options for mitigation necessary to achieve a quality of residential environment consistent with the standards and guidance identified, and the physical scale and scope of the appeal site to accommodate such noise-compliant dwellings through design, all lead me to a general conclusion, with respect to noise, that much, if not all of the appeal site, is appropriate for residential development.
248. The full extent to which that conclusion may apply would only be revealed through very detailed plot-by-plot assessment of individual sites and through consideration of the accompanying dwelling design and bespoke mitigation

proposed for each. The form and content of the eventual scheme would ultimately reflect the plot-by-plot assessment proposed and the solutions offered.

249. Whilst this decision does not turn upon the Council's position in relation to its five-year supply of housing land, I still find the Local Plan's relevant policies for the supply of housing to be out-of-date for the reasons described.

250. The presumption in favour of sustainable development set out in paragraph 14 of the Framework states that, where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, and unless specific policies in the Framework indicate development should be restricted.

251. I am satisfied, subject to the plot-by-plot assessment proposed, that the scheme would not give rise to significant harm in relation to noise or any other matters, and that the scheme would yield considerable economic, social and environmental benefits as described. I find any adverse impacts of the scheme would not significantly and demonstrably out-weigh the benefits in accordance with paragraph 14.

252. I therefore conclude that the proposed scheme would constitute sustainable development, and that the weighted planning balance required by paragraph 14, as clarified by the rebuttal presumption set out in Cheshire East Borough Council and the Secretary of State for Communities and Local Government and Renew Land Developments Ltd [2016] EWHC 571 (Admin), is such that planning permission should be granted.

## **12. CONDITIONS**

253. I have considered the conditions put forward by both main parties to the Inquiry. In assessing such matters, I have regard to the advice set out in both the Guidance and in the Framework in terms of both the justification for individual conditions and of appropriate wording.

254. Commencement conditions are necessary to reflect the relevant legislation and the requirement to discharge outstanding submissions in relation to all reserved matters. To ensure early development as proposed, a condition requires submission of reserved matters within two years as agreed.

255. I have imposed a condition specifying the relevant drawings as this provides certainty, and reference is similarly made to a maximum development of 80 dwellings.

256. To safeguard the environment of future residents and the continued operation of Mangapp Manor as a function venue, a condition sets out detailed arrangements regarding necessary noise mitigation and subsequent standards as discussed. I do not consider any specific condition is required in relation to a bund or other acoustic barrier. Such works are not part of the application description and, should they become appropriate, they would emerge as part of a package of noise mitigation measures required by Condition 6, or as part of a separate application for planning permission as appropriate.

257. Whilst the submitted drawings set out general principles of the access, full details of its design, including matters of sightlines, remain to be approved by the Local Planning Authority.
258. To protect the living conditions of neighbouring occupiers during construction, it is necessary for the works to be undertaken in accordance with a Construction Method Statement (CMS), and this will include consideration of the relationship of the works to Mangapp Manor and its continuing use as a venue for weddings and other functions throughout that period.
259. Whilst I have no clear evidence of site contamination, it is still necessary to safeguard the living conditions of future occupiers of the development by ensuring that appropriate arrangements are made for treatment of any on-site contamination which may be identified.
260. To protect existing trees and other planting within the site, arrangements are made for an Arboricultural Method Statement (AMS), and including details relating to a Tree Protection Plan (TPP), and of any necessary replacement of existing trees.
261. To promote sustainable transport, a condition requires arrangements to be made for a Residential Travel Information Pack, the detailed content of which remains to be agreed by the Local Planning Authority.
262. To ensure the development is appropriately served by a new local shop if required, a condition safeguards allocation of land for that potential purpose as proposed for a period of two years after the approval of the final reserved matter.
263. To meet the Framework's commitment to support high quality communications infrastructure, a condition requires a strategy to support superfast broadband for future occupiers.
264. To contribute to a generally sustainable development, conditions require details to be submitted and be approved by the local planning authority relating to surface water drainage, for an archaeological scheme of investigation to be implemented, and for the development to be undertaken in accordance with the terms and specifications contained within the submitted Ecological Appraisal.
265. In the case of each of the pre-commencement conditions, I consider that resolution of the matters specified to be of sufficient significance to the achievement of a satisfactory development, and in safeguarding the subsequent form of development, such that it would be inappropriate to proceed further without the prior clarification and certainty that would be conferred by their approval.
266. A number of other matters had been suggested as possible conditions by the Council but these relate to issues of appearance, landscaping, layout and scale. Such reserved matters do not form part of this application and would remain to be considered. This includes matters relating to materials, planting, ground levels, internal roads and footways, boundary treatment, external lighting, refuse and parking. Matters relating to phasing of the affordable housing and to provision of the open space are set out in the unilateral undertaking. Provision of bus stops would relate to land outside the application site and is not a matter within the appellant's control. Hence I find that, in the absence of specific further

evidence of such a commitment by other necessary stakeholders, requiring provision by way of a planning condition in this instance would not be reasonable.

### **13. CONCLUSION**

267. For the above reasons, I conclude that the appeal scheme constitutes sustainable development which should be permitted.

### **14. RECOMMENDATION**

268. Subject to the conditions set out in Annex A, I recommend that the appeal be allowed.

*Peter Rose*  
INSPECTOR



## **ANNEX A: SCHEDULE OF CONDITIONS**

### **Time limit**

1. Details of the appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') shall be submitted to and be approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission, and the submission for approval shall include full details of the number of dwellings to be developed and which shall not exceed 80 (eighty).
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

### **Drawings and other details**

4. The development hereby permitted shall be carried out in accordance with the following approved drawings so far submitted: Location Plan Ref: 6046-L-02C dated May 2015, and Proposed Access Arrangement drawing Ref: 1868-GA-12/C dated March 2015.
5. The development shall be carried out in full accordance with the plans and all other particulars relating to the reserved matters and all such other matters for which approval shall be obtained from the Local Planning Authority in writing before any development is begun.

### **Pre-commencement**

6. No development shall commence until a fully detailed scheme of mitigation for protecting the living conditions of future occupiers of the proposed dwellings from noise arising in connection with events at Mangapp Manor and from local road noise has been submitted to and been approved in writing by the Local Planning Authority.

The scheme shall reflect a plot-by-plot assessment of each dwelling proposed and its setting, and shall relate solely to mitigation measures to be deployed within the appeal site to which this permission relates.

The scheme shall detail specific plot-by-plot mitigation measures bespoke to each dwelling, and relevant wider site layout considerations, and shall be designed so as to ensure that the following noise criteria shall not be exceeded in relation to any dwelling upon the first occupation of that dwelling, and the approved measures shall be retained thereafter:

- 1) Noise during the day-time period (0700-2300), when considering the total ambient noise levels, in external living areas of the proposed development which are to be expressly defined by the submission and are to be approved in writing by the Local Planning Authority, shall not be measured to exceed the World Health Organisation (WHO) Guidelines

for Community Noise, 1999 (the WHO Guidelines) and BS 8233:2014 guidance of 50 dB(A) LAeq16hour.

- 2) Noise during the day-time period (0700-2300) and night-time period (2300-0700), when considering the total ambient noise levels, in internal living areas of the proposed development, shall not be measured to exceed the following requirements of the WHO Guidelines and BS 8233:2014:
  1. 35 dBLAeq16 hour during the day-time in bedrooms and living rooms;
  2. 30 dBLAeq8 hour during the night-time in bedrooms;
  3. 45 dBLAmaxfast during the night-time in bedrooms, and;
  4. 40 dBLAeq16 hour during the day-time in dining areas.
- 3) Noise from events at Mangapp Manor during the day-time period (0700-2300) in proposed external living areas, to be defined by the submission and to be approved in writing by the Local Planning Authority, shall not be measured to exceed relevant LA90 background noise levels as set out in Wardell Armstrong's Noise Assessment Report dated June 2015 by more than 5 dB(A) over a 15 minute period.
- 4) Noise from events at Mangapp Manor during the night-time period (2300-0700) shall not be measured to exceed Noise Rating Curve 25 (NR25) in any octave band within bedrooms and living rooms of the proposed development.
7. No development shall take place until an Arboricultural Method Statement (AMS) has been submitted to and been approved in writing by the Local Planning Authority. The AMS shall detail trees and hedgerows to be retained and contain a Tree Protection Plan (TPP) for the duration of the works. The development shall be carried out in accordance with the approved AMS, and no trees within or overhanging the site shall be felled, cut back, damaged or removed, unless as identified in the AMS. If within five years from the completion of the development an existing tree is removed, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, a replacement tree shall be planted within the site in accordance with details to be approved in writing by the Local Planning Authority.
8. No development, and including any site clearance works, shall take place until fencing and ground protection are in place to protect any particular trees or hedges as detailed in the TPP and such measures shall be maintained for the duration of the works.
9. No development shall take place until such time as a scheme to demonstrate that surface water can be managed on site through sustainable drainage measures, and without causing flood risk to the site and surrounding area, has been submitted to, and been approved in writing by, the Local Planning Authority. The scheme shall demonstrate that:
  - 1) run off rates from the site will not exceed greenfield run off rates;

- 2) storage will be provided on site for a 1 in 100 year storm event, inclusive of climate change;
- 3) storage will be provided utilising sustainable drainage techniques wherever possible, and;
- 4) any flows exceeding the drainage network will be routed away from buildings and towards areas of open space.

The scheme to be approved shall be fully implemented prior to the first occupation of the first dwelling on site and shall be subsequently maintained in accordance with a maintenance and management scheme for the lifetime of the development that shall be submitted to and be approved in writing by the Local Planning Authority prior to commencement of the development.

10. No development shall take place, including any ground works or demolition, until a Construction Method Statement (CMS) has been submitted to and been approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for the following:

- 1) construction site access details;
- 2) parking of vehicles of site operatives and visitors;
- 3) loading and unloading of plant and materials;
- 4) storage of plant and materials used in constructing the development, and;
- 5) measures to prevent the transfer of mud and debris onto the highway, and including arrangements for wheel and underbody washing facilities of vehicles.

No works shall be undertaken except as in accordance with the details to be approved pursuant to the CMS.

11. The CMS to be approved pursuant to Condition 10 shall also include reasonable arrangements for minimising inconvenience and environmental disturbance to operators and users of Mangapp Manor during the course of the works, including consideration of general hours of operation, and shall also include details of arrangements with regard to dissemination of relevant site works information to operators of both Mangapp Manor and to other nearby occupiers, both prior to and during site works.

12. No development, including any site clearance or groundworks of any kind, shall take place within the site until after written approval by the Local Planning Authority of a programme of archaeological work by an accredited archaeological contractor. The programme shall include a written scheme of investigation and the development shall be carried out in accordance with the details as approved.

### **Pre-occupancy**

13. Prior to first occupation of any dwelling, the applicant shall submit full design details to be approved in writing by the Local Planning Authority of the

proposed access as shown in principle on WSP drawing Ref: 1868-GA-12/C, dated March 2015, and of associated works, and including full details of all visibility splays and related matters. The approved details shall be implemented prior to first occupation.

14. In the event that contamination is found at any time when carrying out the approved development and such contamination was not previously identified to the Local Planning Authority, the matter must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must then be undertaken of the contamination and be submitted in writing for approval to the Local Planning Authority, and any agreed programme of action be implemented, including any necessary remediation, as required and approved in writing by the Local Planning Authority.
15. Upon the first occupation of each dwelling the occupier shall be provided with a Residential Travel Information Pack for sustainable transport, the detailed form and content of which shall have previously been submitted to and been approved in writing by the Local Planning Authority.
16. The development shall be undertaken in accordance with the terms and specifications contained within the applicant's Ecological Appraisal dated August 2014.
17. Prior to the first occupation of any dwelling, a strategy to facilitate superfast broadband for future occupants of the site shall be submitted to and be approved in writing by the Local Planning Authority. The development of the site shall be carried out in accordance with the strategy and the strategy shall be implemented in accordance with a programme as approved.

## **Other**

18. The land which is reserved for the potential development of a new local shop shall be retained for that purpose for a period of two years after the approval of the final reserved matter. If after that time development of the shop has not commenced, this land shall be made available for an alternative land use to be agreed in writing by the Local Planning Authority.

## **ANNEX B: APPEARANCES**

### **For the local planning authority:**

Timothy Leader of Counsel	Instructed by Chris Purvis, Major Applications Officer, Maldon District Council
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He called:

Gary Sung	Policy Planner
Clive Tokley	Town planning consultant
Chris Cornish	Environmental Health Officer

### **For the appellant:**

Martin Carter of Counsel	Instructed by Jack Murphy, Gladman Developments Ltd
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He called:

Simon Urquhart	Associate Director and Principal Environmental Scientist, Wardell Armstrong
Kathryn Fitzgerald	Senior Planner, Gladman Developments Ltd

### **Interested persons:**

Councillor Tania Ward	On behalf of Burnham Town Council
Andrew Stringer	On behalf of Mangapp Manor
David Lagden	Local resident

Mark Woodger, Principal Planning Officer, on behalf of the local planning authority, and Ivor Beamon, Project Manager, on behalf of the appellant, also contributed to the discussions of possible planning conditions, and to other matters of factual clarification

## **ANNEX C: DOCUMENTS**

### **LOCAL PLANNING AUTHORITY'S INITIAL PROOFS OF EVIDENCE:**

**Planning:** Clive Tokley, and summary

**Housing land supply:** Gary Sung, and summaries, and Appendices PA01-PA25

**Noise:** Chris Cornish, and Appendices CC1-CC10

### **APPELLANT'S INITIAL CORE DOCUMENTS:**

**Folder 1:** Application documents (CD 1.1-1.19)

**Folder 2:** Correspondence with local planning authority and post-application submissions (CD 2.1-2.18), consultation responses (CD 3.1-3.21), and Committee report and decision notice (CD 4.1-4.3)

**Folder 3:** Rule 6 Statement of Case and Appendices (CD 5.1-5.3)

**Folder 4:** Relevant planning re-submission documents (CD 6.1-6.30)

**Folder 5A:** Planning core documents (planning policy) (CD 7.1-7.19)

**Folder 5B:** Planning core documents (planning appeals) (CD 8.1-8.20)

**Folder 6:** Noise (CD 9.1-9.12)

**Folder 7:** Appellant submission documents (GDL1-GDL5)

### **SUBSEQUENT DOCUMENTS SUBMITTED TO THE INQUIRY 22-24 MARCH (AND ARISING FROM):**

#### **By the local planning authority:**

1. Opening statement of the Council
2. Inquiry notification documents
3. Letter from the Secretary of State for Communities and Local Government to the Chief Executive, Maldon District Council dated 6 March 2016
4. Compendium of public responses to planning application  
Ref: OUT/MAL/14/00845
5. Summary of Chris Cornish's evidence
6. Background noise analysis (various extracts)
7. Background Noise note
8. Schedule of housing sites- status of development implementation
9. BS 4142:2014

10. Noise from Pubs and Clubs Final Report, 2005, undertaken by Hepworth Acoustics on behalf of the University of Salford
11. Letter from NHS England dated 30 June 2015
12. Page 46 extract from the World Health Organisation Guidelines for Community Noise, 1999
13. Updated list of recommended conditions
14. Email dated 5 April 2016 enclosing draft noise condition, schedule of draft conditions, and policy extracts relevant to the unilateral undertaking
15. Five-Year Housing Supply update note dated June 2016 forwarded by email dated 24 June 2016

**By the appellant:**

16. Opening statement by the appellant
17. List of appearances by the appellant
18. Folder 3 of Appellant Case (CD 5.1-5.3)
19. Unilateral undertaking dated 24 March 2016
20. Scatter diagram of background data points between 1900 and 2300 hours
21. Schedule of 1 hour averages (subsequently withdrawn)
22. High Court Judgement between Cheshire East Borough Council and the Secretary of State for Communities and Local Government and Renew Land Developments Ltd dated 16 March 2016
23. Court of Appeal Judgement between Suffolk Coastal District Council and Hopkins Homes Limited and the Secretary of State for Communities and Local Government dated 17 March 2016
24. Table setting out housing supply update attached to appellant's email of 13 June

**Jointly by the local planning authority and the appellant:**

25. Tables setting out comments by both appellant and local planning authority responding to specific noise questions asked by the Inspector in relation to evidence submitted- attached to email from Council dated 17 May 2016

**By third parties:**

26. Statement from Councillor Ward
27. Email correspondence from Councillor Ward dated 24 March 2016 enclosing further third party representations
28. Plan of Mangapp Manor submitted by Mr Stringer

- 29. Letter from Kiona O'Brien of 42 Beauchamps dated 24 March 2016
- 30. Email from Kiona O'Brien of 42 Beauchamps dated 24 March 2016
- 31. Email from Jade Clark of 36 Beauchamps dated 24 March 2016
- 32. Letter from John Jolly dated 14 June 2016

**SUBSEQUENT DOCUMENTS SUBMITTED TO THE INQUIRY FOLLOWING  
ADJOURNMENT ON 27 JUNE BUT PRE-RESUMPTION ON 8 NOVEMBER:**

**By the local planning authority:**

- 33. Maldon District Council Five Year Housing Land Supply Statement 2015/16 August 2016
- 34. Maldon District Council Five Year Housing Land Supply Advisory Note August 2016
- 35. Maldon District Local Development Plan (LDP) – Update 04.10.2016 accompanying email of 4 October 2016
- 36. Chronology and narrative in relation to Condition 6 of planning permission Ref: 08/00027/FUL accompanying email of 14 October 2016
- 37. Documents relating to discharge of Condition 6 of planning permission Ref: 08/00027/FUL accompanying email of 17 October 2016 (Council Ref: FUL/MAL/08/00516)

**By the appellant:**

- 38. Photograph of previous site notice accompanying email of 4 July 2016, and of related PINS letter of 6 May 2016
- 39. Planning Proof of Evidence of Kathryn Fitzgerald
- 40. Appendices to Planning Proof of Evidence
- 41. Noise Explanatory Note for the Inspector dated 6 October 2016 from Simon Urquhart
- 42. Application for costs dated 31 October 2016

**Jointly by the local planning authority and the appellant:**

- 43. Statement of Common Ground Addendum signed and dated 29 September 2016

**By third parties:**

- 44. Emailed representation from Christine Smart dated 21 October, 2016, received via the Council



**Other:**

- 45. Photographs of Inspector's unaccompanied site visit on 1 August 2016 attached to email of 2 August 2016

**SUBSEQUENT DOCUMENTS SUBMITTED TO THE INQUIRY FOLLOWING RESUMPTION ON 8 NOVEMBER:**

**By the local planning authority:**

- 46. Email from Mark Woodger dated 7 November 2016 containing various factual updates
- 47. Burnham-on-Crouch Neighbourhood Plan Draft for Reg 16 Consultation October 2016
- 48. Closing submissions by Mr Leader

**By the appellant:**

- 49. Colour copy of Figure 4 to the June 2015 noise assessment
- 50. Local Development Plan Consultation (2014) Draft Proposals Map and Key
- 51. Examples of noise conditions
- 52. Closing submissions by Mr Carter

**Jointly by the local planning authority and the appellant:**

- 53. Illustrative plan: distances to marquee (Ref: 6046-L-120)



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.