



**REPORT of
ASSISTANT DIRECTOR: PLANNING AND IMPLEMENTATION**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
4 DECEMBER 2024**

Application Number	24/00690/VAR
Location	ROE Environmental Limited, Offices, Fleet Farm, Fambridge Road, North Fambridge
Proposal	Variation of Conditions 1 and 2 on approved planning permission FUL/MAL/09/00335 (which varied Conditions 1 and 2 imposed upon planning FUL/MAL/04/01288) to allow parking of additional lorries on the site, bringing the total number to 17 lorries.
Applicant	Sarah Roe - R J Roe & Sons Ltd
Agent	Mr Ian Briggs - Landesign
Target Decision Date	6 December 2024 (extension of time)
Case Officer	Fiona Bradley
Parish	NORTH FAMBRIDGE
Reason for Referral to the Committee / Council	Previous Committee Decision

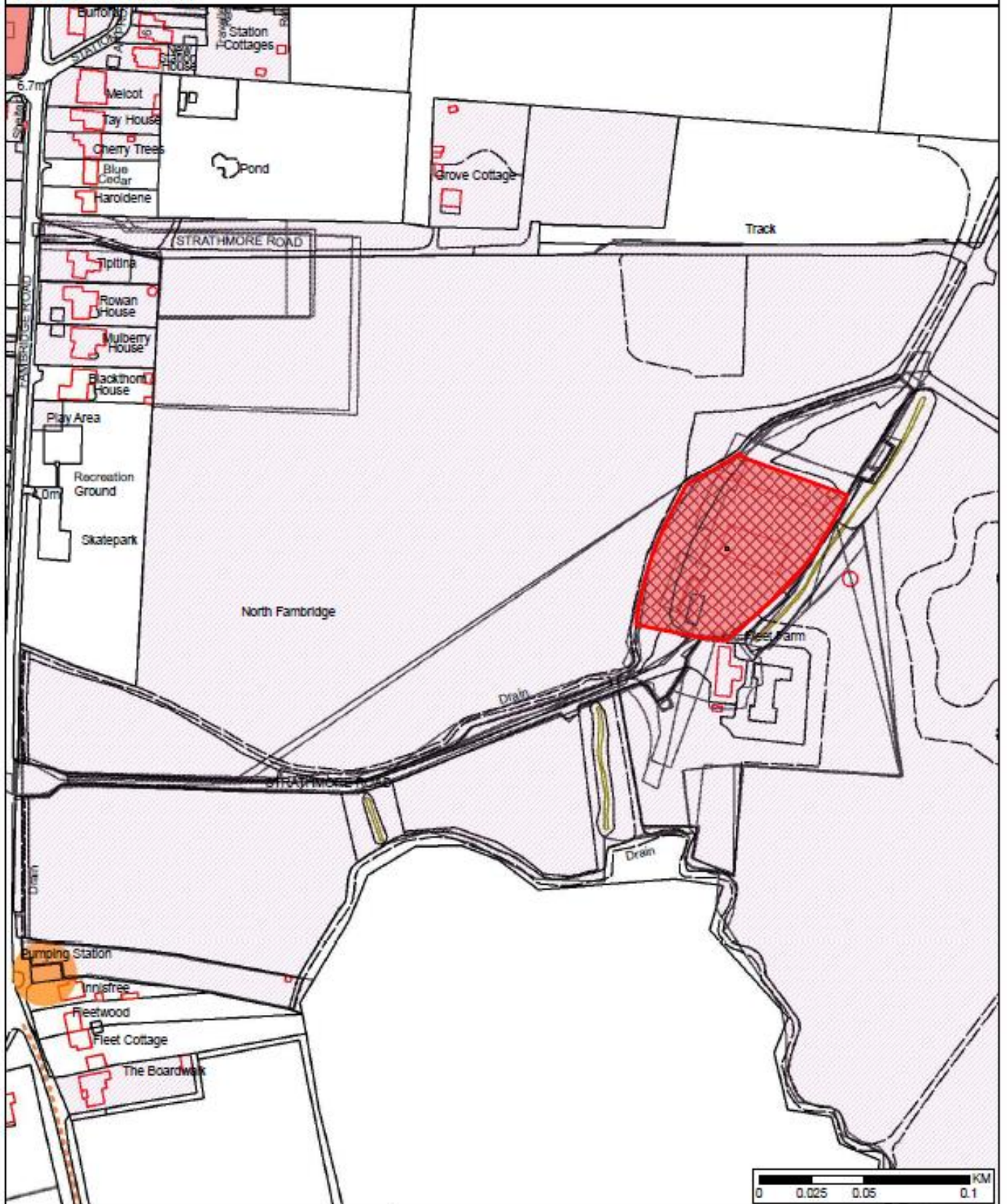
1. RECOMMENDATION

APPROVE subject to the conditions (as detailed in Section 8 of this report).

2. SITE MAP

Please see below.

Fleet Farm, Fambridge Road, North Fambridge North Western Area



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Maldon District Council 100018588 2014



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Scale: 1:2,500

Organisation: Maldon District Council

Department: Department

Comments: Not Set

Date: 13/11/2024

MSA Number: 100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

Site description

- 3.1.1 The application site is known as Fleet Farm in North Fambridge and is located to the east of the village. The site is outside the settlement boundary of North Fambridge.
- 3.1.2 The site comprises two large barns and a porta-cabin surrounded by an extensive area of hardstanding. Surrounding the site are 2 metre high banks with vegetation. The site is served by an existing access from Fambridge Road, opposite Hurndall Avenue. Immediately to the south of the site is Fleet Farm dwelling, within the blue line shown on the site plan.

Background

- 3.1.3 The background to this application dates back to a 2002 application, 02/00646/FUL, which granted permission for 'Use of land and building for drainage contracting business, parking of 10 no. lorries and retention of existing portacabins'. A subsequent application, 04/01288/FUL, was granted to provide an 'Amendment of condition No. 3 imposed upon planning permission: FUL/MAL/02/0646 to provide two additional lorry parking spaces'. Taking the total number of lorries to 12. A further application, 09/00335/FUL, was granted to provide an 'Amendment of condition No. 3 imposed upon planning permission FUL/MAL/02/0646 to provide three additional lorry parking spaces' in association with the drainage contracting business. This resulted in the increase of the total number of lorries on site to 15.

Description of proposal

- 3.1.4 This application seeks the variation of conditions 1 and 2 of the 2009 permission, 09/00335/FUL, to allow parking of additional lorries on the site, bringing the total to 17 lorries.
- 3.1.5 Condition 1 of 09/00335/FUL states:

The use of the site as granted under planning permission FUL/MAL/04/01288 shall ensure solely for the operation of a maximum of 15 No. commercial vehicles from the site which shall be used solely in connection with a drainage contractors business.

REASON

The site lies outside any area intended for commercial uses and permission is only granted because of the particular circumstances of the present case, and in order to protect the amenities of the rural area, in accordance with policies S2, CC6 and CC7 of the adopted Maldon District Replacement Local Plan.

- 3.1.6 It is proposed that the wording of the varied condition could be as follows:

The use of the site as granted under planning permission FUL/MCL/09/00335 shall be restricted for the operation of a maximum number of 17 No. commercial vehicles from the site, which shall be used solely in connection with the drainage contractors' business.

3.1.7 Condition 2 of 09/00335/FUL states:

The only vehicles to be maintained at the site shall be the 15 No. commercial vehicles as detailed within Condition 1 above and no others.

REASON In the interests of local and residential amenity in accordance with policy BE1 of the adopted Maldon District Replacement Local Plan.

3.1.8 It is proposed that the wording of the varied condition could be as follows:

The only vehicles to be maintained at the site shall be the 17 No. commercial vehicles as detailed within condition one above.

3.1.9 The Planning Statement submitted with the application sets out that there “extra vehicles are needed because Roe’s services have increased in demand”.

3.2 Conclusion

3.2.1 The main issues remain the same as previous application, 09/00335/FUL as to consider whether the stationing of two additional commercial vehicles on site would have a detrimental impact upon the character and appearance of the rural area and secondly, if the proposal would have an impact upon the amenities of residential properties.

3.2.2 It is considered that the use of the site as proposed for two additional commercial vehicles would be acceptable being only a small increase in the number of vehicles from that which exists. The increased number of vehicles proposed would not harm the character or appearance of the rural area as the vehicles would be accommodated within the farm complex which is largely screened from external views by an existing agricultural building to the north, banking to the east and bales of hay to the western boundary of the site. Even when considered in the context of the original application, which allowed for 10 vehicles, the proposal to allow 17 vehicles is acceptable in terms of the above matters.

3.2.3 One letter of representation has been received concerning the movement of vehicles, noise and disturbance. The Highway Authority has raised no objection to the proposal. The Council’s Environmental Health Services has raised no objections to the proposal with regard to the noise and disturbance.

3.2.4 Taking into account the above, the development would accord with the policies within the approved Local Development Plan (LDP) and the National Planning Policy Framework (NPPF). Officers consider that there are no material considerations, that indicate that a decision should be made other than in accordance with the Development Plan.

3.2.5 It is recommended that planning permission be granted.

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 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
- 88 – 89 Supporting a prosperous rural economy
- 123-130 Making effective use of land
- 131-141 Achieving well-designed and beautiful 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
- E4 Agricultural and Rural Diversification

4.3 Relevant Planning Guidance / Documents:

- 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 NPPF.

5.1.2 Planning permission for the commercial use of the site was granted under the terms of application 02/00646/FUL. That decision was subsequently varied under permissions 04/01288/FUL and 09/00335/FUL, resulting in the increase of the total number of lorries permitted on site to 15. There are no alterations in respect of the principle of development. The material consideration when determining this application for the variation of conditions 1 and 2 are legally sound and if there is other justification submitted to warrant their variation.

Does the proposal fall within the parameters of a Section 73 application?

5.1.3 Lord Justice Lewison in a recent court judgment in the Court of Appeal between John Leslie Finney and Welsh Ministers, Carmarthenshire County Council and Energiekontor (UK) Limited [2019] EWCA Civ 1868 established the purposes of a Section 73 application. In particular, Lord Justice Lewison stated that *“On receipt of such an application section 73 (2) says that the planning authority must “consider only the question of conditions”. It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development... It is notable, however, that if the planning authority considers that the conditions should not be altered, it may not grant permission with an altered description but subject to the same conditions. On the contrary it is required by section 73 (2) (b) to refuse the application. That requirement emphasises the underlying philosophy of section 73 (2) that it is only the conditions that matter.”*

- 5.1.4 The above judgement has been further endorsed recently in the case of *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor* [2023] EWHC 142 where the High Court stated that *'section 73 is clearly intended to be a provision which enables a developer to make a section 73 application to remove or vary a condition, provided of course that the application does not conflict with the operative part of the planning permission'* This has also been supported in *R (Fiske) v Test Valley Borough Council* [2023] EWHC 2221 (Admin).
- 5.1.5 On the basis of the above judgements it is clear that permission for a Section 73 application shall only be granted for the same development and any variation shall only relate to the conditions imposed to the original permission.
- 5.1.6 The current variation of conditions application relates to solely to conditions previously imposed on permission 09/00335/FUL. This Section 73 application will not alter the description of the development previously approved and as such, the proposal would fall under the parameters of a Section 73 application.

Development Plan policies

- 5.1.7 The site is located outside of a defined settlement boundary and thus lies within a countryside location. Policy S8 of the Local Development Plan states that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. Policy S8 sets out the development types that may be permitted where there is no adverse impact to the countryside. One set exception, set out at Policy S8 f) is *'rural diversification, recreation and tourism... (in accordance with Policies E4 and E5)'*.
- 5.1.8 Policy E4 sets out a positive policy for development for *"the change of use of existing rural buildings to other employment generation uses"* subject to criteria a-f. In this case, the 'other employment generation' i.e. the drainage contractor use was granted permission in 2002 and has been operating from the site since that time. The need for the additional vehicles is due to the increased demand for the services provided by the applicant, representing a justifiable and functional need for the proposal, in accordance with criterion a). Criterion b) requires the proposal to contribute to the viability of the agricultural business as a whole. In this case, that was established in the 2002 permission. In relation to the remaining criteria, there would be no detrimental impacts to the building's historic or architectural significance; it would not negatively impact on wildlife or the natural environment; no external storage is proposed; and the proposal would not prejudice the vitality and viability of existing businesses in nearby towns and villages.
- 5.1.9 The development would meet with the criteria of Policy E4 relating to rural diversification, and thus would meet with the Policy S8 which seeks to protect the countryside. In addition, planning permission 02/00646/FUL, and subsequent variations, has already approved the use of the site and the associated parking of vehicles. The principle of development is therefore acceptable and supported.

5.2 Design and Impact on the Character of the Area

- 5.2.1 The principle of good inclusive design and layout and sustainable development has been reflected in the approved Local Development Plan, primarily with policy D1 which seeks to ensure that all development will respect and enhance the character and local context. Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG.

5.2.2 The variation would not control precisely where the vehicles are parked on the site as the current permission does not do so. However, the site is surrounded by high bunds and vegetation which effectively screen the site from the surrounding area. Accordingly, the additional vehicles would only be seen from within the site itself, and there are no public views, either from Fambridge Road to the west or from the Public Right of Way (PRoW) (Footpath 10) to the southwest. Accordingly, there would be no harm to the wider amenity of the area and the intrinsic character and beauty of the countryside would be maintained in accordance with policy S8 of the LDP and the provisions of the NPPF.

5.3 Impact on Residential Amenity

5.3.1 In terms of neighbouring amenity, the nearest dwelling is located to the west, approximately 280m from the site's boundary. The additional vehicles would create additional vehicle movements however due to the limited increase in vehicle numbers (two) this would be minimal in terms of traffic generation and impact on residents on Fambridge Road. No objection has been raised by Environmental Health in terms of neighbour impact. The proposed development would not result in any harm to residential neighbours that would justify refusal of the application.

5.4 Access, Parking and Highway Safety

5.4.1 The site is of a size which provides adequate space for the parking and manoeuvring of the existing vehicles and proposed additional vehicles. The applicant states that the additional vehicles would result in an additional four vehicle movements per day, with the vehicles leaving the site in the morning and return at the end of the working day. Essex County Council, as Highway Authority, has no objection to the proposed variation of the conditions. Although an informative is recommended by the Highway Authority regarding works affecting the public highway, no works are proposed and therefore it is not necessary to include the informative.

5.4.2 The development would comply with policies T2 and D1 of the Local Development Plan.

6. ANY RELEVANT SITE HISTORY

- **FUL/MAL/88/00990** - Parking of Vehicles. Approved: 09.01.1991
- **FUL/MAL/98/00706** - Proposed demolition of existing office building and replacement with single storey office extension. Withdrawn: 12.11.1998
- **FUL/MAL/98/00856** - Use of Land for Drainage Business. Refused: 08.02.19990
- **FUL/MAL/99/00355** - Contracting Business. Approved: 29.06.1999
- **FUL/MAL/99/00785** - Portacabin Office. Approved: 30.11.1999
- **FUL/MAL/02/00646** - Use of land and building for drainage contracting business, parking of 10 no. lorries and retention of existing portacabins. Approved: 24.07.2002
- **FUL/MAL/04/01288** - Amendment of condition No. 3 imposed upon planning permission: FUL/MAL/02/0646 to provide 2 additional lorry parking spaces. Approved: 10.01.2005
- **FUL/MAL/07/01038** - Two storey office block and parking for four lorries. Refused: 05.11.2007
- **FUL/MAL/08/00103** - Single storey and part two storey offices. Parking for staff. Approved: 02.04.2008

- **FUL/MAL/09/00132** - Variation of condition 7 imposed upon planning permission FUL/MAL/02/00646 relating to hours of operation of drainage contracting business Approved 22.05.2009.
- **FUL/MAL/09/00335** - Variation of Conditions 1 and 2 imposed upon planning FUL/MAL/04/01288 to allow parking of 3 no additional lorries. Approved 12.06.2009.
- **FUL/MAL/13/00714/FUL** - Vary condition 7 of planning application FUL/MAL/02/00646 to state: No vehicles associated with the drainage contracting business shall enter or leave the site at any time on Sundays or Bank Holidays or shall enter or leave the site outside of the hours 6am and 1pm on Saturday and 6am and 6pm on weekdays with the exception of 6 vehicles (12 Vehicles movements in total either leaving or entering the site) per 24 hour period for the purposes of emergency call-outs. A record of all emergency call-outs including dates, times, addresses and nature of emergency shall be recorded in a written format and be kept available for inspection upon request from the Local Planning Authority. Approved.
- **FUL/MAL/15/00588** - Change of use from B8 to B1 and inclusion of a new access road. Approved.
- **LDE/MAL/15/00904** – Claim for Lawful Development Certificate for existing use: residential occupation of Fleet Farm in breach of agricultural occupancy condition (condition 2 of MAL/947/85). Granted 30 October 2015
- **FUL/MAL/15/00950** - Variation of condition 2 on approved application FUL/MAL/02/00646 (Use of land and building for drainage contracting business, parking of 10 no. lorries and retention of existing portacabins) to allow for a change in the company name. Approved.
- **FUL/MAL/15/01376** - Change of use of Fleet Farm to B8 use. Approved.

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
North Farnbridge Parish Council	No response received	

7.2 Statutory Consultees and Other Organisations (*summarised*)

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
County Highways	The Highway Authority has no adverse comments to make regarding the variation of the above conditions	Noted and addressed in section 5.4.

7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection.	Noted and addressed in section 5.3.

7.4 Representations received from Interested Parties (summarised)

7.4.1 The application was advertised by way of a site notice posted on the 3 October 2024 (with expiry date for comments set as 24 October 2024). The site notice was affixed at eye level to a telegraph pole opposite the site's access on Fambridge Road, to the north of the junction with Hurndall Avenue, in a prominent position adjacent to the public highway.

7.4.2 1 letter was received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comments	Officer Response
Already operate vehicles outside of their permitted times, at both weekends and during the week mornings and evenings.	Noted, there are restrictions on the 2002 application however this is not part of the consideration of the current application which is only considering the additional vehicles.
More suitable premisses should be identified on an industrial site or similar.	The site has had planning permission for the use since 2002 as discussed in section 5.1.
Impact on railway bridge and road maintenance	Road maintenance is the responsibility of the Highway Authority who has not raise an objection (see section 5.4).
Highway safety – near accidents and no appreciation of children's playground on Fambridge Road.	Noted however no objection has been raised by the Highway Authority on the grounds of highway safety (see section 5.4).

8. PROPOSED CONDITIONS

1 The use of the site as granted under planning permission FUL/MAL/09/00335 shall be restricted for the operation of a maximum 17 No. commercial vehicles from the site which shall be used solely in connection with a drainage contractor's business.

REASON: The site lies outside any area where planning permission for commercial uses would normally be granted. Although the site has permission for commercial use, the condition is necessary to protect the amenities of the rural area, in accordance with policies S8, D1 and E4 of the Maldon District Approved Local Development Plan.

2 The only vehicles to be maintained at the site shall be the 17 No. commercial vehicles as detailed within Condition 1 above and no others.

REASON: In the interests of local and residential amenity in accordance with policy D1 of the Maldon District Approved Local Development Plan.

Submitted plans:

Site Location Plan no. 98/02/10