



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

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
21 MAY 2018**

Application Number	FUL/MAL/18/00280
Location	Land North West Of Riversleigh, Nipsells Chase, Mayland, Essex
Proposal	Construction of an apple storage barn
Applicant	Mr Kenneth Paton & Susan White
Agent	Mr Anthony Cussen - Cussen Construction Consultants
Decision Date	15 th May 2018
Case Officer	Anna Tastsoglou TEL: 01621 875741
Parish	MAYLAND
Reason for Referral to the Committee / Council	Councillor / Member of Staff

1. RECOMMENDATION


REFUSE for the following reason (as detailed in Section 8 of this report).

2. SITE MAP

Please see overleaf.

Land North West Of Riversleigh Nipsells Chase Mayland
FUL/MAL/18/00280



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	Organisation:	Maldon District Council
	Department:	Department
	Comments:	SE Committee
	Date:	08/05/2018
	MSA Number:	100018588
www.maldon.gov.uk		

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application is located on the western side of Nipsells Chase within a rural area outside the defined settlement boundaries and it is a designated wildlife site. The site currently forms an open green land, with a number of trees. It is known that the site until 1970s was an established orchard. The land was recently cleared of almost all trees and is now mostly grassed over.
- 3.1.2 At present there are a number of young trees planted on the site, which according to the applicant are two years old trees. The site forms a parcel of land on the southwest corner of a larger site owned by the applicant and measures approximately 0.61 hectares. Access to the site is proposed to be taken off of Nipsells Chase.
- 3.1.3 The surrounding area of the application site is largely undeveloped. There are some examples of dwellings to the north and south of the application site; however, the wider area appears to be used for agricultural purposes. To the west the application site abuts a woodland site.
- 3.1.4 Planning permission is sought for the erection of a barn. The barn would be of a T-shape and it would measure a maximum of 19m wide, 10.6m deep, 2.3m high to the eaves, with a maximum height of 4.4m. The applicant has stated that the barn will be used for storage of apples.
- 3.1.5 Internally the barn would accommodate an apple store, an office space and apple preparation area, an implement store, a smaller store and a shower/WC. Externally the proposed development is proposed to be finished in timber windows and doors, pantiles to the roof and the external elevations would be finished in timber weather boarding.
- 3.1.6 The application is supported by a Design and Access Statement which states that the proposed barn is required for the storage and preparation of fruit grown and produced onsite, within the Paton Place Orchard. An ancillary store has been shown on the submitted plans.
- 3.1.7 The site is proposed to be accessed off of Nipsells Chase traversing the land owned by the applicant.

3.2 Conclusion

- 3.2.1 Having taken all material planning consideration into account, it is considered that the development would not be acceptable in principle, given that the proposal would have a substantial and harmful visual impact on the open countryside that has not been adequately justified and would not be off-set by the benefits of supporting an established agricultural enterprise. Whilst the proposal is acceptable in all other respects, it is considered that the development is contrary to policies S1, S8, E4 and D1 of the Maldon District Local Development Plan (MDLDP).

4. MAIN RELEVANT POLICIES

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

4.1 National Planning Policy Framework 2012 including paragraphs:

- 7 Three dimensions to sustainable development
- 8 Roles of sustainable development
- 14 Presumption in favour of sustainable development
- 17 Core planning principles
- 29-41 Promoting sustainable transport
- 56-68 Requiring good design
- 109-125 Conserving and enhancing the natural environment
- 196-197 Determining applications

4.2 Maldon District Local Development Plan adopted by the Secretary of State for in July 2017:

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and the Built Environment
- E4 Agricultural and Rural Diversification
- H4 Effective Use of Land
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- Maldon District Design Guide SPD
- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Esses Design Guide
- Car Parking Standards

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) and Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990)).

5.1.2 The application site lies beyond the designated settlement boundaries, in a rural area and policies S1 and S8 of the approved MDLDP 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 Given that the application site is located outside the settlement boundaries, it should be demonstrated that there is no adverse impact from the development upon the intrinsic character of the countryside. The impact of the proposed storage building on the appearance and character of the area is fully assessed below on the relevant 'Design and Impact on the Character of the Area' Section.
- 5.1.4 Policy S8 of the LDP includes a number of acceptable uses within the countryside, including agriculture and forestry and related development; however, this is only when the landscape, natural resources and ecological value of the countryside is protected and when the development is in accordance with policy E4.
- 5.1.5 Policy E4 states that *"The Council will support the development of new buildings or activities associated with agriculture and other land-based rural businesses where:*
- 1) There is a justifiable and functional need for the building/activity;*
 - 2) The function of the proposed building/activity is directly linked, and ancillary to, the existing use; and*
 - 3) The building / activity could not reasonably be located in existing towns, villages or allocated employment areas."*
- 5.1.6 A Design and Access Statement has been submitted with the application which states that the purpose of the proposed building is for the storage and preparation of fruit grown within the application site. The statement also confirms that 45 trees are currently planted on site, which are 2 years old. Together with the application an apple tree guide has been submitted which suggests that crops can be expected between 2 to 4 years after planting and that the estimated yield is between 90-120lbs per tree (1.5 to 2 bushels per tree). Taking into account the age of the trees, their limited number and also the limited estimated yield, it is considered the size of the proposed barn (160sqm) has not been justified. Whilst it is accepted that the applicant proposes to prepare juice from the apples and an invoice has been submitted demonstrating the purchase of some related machinery, including an electric apple mill, a pasteuriser and a juice extractor, it is noted that the size of the purchased machinery is modest to justify the need of such a large sized barn. It is therefore considered that even once expanded upon, the agricultural use would be a relatively small-scale operation rather than an extensive agricultural trade or business and it has not been justified why the development cannot be located in existing towns, villages or allocated employment areas. In line with the abovementioned policy it is considered that the principle of erecting a building to support agriculture can be supported, however, the scale and form of the building should be functional and proportionate to the justification for the building. In this instance it is considered that the justification is limited and the site area of 0.61 hectares, including 45 fruit trees, would not enable an operation to occur that would require a building of the size proposed. Whilst it is not disputed that the future use of the building could be controlled through the imposition of conditions, it will be set out further below that the scale of the building and its visual impact is substantial and this therefore far exceeds the agricultural functions of the site. The proposal is therefore considered to be contrary to the abovementioned policies.

5.1.7 Other material consideration relating to the impact of the development on the amenity of the neighbouring occupiers, highways issues and impact on the landscape are assessed below.

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 should be sought 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 basis of emerging policy D1 of the Local Plan ensures that all development will not have a detrimental impact on its surrounding area and local context and will actively seek opportunities for enhancement in the built environment.

5.2.3 In determining an appropriate contextual relationship with surrounding development, factors such as height, scale, massing and siting are material considerations. Details such as architectural style, along with colour texture of materials, are also fundamental in ensuring the appearance of any new development is sympathetic to its surrounding and therefore wholly appropriate in its context.

5.2.4 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”.

“that 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.”

5.2.5 This principle has been reflected in 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) Historic environment particularly in relation to designated and non-designated heritage assets;
- f) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
- g) Energy and resource efficiency.

- 5.2.6 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the Maldon District Design Guide (MDDG)(2017).
- 5.2.7 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.
- 5.2.8 The application site is located outside the defined settlement boundaries within a rural and undeveloped context. There are a couple of examples of buildings to the north and south of the application site; however, these are in a distance away from the application site, with the nearest being around 106m away (Riversleigh).
- 5.2.9 Although the site is located away from Nipsells Chase, the hedgerow along Nipsells Chase has been trimmed to a low height and therefore, the site is visible from a long distance. Furthermore, the majority of the trees within the applicant's ownership have been removed and the site and wider area are now mainly flat and grassed over. It is therefore considered that the visual impact of the building, due to the openness of the landscape and the size of the building, would be significant.
- 5.2.10 It is acceptable that agricultural buildings are common in the countryside. However, it is necessary to consider the impact of the development on the area.
- 5.2.11 The proposed building is of a relatively large scale and the proposal would result in an imposing building that would demonstrably change the character and appearance of the area as it would represent a substantial intrusion of the built development in the countryside. Therefore, it is necessary to consider the benefits of the proposal against the harm. There is little information submitted as part of the application as to how the building would be used in connection with the new enterprise, why the building (including the various separate components) is at such a large scale and about the enterprise generally. The supporting document indicates that it is intended to produce apple juice on site. However, it is possible that if this was the primary use of the building that the barn would fall within class B2 of the use class order. It is considered that this lack of detail and clarity weighs against the proposal.
- 5.2.12 With regard to the design of the building, it is considered that as proposed, including the level of fenestration proposed, it would not be representative of an agricultural building. To the contrary it could be argued that its overall appearance reflects more a residential rather than an agricultural building, given the high level of glazing and overall design. This would further weigh against the proposal, as it would result in a form of development that does not reflect its proposed function or the rural character, but rather results in an alien form of development. It is therefore, considered that this exacerbates the harm highlighted above.
- 5.2.13 Concerns have been also raised from the Countryside Officer regarding the impact on the development onto the open countryside and on what is still a designated Local Wildlife Site without sufficient justification demonstrating the need of such a large

building. In particular it is noted that most build element in the landscape are located in close proximity to Nipsells Chase and therefore, in landscape terms this building is inappropriately located. A response has been received by the applicant stating that there are remains of large agricultural and residential building at similar locations away from the main access road and that a brick stable block is located in close proximity to the south of the application site. It is noted that limited weight can be afforded to this argument, given that at present and since 2000 there are no buildings in the area that has been indicated by the applicant and also the stable block appears to be within the curtilage of the dwellinghouse known as Riversleigh.

- 5.2.14 In light of the above, the development would have a significant detrimental impact upon the appearance and intrinsic character of the countryside. The visual impact is not considered to have been off-set or justified by the benefits of supporting agricultural practices.

5.3 Impact on Residential Amenity

- 5.3.1 The basis of policies D1 and H4 of the approved LDP seek 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 Maldon District Design Guide (2017).
- 5.3.2 The proposed development would use an existing vehicular crossover onto Nipsells Chase and a new service road would need to be formed within the applicant's ownership land to given access to the site. Once the business is established, it may result in increased levels of activity; however, taking into account the small size of the agricultural land that it would be related to, on balance, it is not considered that the proposed development would have a materially harmful impact on the residential amenity of the neighbours, in terms of noise and disturbance.
- 5.3.3 As noted above, the development would be located a significant distance away from any other neighbouring residential dwelling. The nearest dwelling to the development is Riversleigh and it is located 100m away from the application site, therefore, it is not considered that the development would have any detrimental impact on the residential amenity of the nearby neighbours, in terms of loss of light, domination or sense of enclosure.
- 5.3.4 The application site is surrounded by open fields and as such, there would be no greater impact on residential amenity.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposal, inter alia, to sufficient parking facilities having regard to the Council's adopted parking 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 Council's adopted Vehicle Parking Standards SPD contains the parking standards which are expressed as maximum standards. This takes into account Government guidance which encourages the reduction in the reliance on the car and promotes methods of sustainable transport.
- 5.4.3 The proposed development would be used for purposes in association with an agricultural use and therefore, there are no set requirements for parking provision.
- 5.4.4 The site would be accessed via a new vehicular access which will be formed within the applicant's land off of Nipsells Chase. The Highways Authority has been consulted and raised no objection to the proposed development.

5.5 Ecology

- 5.5.1 The site is a designated local Wildlife Site it would therefore be regarded as a 'sensitive site' where there is clear policy requirements that aim to conserve and protect nature conservation interests. These principles are reflected within policy N2 of the LDP which states that "*All development should seek to deliver net biodiversity and geodiversity gain where possible. 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 For that reason, the applicant has submitted a Phase 1 Habitat Survey, concluding the land which was recently cleared from the majority of the trees, is classified as improved grassland, having low ecological value, with the exception of some retained trees, which are of relatively elevated value in the context of the site and the new trees which are likely to increase in value as they mature. In terms of fauna the site is considered to be of limited value, although it is likely to support Great Crested Newts in their terrestrial phase, whilst reptile species may have colonised following removal of scrub and a typical range of breeding birds are likely to be present. Natural England and the Council's Coast and Countryside Officer have been consulted and raised no objection to the proposed development in terms of its impact on the ecological assets and the wildlife.

6. ANY RELEVANT SITE HISTORY

- 6.1 **FUL/MAL/17/00736**– Proposed construction of a new detached single storey dwelling. Application withdrawn.
- 6.2 **AGR/MAL/17/01043** – Prior notification for permeable hardstanding, with edging stones.. application refused 12.10.2017.
- 6.3 **DD/MAL/17/01060** – T1 - Elm - Fell. T2 - Wild Pear - Fell. T3 - Wild Pear - Fell. Can works proceed under 5 day D&D (5 Day Notice). Approved 16.10.2017.

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 **Representations received from Parish / Town Councils**

Name of Parish / Town Council	Comment	Officer Response
Mayland Parish Council	<p>Object to the application for the following reasons:</p> <ul style="list-style-type: none"> -Materials used for apple preparation area not suitable for drink production. -Washdown of preparation area would be required -Office space open to preparation area -Only one entrance to store area and prep area. - No means of escape for staff. no fire escape. - Entrance to store is not off hardstanding area - Cross contamination of fruits and nuts could be anise. -No ventilation in store, office and preparation area. -Layout of preparation area not defined. Equipment, sinks, fermentation area etc Small fermenter vessel size would suggest that many more would be required. -Access to hard standing from north, existing site has a southern entrance which would be more suitable. -Such a small building could affect the sustainability of cider production from info given. -No info on how equipment is to be sterilised, chemical or steam. 	<p>Comments noted; however, the majority of the comment relate to the business itself and are not material planning considerations.</p>

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Essex County Council Highway Authority	No objection.	Noted.
Natural England	No objection.	Noted.

7.3 Internal Consultees (*summarised*)

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection subject to conditions.	Comment noted.
Countryside and Coast Officer	Objection raised, due to the unjustifiable impact of the development on the landscape.	Comment noted.

7.4 Representations received from Interested Parties (*summarised*)

7.4.1 No representations were received for this application:

8. REASON FOR REFUSAL

- 1 The proposed development, by virtue of the scale, design and siting of the building within the open countryside, would cause substantial harm to the rural character of the area that has not been adequately justified that is to the benefit of supporting an established agricultural business. The proposal is therefore unacceptable and contrary to policies S1, S8, E4 and D1 of the Maldon District Local Development Plan and the National Planning Policy Framework.