



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
6 DECEMBER 2023**

Application Number	23/00103/COU
Location	Building at junction of Braxted Park Road with Maldon Road, near Tiptree, CO5 0QA
Proposal	Application for change of use of existing agricultural barn to farm shop and change of use of existing farm shop to cafe, resurfacing of existing car park commensurate with increased floor space.
Applicant	Mr J. Purdy
Agent	Mrs Alice Quinn of Smart Planning Limited
Target Decision Date	31.03.2023
Case Officer	Fiona Bradley
Parish	TOLLESHUNT MAJOR
Reason for Referral to the Committee / Council	Member Call in by Councillor J V Keyes with regard to Policies S1, S2, D1, H4, E1 and E2

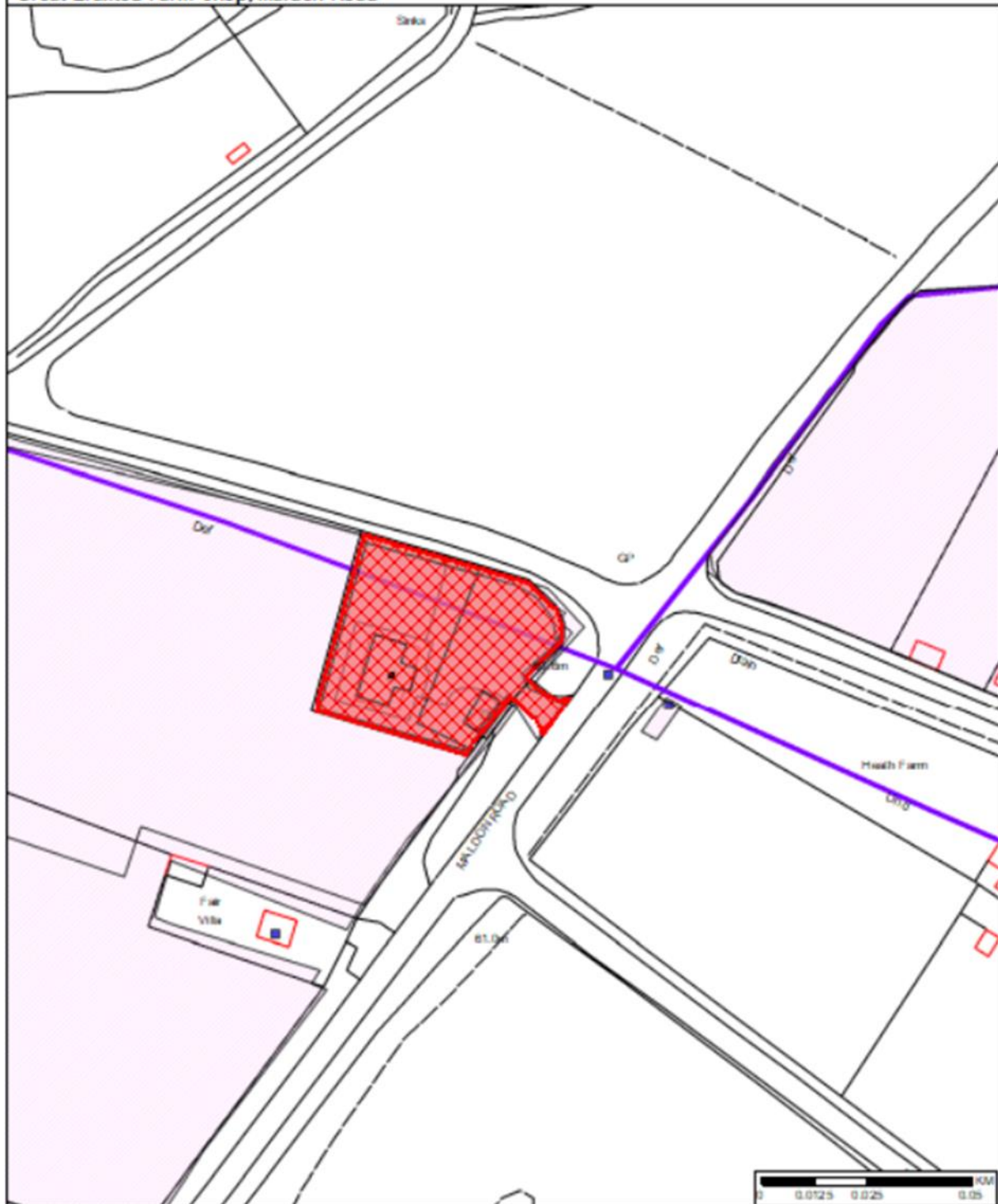
1. RECOMMENDATION

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

2. SITE MAP

Please see below.

Application reference 23/00103/COU
Great Braxted Farm Shop, Maldon Road



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Maldon District Council 100018588 2014



MALDON DISTRICT
COUNCIL

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Scale: 1:1,250

Organisation: Maldon District Council

Department: Department

Comments: Not Set

Date: 06/06/2023

MSA Number: 100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

Site description

- 3.1.1 The site fronts onto Maldon Road, part of the B1022 which is a route between Maldon to the southwest and Colchester to the northeast. The site is located between Great Braxted to the southwest and Tiptree to the northeast.
- 3.1.2 The site is adjacent to the junction of Maldon Road with Braxted Park Road and Grove Farm Road. Braxted Park Road forms the northern boundary of the site with vehicular access to the site on the western side of Maldon Road. The site is approximately 44m wide by 40m deep.
- 3.1.3 The site is known as Great Braxted Farm Shop and includes two existing buildings and a car parking area. The smaller building comprises the farm shop which sells flowers, fruit, vegetables, meat, pies, bread, cakes, fish and other shelled sea food, pickles and jams and other sundries are sold. The farm shop building measures 10.4m long by 9m wide, following the building of an extension which effectively doubled its size, which was granted planning permission in 2020. The larger building, the barn, was constructed over a period of time and completed in 2012. The building is currently vacant.
- 3.1.4 The site is outside any Settlement Boundary. Land to the north, on the far side of Braxted Park Road, is part of the Tiptree Heath Site of Special Scientific Interest.

Description of proposal

- 3.1.5 The proposal is for a change of use of a barn to the rear of the site to farm shop, it is proposed that the existing farm shop on the site would move into this building. In addition to the retail floorspace would include toilets and a kitchen area. The proposal also includes the change of use of the existing farm shop building to a café use comprising a dining area, kitchen and accessible toilet.
- 3.1.6 The car parking area would be extended deeper into the site to the side of the barn. This element of the proposal is retrospective as the development has been undertaken. The extended parking area would be block paved, to match the existing parking area. Two EV charging points are shown on the plans. The application states that the number of parking spaces would be increased from 6 spaces to 26 spaces.
- 3.1.7 The café building would have a gross internal floorspace 89 sq m. The retail use of the barn would be on two floors with a gross internal floorspace of 283 sq m.
- 3.1.8 Existing employees consist of 2 full-time and 3 part-time, a total full-time equivalent of 3.2 employees. Proposed employees would consist of 4 full-time and 4 part-time, a total full-time equivalent of 5.6 employees.

3.2 Conclusion

- 3.2.1 The proposed development includes use of an existing building as a café, which is classed as a town centre use, outside of an existing town, village or located employment area. It has also not been demonstrated that there is a functional need for the use in this rural location, and that it could not have been located in an existing town, village or employment. In addition, the scale and nature of the proposed farm shop is not appropriate in this rural location.

- 3.2.2 The proposal would fail to provide sufficient on-site parking and would therefore likely cause detriment to the free flow of traffic and highways safety.
- 3.2.3 Furthermore, the extent and nature of the car parking surface would create a form development which would be visually unacceptable and materially detrimental to the character of this site which is within a rural setting.
- 3.2.4 It is therefore recommended that planning permission is refused.

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2021 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
- 54-58 Planning Conditions and Obligations
- 81-82 Building a strong, competitive economy
- 84-85 Supporting a prosperous rural economy
- 104-113 Promoting sustainable transport
- 119-123 Making effective use of land
- 126-136 Achieving well-designed places
- 174-188 Conserving and enhancing the natural environment

4.2 Maldon District Local Development Plan (2017)

- S1 Sustainable Development
- S7 Prosperous Rural Communities
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- E2 Retail Provision
- E3 Community Services and Facilities
- E4 Agricultural and Rural Diversification
- E5 Tourism
- N2 Natural Environment, Geodiversity and Biodiversity
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- Vehicle Parking Standards (2018)
- National Planning Policy Guidance (NPPG)
- Maldon District Design Guide (MDDG) (2017)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 The Council is required to determine planning applications in accordance with its adopted Development Plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004), Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990)) and through

Government policy at paragraph 47 of the National Planning Policy Framework (NPPF).

- 5.1.2 Policies S1, S2 and S8 of the approved Maldon District Local Development Plan (LDP) seek to support sustainable developments within the defined settlement boundaries. This is to ensure that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. It is clearly stated that outside of the defined settlement boundaries, Garden Suburbs and Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon.
- 5.1.3 The application site is located outside of any defined settlement boundary and is therefore within open countryside. Policy S8 requires the countryside to be *“protected for its landscape, natural resources and ecological value as well as its intrinsic beauty”*. The Policy goes on to state that, *“development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for...b) employment generating proposals (in accordance with Policy E1)...c) Community services and facilities to meet local need (in accordance with E3)... f) rural diversification, recreation and tourism proposals (in accordance with Policies E4 and E5”*.
- 5.1.4 Policy E1, referred to in Policy S8, seeks to encourage employment generating uses which fall under the old uses class of B1, B2 and B8 uses. Whilst the proposed development would provide for approximately 6 full-time and 4 part-time jobs, the uses are not employment generating as such.
- 5.1.5 Policy E2 of the LDP is concerned with retail provision. The policy essentially seeks to direct retail and other town centre uses to existing town centres. Part of the text of the policy states *“Except where already the subject of an extant planning consent for town centre uses of similar scale and function, proposals for town centre uses outside of the Town Centre Areas will be subject to sequential testing in accordance with national policy”*. The principle of retail provision at the site has been established by planning permission 20/00984/FUL, for which the development was described as “Extension to farm shop”. The 2020 planning permission related to land within the front part of the current application site i.e. the existing farm shop not the barn to the rear.
- 5.1.6 The text of Policy E2 continues by referring to applications, including alterations or to vary or remove conditions in respect of the range of goods sold, in out-of-centre locations being required to submit an impact assessment where floorspace thresholds are exceeded. The lower of the two thresholds, 1,000 sq m gross, is relevant for this application. The increase in floorspace in this case would be 283 sq m. Given that a relevant threshold has not been exceeded, this part of the text of Policy E2 is satisfied.
- 5.1.7 Policy E3 seeks to retain and enhance the provision of community services and facilities in the District, particularly where they are essential to the local community. The supporting text to this policy includes local shops to fall within the definition of community services and facilities. The retention and enhancement of the farm shop would be in accordance with this policy.
- 5.1.8 The change of the barn to retail space is considered relevant in the second part of Policy E4 which refers to how the Council will support the change of use of existing rural buildings to other employment generation uses if it can be demonstrated that six criteria are met. These will be addressed in turn below.

- 5.1.9 The first criterion is that there is a justifiable and functional need for the proposal. The application states that the farm shop has gradually developed and expanded since first opening and is now a profitable business operated by the current manager with many years experience in the fruit and vegetable trade and who started trading at the shop in 2020. The manager is keen to expand and develop this sustainable business here in promoting local and fresh produce and additionally provide a local café again serving fresh local produce to customers. Whilst the farm shop is currently a profitable business, the manager wishes to improve on the existing farm shop facilities and run a café from the site which would diversify the current commercial use. Whilst this might be desirable for the manager, it is considered that there is no justifiable and functional need for either the expansion of the farm shop or the proposed café in this countryside location. On this basis the proposal does not meet the first criterion.
- 5.1.10 The second criterion is that the change of use would contribute to the viability of the agricultural business as a whole. The site location plan shows that the site is part of a land holding which includes other land, shown by a blue line, which is in agricultural use. However, it is understood from the Planning Support Statement submitted that the manager of the farm shop is not the applicant, and there is no evidence presented to demonstrate that the farm shop or café would “*contribute to the viability of the agricultural business as a whole*”.
- 5.1.11 To further support this argument, the existing barn is currently vacant. It is noted in the submitted Planning Support Statement at paragraph 4.1 that “*Prior Approval for conversion of the barn to a Flexible Commercial Use was refused on 19 April 2021 (reference 21/00206/COUPA). This was for a purely technical reason related to the degree of agricultural use*”. This is not correct. The Officer’s report states at paragraph. 5.2.3 that:
- “Limited supporting information has been provided to demonstrate on the balance of probabilities that the building the subject of this application has been used solely for agricultural purposes. Firstly, whilst the external materials of the building are of a typical agricultural nature, the design of the barn; including the large glazed panels with modest glazed doors to the front and rear are not reflective of an agricultural building. At the time of the Officers site visit the building was being used for miscellaneous storage. However, there was no further evidence on site of the use of the building for agricultural purposes. Furthermore, land associated with the building is considered to be well ‘manicured’ and is separated from open fields by a post and rail fence; clearly denoted from the rest of the land as shown within the blue line boundary”.*
- 5.1.12 The decision notice stated, “*It has not been demonstrated that the subject building has been used solely for an agricultural use as part of an established unit*”. On the most recent visit to the site, Officers can confirm that the building is not in agricultural use.
- 5.1.13 Taking the above into consideration, the proposal does not meet the second criterion.
- 5.1.14 The third criterion is concerned with respecting the building’s historic or architectural significance which is not of relevance in this case
- 5.1.15 The fourth criterion is that the change of use should not negatively impact on wildlife or the natural environment. This is discussed below. The proposal is acceptable on these grounds.

- 5.1.16 The fifth criterion is that no storage of raw materials or finished goods should take place outside the building if it would be detrimental to the visual amenity of the area. The existing farm shop does display goods externally. This could be restricted by way of a condition if considered necessary.
- 5.1.17 The final criterion is that the use of the building should not lead to dispersal of activity on such a scale as to prejudice the vitality and viability of existing businesses in nearby towns and villages. The farm shop use has existed for some 25 years on the site, albeit that the use began on a less formal basis and at a much smaller scale than is proposed. The expansion of the farm shop and addition of a café are not considered to be of a scale that would prejudice the vitality and viability of existing business in nearby towns and businesses.
- 5.1.18 Overall, the proposal does not accord with Policy E4 as there is no justifiable and functional need for the development and as it does not contribute to the viability of the agricultural business as a whole.
- 5.1.19 Policy E4 of the LDP is relevant as it refers to agricultural and rural diversification, particularly the change of use of existing rural buildings and the development of new buildings or activities associated with agricultural or other land-based rural business. This is supported by paragraph 84 of the NPPF which states that planning decisions should enable *“(a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings”* and *“(c) sustainable rural tourism and leisure developments which respect the character of the countryside”* and *“(d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings public houses and places of worship”*.
- 5.1.20 In regard to Policy E5, in a report to the Council (dated 3 November 2023) concern was raised by Officers regarding the conformity of Policy E5 with the NPPF. The report states, *“The policy is negatively worded, in that the first clause of the policy states there should be an identified need for the provision proposed, yet, the Council has not set out what evidence it would require to demonstrate need and it has no needs assessment of its own”*. Accordingly, Policy E5 is afforded lesser weight.
- 5.1.21 The scale of the development proposed in this countryside location is of concern. The existing farm shop retail floor area is 69.82 sq m in area (excluding storage areas). The proposed farm shop in the barn would provide approximately 202.35 sqm in area (excluding circulation space, kitchen and WC). The retail floor space proposed is almost three times bigger than the current farm shop, plus it has additional amenities including 3 toilets, kitchen and circulation space. In the absence of any justifiable and functional need for the retail use it is not supported in this countryside location.
- 5.1.22 The proposed café use would be provided for in the building currently used by the farm shop. Although, the Planning Support Statement states there will be a *“synergy between the café and farm shop uses as customers may shop and visit and enjoy the cafe within the same trip”* this does not demonstrate a need for the café. Nor does it acknowledge the additional trips generated by the increased size of the retail use. Accordingly, there is no justification or functional need for the cafe within this countryside location.
- 5.1.23 Whilst the proposal would provide approximately 6 full-time and 4 part-time jobs, this is considered to be a limited benefit which does not outweigh the harm caused. The

principle of development, therefore, has been found to be unacceptable due to the scale and nature of uses proposed in this countryside location.

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 No additional buildings or extensions are proposed, and the external elevations will remain much the same with black weatherboard finish and clay tile roof.
- 5.2.3 However, the application has a retrospective element regarding extensive block paving which has been laid in the car park. The submitted Proposed Site Plan shows that more than half the area of the site would be taken up by block paving which is out of character within the rural environment. The hard surfacing would be visible from outside the site through the vehicular access. This expanse of block paving is considered unacceptable in visual terms as it does not protect the intrinsic beauty of the countryside. This element of the application is considered unacceptable and contrary to Policies S8 and D1 of the LDP.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policy D1 of 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 (2017).
- 5.3.2 There are no residential dwellings close to the application site, the closest dwelling to the proposed development is Fair Villa nearly 60m to the south.
- 5.3.3 Environmental Health was consulted on the application and did not raise an objection to the proposal. However, a condition was recommended to ensure no external illumination is installed without details first being submitted and approved.
- 5.3.4 The proposal is considered acceptable with regard to residential amenity subject to conditions as suggested by Environmental Health.

5.4 Access, Parking and Highway Safety

- 5.4.1 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. Similarly, policy D1 of the approved LDP (2017) 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 proposal provides for 26 parking spaces which have already been provided. It is noted the works to resurface the car park and extend it further into the site have already been carried out. Paragraph 4.6.4 of the Vehicle Parking Standards SPD states that for mixed use schemes, it is necessary to calculate the amount of parking required for each element of the scheme. For retail that standard is 1 space per 5 sq m. The retail floorspace proposed is 283 sq m resulting in a parking requirement 14 car parking spaces. The café floorspace proposed is 89 sq m resulting in a parking

requirement of 18 car parking spaces. The proposals would therefore require 32 car parking spaces in total. In this case there is a shortfall of 6 spaces.

- 5.4.3 The proposal provides two disabled parking spaces and two EV charging points are proposed within the car park.
- 5.4.4 The local highway authority has been consulted and have stated the application has been fully considered and a site visit undertaken. They note the proposal would not alter the existing access arrangements to the local highway network and includes an enlarged car park. In summary the impact from the proposal is acceptable and it is not contrary to policies of the Highways Authority's Development management Policies February 2011: DM1 Safety, Efficiency and Capacity; DM2-4 Road Hierarchy; DM8: Parking Standards and DM9: Accessibility.
- 5.4.5 Notwithstanding the Highways Authority's response, the purpose of the Council's Vehicle Parking Standards (at paragraph 4.6.1) is to "*ensure that the operation of the development does not negatively impact on the surrounding road network or result in on-street parking*". There is no provision for on-street parking in the surrounding area due to the site's countryside location and overspill parking on the verges should be avoided. The shortfall of parking spaces is therefore of concern due to the potential for overspill and indiscriminate off-site parking caused by insufficient on-site parking provision. This may prejudice the safety of users of the highway or the passage of utility and emergency vehicles.
- 5.4.6 No provision is made for cycle parking within the site however there is sufficient space on the site for this to be provided. This could be covered through an appropriately worded condition if the application was considered to be acceptable.
- 5.4.7 The proposal is considered unacceptable with regard to Policy T2 of the LDP 2017.

5.5 Biodiversity

- 5.5.1 Policy N2 states that all development should seek to deliver net biodiversity gain where possible. The policy also states that any development which could have an adverse effect on sites with designated features, priority habitats and/or protected or priority species, either individually or cumulatively, will require an assessment as required by the relevant legislation or national planning guidance.
- 5.5.2 Place Services, Ecology was consulted on the application and a of a holding objection was received due to insufficient ecological information on European Protected Species (bats). A Preliminary Bat Roost Assessment was subsequently submitted, and Ecology was re-consulted. The latest written response from Ecology states that there is no objection subject to securing biodiversity mitigation and enhancement measures through conditions.
- 5.5.3 Subject to a condition to ensure the implementation of a biodiversity enhancement strategy, the proposals are considered acceptable with regard to Policy N2.

5.6 Other matters

- 5.6.1 Environmental Health requested conditions requiring details of surface water drainage to be submitted and for no external illumination to be installed without the agreement of the local planning authority. If the application were to be approved these conditions would be considered necessary to prevent potential water and light pollution.

6. ANY RELEVANT SITE HISTORY

- **05/00655/AGR** – Construction of agricultural barn – Application closed 19.07.2005
- **05/01171/AGR** – Proposed barn – Prior approval required 28.10.2005
- **12/00438/LDE** - Claim for a Certificate of Lawfulness: Completion of a partially constructed agricultural barn – Lawful 27.06.2012
- **12/00845/FUL** - Re-building of farm shop following fire – Approved 15.11.2012
- **20/00984/FUL** - Extension to farm shop – Approved 25.11.2020
- **21/00206/COUPA** – Prior notification for the change of use of an agricultural building to a flexible business use. Refused 19.04.2021
- **21/00793/FUL** - Change of use of existing agricultural barn to retail (use class A1). Resurfacing of existing car park and extension of car park. – Withdrawn 15.09.2021

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Tolleshunt Major Parish Council	<p>The Parish Council objects to this application for the following reasons: The amount of extra traffic that this proposal would undoubtedly generate, with resulting road safety issues. The site lies on the corner of a complex and hazardous 3 way junction (Maldon Road which is very busy main road, and Braxted Park Road which is the main route to the A12) with two further junctions within 100 metres on the other side of the Maldon Road. Access into and out of the site is very close to the main junction and there are already road safety issues here without any extra increase in traffic turning into the proposed cafe. Furthermore there are two bus stops on either side of the road and immediately in front of the site, where the buses have to stop on the road itself. This all results in a very busy and potentially</p>	<p>The points raised are addressed as follows:</p> <ul style="list-style-type: none"> • The Highway Authority has raised no objection to the proposed development in terms of highway safety. • There is no additional signage proposed with this application. • The need for the development is discussed in section 5.1 of this report. • The point about previous non-compliance with conditions is noted however the LPA must consider the application before it only.

Name of Parish / Town Council	Comment	Officer Response
	<p>dangerous area for road users.</p> <p>The Council has already raised concerns about the amount of existing signage at the farm shop, which causes further safety issues due to lack of visibility for motorists. This problem will only increase if signage for the cafe is added.</p> <p>There is also concern that the proposal will not comply with Policy E2 of the Maldon District Local Plan which states that “additional retail need should be accommodated in town centres”. Policy E4f also states that “the use of the building would not lead to dispersal of activity on such a scale as to prejudice the vitality and viability of existing businesses in nearby towns and villages.” It should be noted that there is already an established cafe within a mile of the site (Forget Me Not cafe at Tom’s Farm Shop).</p> <p>There are non-compliance issues with some of the conditions of the previously approved application for the farm shop at this site (FUL/MAL/20/00984), including the failure to remove containers within one month of the completion of the approved development (condition 5), and the operating of a cafe bar serving drinks and hot food.</p> <p>The Parish Council asks that the application is refused.</p>	

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Highways Authority	From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority	Noted.

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection. Conditions suggested regarding surface water drainage and no external illumination.	Noted.
Ecology	No objection subject to securing biodiversity mitigation and enhancement measures	Noted.

7.4 Representations received from Interested Parties

7.4.1 No representations have been received for the application.

8. PROPOSED REASONS FOR REFUSAL

1. The development is for a cafe and an enlarged retail use, which are classed as 'town centre uses', outside of an existing town, village or employment area. It has not been demonstrated that there is a justifiable and functional need for the café use or for the increased scale of the retail use in this countryside location, outside of any settlement boundary. The scale and nature of the proposed uses fail to protect and enhance the character of this rural location through this inappropriate development. Therefore, the development would be contrary to Policies S1, S8 and E5 of the approved Maldon District Local Development Plan and the provisions of the NPPF.
2. The proposed development, by reason of its failure to provide adequate on-site car parking provision, would be detrimental to public amenity and the convenience of highway users caused by overspill and indiscriminate parking. Intensification of vehicular activity in the setting due to the site indiscriminate parking and may also prejudice the safety of users of the highway or the passage of utility and emergency vehicles. As such the proposal is contrary to Policy S8, D1 and T2 of the approved Maldon District Local Development Plan, the Vehicle Parking Standards SPD of the local planning authority and the provisions of the NPPF especially at paragraphs 130 a) and 134.
3. The extent of block paving to the parking area would represent an excessive area of hard surfacing to this site which is set in a rural area and which thereby takes its character from its rural setting. The proposed development would fail to contribute to or enhance the local environment and fail to recognise the intrinsic character and beauty of the countryside by the introduction of an excessive extent of hard surfacing in a form which does not respect the character of the setting of the site. As such the

proposal is contrary to Policies S8 and D1 of the approved Maldon District Local Development Plan and the provisions of the National Planning Policy Framework.