



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
2 SEPTEMBER 2020**

Application Number	20/00459/FUL
Location	Abaco House, Foxhall Road, Southminster, Essex
Proposal	Change of use of land from agriculture to B8 storage and distribution and construction of storage building
Applicant	Mr Peter Herrington
Agent	Mr Anthony Cussen - Cussen Construction Consultants
Target Decision Date	08.09.2020
Case Officer	Annie Keen
Parish	SOUTHMINSTER
Reason for Referral to the Committee / Council	Departure from Local Plan Member Call In – Councillor A S Fluker Reason – Policies S1, E1 and E4

1. RECOMMENDATION


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

2. SITE MAP

Please see overleaf.

Abaco House, Foxhall Road, Southminster
20/00459/FUL



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	South East Area Committee
	Date:	05/08/2020
	MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is located to the south of Foxhall Road outside the settlement boundary of Southminster. Foxhall Road is predominantly rural with open fields to the north whilst farm buildings and residential dwellings are sporadically placed along the southern side facing the road.
- 3.1.2 Planning permission is sought for the change of use of the land from agricultural to B8 storage and distribution and for the erection of a B8 storage unit with a floor space of 188m², located to the west of the site. The proposed operating hours would be Monday to Friday 07:30-18:00 and Saturdays 08:00-13:00.
- 3.1.3 The proposed storage unit would measure 15.3 metres in width and 12.3 metres in depth with a maximum height of 5.3 metres. The unit would be constructed of steel sheeting and pre-cast concrete panels.

3.2 Conclusion

- 3.2.1 The proposed development is located on an area of undeveloped land and there is no policy consideration which would support the change of use in this locality. Furthermore, the development results in an unacceptable form of development into the countryside with no mitigation of harm proposed through sufficient screening or landscaping of the site. Additionally, due to noise the proposed development would impact upon the neighbouring amenity of 'Hazelville' to the east, to the detriment of the neighbouring occupiers. Therefore, the development is an unwelcome visual intrusion into the open and undeveloped countryside and the benefits of the proposal do not outweigh the harm to the character and appearance of the rural area or neighbouring occupiers.

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2019 including paragraphs:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 54 – 57 Planning conditions and obligations
- 117 – 123 Making effective use of land
- 124 – 132 Achieving well-designed places

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

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment

- H4 Effective Use of Land
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- Planning Policy Guidance (PPG)
- Maldon District Design Guide (MDDG)
- Maldon District Vehicle Parking Standards (VPS)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the NPPF require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the development plan comprises of the approved LDP.
- 5.1.2 The application site is situated outside of a defined settlement boundary and also outside of the defined Employment Land Areas, as specified within policies S8 and E1 of the LDP.
- 5.1.3 In principle, designated employment areas will be retained and protected for Class B Uses as specified and Sui Generis Uses of an employment nature, unless it can be demonstrated that there is no reasonable prospect for the site to be used for these purposes. New proposals for employment use will be directed to the designated employment areas prior to considering other sites within the District.
- 5.1.4 The nearest village to the application site is Southminster, which is approximately 1751m (1.1 miles) away from the application site and therefore it is relevant to note that policy S1 of the Local Development Plan (LDP) states “When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (NPPF) and will apply, among other things, the following key principles in policy and decision making:
- 1) Ensure a healthy and competitive local economy by providing sufficient space, flexibility and training opportunities for both existing and potential businesses in line with the needs and aspirations of the District
 - 3) Promote the effective use of land and priorities development on previously developed land and planned growth at the Garden Suburbs and Strategic Allocations;
 - 4) Support growth within the environmental limits of the District;
 - 5) Emphasise the importance of high quality design in all developments;
 - 12) Maintain the rural character of the District without compromising the identity of its individual settlements;

- 13) Minimise the need to travel and where travel is necessary, prioritise sustainable modes of transport and improve access for all in the community.
- 5.1.5 The requirement to focus strategic growth to the District's main settlements is also reiterated in Policy S2, as these areas constitute the most suitable and accessible locations in the District. It is also noted that "Strategic growth in the rural villages will be related to the settlement hierarchy, reflect the size, function and physical capacity of the settlement and will not result in unsustainable spatial patterns to the detriment of the wider area.
- 5.1.6 Support of sustainable economic growth to create jobs and prosperity is one of the central themes of the NPPF. On that basis, the provision of new employment opportunities is not objected to, one of the requirements of the NPPF is to secure the LDP's set criteria or identify strategic sites for local and inward investment to match the strategy and to meet anticipated needs over the plan period. It is noted that the approved LDP has set the need of the District and strategic sites for Employment Uses have been identified. The application site, although adjacent to an existing non-designated employment site is outside the boundaries of the identified employment land areas.
- 5.1.7 Policy E1 of the approved LDP states that 'The Council will encourage employment generating developments and investment in the District to support the long-term growth vision outlined in the Council's Economic Prosperity Strategy (EPS)'. However, it also states 'new proposals for employment uses will generally be directed to the designated employment areas prior to considering other sites within the District.' The LDP identifies a need for 11.4ha of employment land over the plan period; however, this need is addressed in full within the allocated sites.
- 5.1.8 Having regard to the location of the site it is considered that the latter part of Policy E1 is also relevant, which states that 'outside of the designated employment allocations, new provision for high quality employment space or the expansion of existing employment areas will be considered favourably subject to design, environment and infrastructure considerations.' This should be read in conjunction with policies S1 and S8 of the LDP where it stipulates that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. Outside of the defined settlement boundaries, the Garden Suburbs and Strategic Allocations, planning permission for the development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for, amongst other things, employment generating proposals, as stipulated in Policy S8(b) of the LDP.
- 5.1.9 The applicant has stated in their application form that the required change of use of the land to B8 and the construction of associated hardstanding and open-fronted storage building is not a waste management development and will not be used to store and aid the collection of waste, trade effluent waste or create further employment. However, there is no robust justification why the proposed B8 use would need to be located at this site, within the countryside, and why it could not be located within the existing settlement boundaries, employment generating areas or allocated employment sites within the LDP. Additionally, no justification has been provided as to why the storage building is required.

- 5.1.10 Whilst it is noted that supporting letters, submitted with the application, states that the site has previously been used for the storage of machinery, lorries, caravans, skips, equipment in relation to a fencing company and more recently for the storing and stacking of skips and associated lorries. However, there has been no evidence provided to substantiate these claims and there is no lawful development certificate granted for the site. It is noted the noise report submitted with the application states the use of the site is retrospective and a skip hire business currently operates from the site with up to 12 deliveries occurring per day. The application form states the business currently employs two full-time workers and the development would allow the creation of a further six full-time jobs.
- 5.1.11 An assessment of the impacts on the intrinsic character and beauty of the countryside will be considered under section 5.2.
- 5.1.12 Regard has also been had to policy S7 of the LDP which ‘seeks to support and facilitate sustainable economic development within the villages’ through a number of criteria. However, the criterion does not relate to the provision of new employment uses within the countryside. Therefore, it is not considered that this policy would provide a basis to support the principle of this development.
- 5.1.13 It is noted a consultation application was received from Essex County Council in relation to the storage of waste on the site. The consultation response noted there were no historical applications for the change of use of the land and only one building had permission to be used in relation to the storage and maintenance of machinery.

5.2 Design and Impact on the Character of the Area

- 5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.
- 5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. The NPPF states that:
- “The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people”.*
- “Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions”.*
- 5.2.3 This principle has been reflected to the approved LDP. The basis of policy D1 of the approved LDP seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of:-

- a) Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
 - b) Height, size, scale, form, massing and proportion;
 - c) Landscape setting, townscape setting and skylines;
 - d) Layout, orientation, and density;
 - e) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
- 5.2.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG.
- 5.2.5 The application site lies outside of any defined development boundary. According to policies S1 and S8 of the LDP, the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The policies stipulate that outside of the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the development is for proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.
- 5.2.6 The application site is located to the south of Foxhall Road within an area characterised with dwellings and farms sporadically placed, predominantly along the southern side of Foxhall Road. The area to the south of the development site is characterised by open countryside. The proposed development, subject of the application site, would change the use of the existing land to a B8 storage and distribution along with an associated storage building and hardstanding. This would demonstrably and detrimentally impact on the character and appearance of the area.
- 5.2.7 The proposed storage unit would have a mono-pitched roof with walls of mixed materials to the north, south and west and an open frontage. A hardstanding is proposed internally and externally to the building. Whilst the development would be set back from the streetscene and located behind other buildings on the site, the development due to its scale and design would form a dominant structure within the site that would be visible from the public realm. This would further exacerbate the harm highlighted above.
- 5.2.8 The proposed storage building would be located further south of the existing buildings on site and that of the neighbouring buildings to the east and west and therefore would not form part of the existing built form on the site. Due to this, it is considered the proposed building would be situated within open countryside, to the detriment of the character and appearance of the countryside.
- 5.2.9 The proposed materials used in the construction of the building would be a galvanised steel frame, steel roof sheeting with the lower sections of walling constructed of pre-cast concrete blocks and the upper sections constructed of green powder-coated steel sheeting. The internal flooring would be concrete whilst the external hardstanding would be constructed of compacted road planings. It is considered the proposed materials would be a visually intrusive addition to the locality and within the wider countryside.

- 5.2.10 Additionally, it is noted no soft landscaping has been proposed to mitigate the impact of the development on the countryside and the locality.
- 5.2.11 Furthermore, having regard to the findings of section 5.1 it is considered that the employment benefits arising from the development would not outweigh the resultant harm caused by the development to the intrinsic character and beauty of the countryside. As such, the development would not comply with policies S1, S8 and D1 of the LDP and guidance contained within the NPPF.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 in the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG. Similarly, policy D2 of the approved LDP requires all development to minimize all forms of possible pollution including air, land, water, odour, noise and light. Any detrimental impacts and potential risks to the human and natural environment will need to be adequately addressed by appropriate avoidance, alleviation and mitigation measures.
- 5.3.2 Knight House situated to the north west of the site would be located 133 metres from the proposed development and therefore the proposal would not detrimentally impact upon the occupiers of this dwelling.
- 5.3.3 The proposed development would be situated 127 metres from the dwelling to the north 'Resthaven' and therefore would not detrimentally impact upon the occupiers by way of overlooking, overshadowing or being unduly overbearing.
- 5.3.4 The proposed storage building would be situated 28.8 metres from the boundary to the east, and 56.3 metres from the neighbouring dwelling on that site 'Hazelville'. Due to the separation distance it is considered the proposed building would not detrimentally impact upon the neighbouring occupiers by way of overlooking or overshadowing.
- 5.3.5 A noise report submitted with the application states there is '*a possibility of minor adverse impact*' to the nearest residential dwelling, 'Hazelville', during day time hours with an increased level of 13dB inside the dwelling with the windows partially open. The report considers this increase to be minor and that the amenity of the neighbouring occupiers would not be significantly affected, however the report suggests mitigation should be used to limit noise along the eastern boundary. report suggests the use of a solid screen approximately 2.4 metres in height and 50 metres in length or storage containers to be positioned along the eastern boundary to limit noise from the site. However, due to the site being located within the countryside, it is considered this would be an alien feature and would not be a suitable means of mitigation and therefore, would not be able to overcome the harm to the neighbouring residents.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T1 of the approved LDP seeks to create additional sustainable transport opportunities. Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide sufficient parking facilities

having regard to the Council's adopted parking standards. The Council's adopted Vehicle Parking Standards (VPS) SPD contains the parking standards which are expressed as minimum standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.

- 5.4.2 The adopted VPS state that 1 vehicle parking space should be provided per 150m² of warehouse or open-air storage, 1 cycle space per 500m² for staff, 1 cycle space per 1000m² for visitors and 1 lorry space per 200m² for operational purposes.
- 5.4.3 The proposed storage building would be 188m² and supporting information states there are 2 lorries and a small truck stored at the site, additional information provided in the application form states there are currently two existing employees and six further proposed employees. Based on the above standards, it is considered only two parking spaces would be required. The plans submitted with the application show there would be adequate space within the site to allow for the required parking spaces and any further additional spaces needed.
- 5.4.4 Access to the site is to the north of the proposed development is served by an existing access on to Foxhall Road, which is used by other users of the site. Due to this no objections are raised regarding site access.
- 5.4.5 Due to this the proposed development would accord with policies D1 and T2 of the LDP and the Maldon District Vehicle Parking Standards SPD.

5.5 Other Material Considerations

- 5.5.1 A consultation response from Environmental Health raised concerns regarding the submitted noise assessment as the consultation response stated it was unclear where all of the noise assessments were taken from. It is also noted there were no comparative readings taken from the site such as at weekends and some noise characteristics have not been assessed and therefore the consultation response states the report does not represent a subjective assessment of what is actually heard during the loading and unloading operation. It is also pointed out that the report focuses on the nearest dwelling to the site but does not consider other neighbouring dwellings. Environmental Health therefore consider the noise report to be inadequate and concerns regarding dust management have not been addressed.
- 5.5.2 A response from the Sound Specialist states the data represents a worst-case scenario and noise readings were taken from outside the neighbouring property as there was no direct access to the site and it is unreasonable to consider the area to the east of the neighbouring property as being used as amenity space. However, a response from Environmental Health states that it is not unreasonable to assess noise levels at the boundary of the dwelling as residential use extends to the whole of the site. The Sound Specialist also states the assessment does not conclude that the development would result in a minor adverse impact on neighbouring occupiers, however notes that the numerical assessment does suggest this and therefore boundary treatments are recommended to mitigate any impact. Further correspondence from Environmental

Health states aspects of the report regarding harm to neighbouring amenity need to be addressed before suitable mitigation measures can be assessed.

6. ANY RELEVANT SITE HISTORY

Application Number	Description	Decision
03/00491/LDE	Use of workshop building for manufacturing, repairs and storage of equipment, machinery and other materials. Use of land for ancillary storage up to a height of 3 metres and parking of vehicles associated with the principal use of the site.	Approved
19/01210/ESS	Waste transfer station for the sorting of up to 6,000 tonnes of waste per annum, including the erection of a sheltered area for sorting of skips	No objection

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Southminster Parish Council	Support	Noted

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Environment Agency	No response	N/A
County Highways	No response	N/A

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	Object – inadequate sound report does not make clear where noise levels were measured from, excludes some surrounding dwellings without explanation and that the character of the proposed operation has not been fully	Comments noted

Name of Internal Consultee	Comment	Officer Response
	considered. Concerns regarding dust management have not been addressed.	
Environmental Health	<p>Further comments have been submitted in response to the Sound Specialists comments below: The report is based on two deliveries per hour, is this worst-case scenario? If adequate assessment cannot be made using BS4142 then other assessments will be used to protect amenity. It is not unreasonable to calculate to the boundary rather than the property; residential use extends to the entire external area. The use of Single Event Level measurements could be considered. The report does not represent a subjective assessment of what is heard during loading and unloading, and this has not been addressed. There are still areas of the report that need addressing before further comment at mitigation measures are suitable.</p>	Comments noted

7.4 Representations received from Interested Parties

7.4.1 1 letter was received **commenting** on the application and summarised as set out in the table below:

Comment	Officer Response
<p>Additional comments have been received from the Agents' Sound Specialist in response to a consultation from Environmental Health and are summarised below:</p> <p>Background data was recorded on-site but without significant operations occurring, it is an alternative site as there is no direct access from the site to the neighbouring property. A first floor position was used to replicate environmental conditions that would be comparable from overlooking windows of Abaco House and for security. The data collected represents a worst-case scenario during times of operation. The property considered in the report is closest to the site, so</p>	Comments noted, please see section 5.6 and 7.3

Comment	Officer Response
<p>the impact assessment looks to a worst-case, it might be unreasonable to consider that area as dedicated external amenity as it appears to be to the east of the property. The sound levels might be higher to the west but that is a track road and a strip of land, we seek to understand the impacts on residential land use with the instatement of mitigation. Loading and unloading would not occur constantly throughout the day, therefore it is appropriate to consider a 1-hour day time interval.</p> <p>BS4142 does not require entire daytime periods but those of typical times of operation.</p> <p>The environmental sound climate included road noise and other commercial activity on the site.</p> <p>The assessment does not conclude a minor adverse impact, the numerical assessment suggests this.</p> <p>Context is relevant with the impact assessment being low and worst-case only having a minor adverse effect.</p> <p>The report is recommending a scheme of boundary treatment to minimise impact, but the site has operated for some time without complaint.</p> <p>Dust mitigation is outside the scope of noise impact assessments.</p>	

8. REASONS FOR REFUSAL

- 1 The development is located outside of a defined settlement boundary and outside of the employment sites identified within the LDP. No justification has been provided as to why the development is required outside of these areas. Furthermore, as a result of the scale, design and position of the proposed building on the site, the development would detrimentally impact on the character and appearance of the countryside and locality, resulting in an unwelcome visual intrusion into the countryside outside of a defined settlement boundary and has failed to be sufficiently mitigated against through the use of soft landscaping. Therefore, the development results in demonstrable harm to the character and appearance of the site and the intrinsic character and beauty of the countryside contrary to policies, S1, S8, D1 and E1 of the LDP, guidance contained within the NPPF and the Maldon District Design Guide.

- 2 Insufficient information has been provided, to the satisfaction of the Local Planning Authority, to confirm that the proposed development would not have an undue impact, due to the potential noise and disturbance, upon the amenity of the neighbouring occupiers. The proposed development is therefore contrary to policy D1 and D2 of the LDP, guidance contained within the NPPF and the Maldon District Design Guide.