

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	ML	19/07/2021
Planning Development Manager authorisation:	JJ	21/07/2021
Admin checks / despatch completed	ER	21/07/2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	21/07/2021

**Application:** 21/00085/FUL **Town / Parish:** Mistley Parish Council

**Applicant:** T & R Fairley Farms

**Address:** Land North West of Horsley Cross Manningtree

**Development:** Proposed change of use from agricultural land to use of land for additional car boot sales.

### **1. Town / Parish Council**

Mrs Susan Clements  
05.03.2021

At its Planning Committee Meeting on the 4th March 2021, the Parish Council raised its concerns about the potential highway safety issues and the access ingress issues on this fast and busy road. Essex County Council Highways as statutory consultee should look carefully at the details.

### **2. Consultation Responses**

Tree & Landscape Officer  
08.02.2021

The application site is currently in agricultural use. There are no trees or other significant vegetation within the main body of the land but are one or two small trees on the boundary with the highway. The retention of these trees is not compromised by the development proposal.

The boundary with the highway is demarcated by open ditch and allows clear views of the whole site for users of the highway.

The proposed change of use of the land will have a detrimental impact on the local landscape character whilst the site is in use however when the site is not in use its character and appearance will not be significantly different to that of the surrounding agricultural land.

The potential harm to the appearance of the landscape could be mitigated by new soft landscaping associated with the development proposal. If site boundaries were to be planted with a new hedgerow comprising indigenous species with specimen trees at approximately 10m spacing then a good level of screening could be achieved.

There could be potential for a few specimen trees to be planted in the main body of the land.

If planning permission is likely to be granted then soft landscaping to screen the future use of the site should be secured by a condition attached to any such permission.

Environmental Protection  
09.02.2021

I can confirm that EP have no comments to make in relation to the above application.

Essex County Council  
Heritage  
23.02.2021

Built Heritage Advice pertaining to an application for: Proposed change of use from agricultural land to use of land for additional car boot sales.

The proposals concern the setting of the following heritage assets:

- The Grade II listed Abbot's Hall (List UID: 1261150).
- New Lodge, identified as a non-designated heritage asset.
- Bradfield lodge, identified as a non-designated heritage asset.

I am unopposed to this application, however should any permanent or temporary fixed structures be required to facilitate the proposed change of land use, as part of this application or any future application, I would request that I be reconsulted or consulted.

Essex County Council  
Ecology  
22.02.2021

No objection subject to securing biodiversity mitigation and enhancement measures

#### Summary

We have reviewed the Planning Statement (Stanfords, January 2021), aerial imagery, the Great Crested Newt Strategic Operation Areas, and the Multi Agency Geographic Information for the Countryside (MAGIC) map, relating to the likely impacts of development on designated sites, protected species and Priority species & habitats.

We are satisfied that there is sufficient ecological information available for determination.

We note that no ecological documents have been submitted as part of this application. A desk study on MAGIC map and aerial photography, and information provided in the Planning Statement (Stanfords, January 2021), details that the current habitat onsite is arable and no Priority habitats are present. There are several trees identified to the boundary of the site, but these are to be retained. There are two large waterbodies present within 250m of the development, however the Great Crested Newt Strategic Operation Areas identifies that the site is highly unsuitable for Great Crested Newts. The closest designated site is the Stour and Orwell Estuaries SPA and Ramsar, which is approximately 4km north of the site. Given the distance of the development from this site, and that this proposal is for a relocation of a car boot sale from land approximately 500m south, it is considered that the development is unlikely to impact on this designated site.

We are therefore satisfied that the proposed development is unlikely to affect designated sites, protected and Priority species and habitats.

We note that, as outlined under Paragraph 170d of the National Planning Policy Framework 2019, all development should secure measurable net gains for biodiversity. Given the scope of this development, we recommend that this could include native hedgerow species planting along the boundaries of the site, or the installation of bird or bat boxes on a retained tree. The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Strategy and should be secured as a condition of any consent.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

Impacts will be minimised such that the proposal is acceptable subject to the conditions below based on BS42020:2013.

Submission for approval and implementation of the details below should be a condition of any planning consent.

Recommended conditions:

1. PRIOR TO BENEFICIAL USE: BIODIVERSITY ENHANCEMENT STRATEGY

"A Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter."

Reason: To enhance Protected and Priority Species/habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

ECC Highways Dept  
14.07.2021

From a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reasons:

1. As far as can be determined from the submitted information the applicant has failed to provide specific additional information requested in respect of highway safety impacts, to the satisfaction of the Highway Authority. The proposal would intensify the use of existing accesses onto B1035 Clacton Road (secondary distributor within the County's Route Hierarchy). The main function of this highway is that of carrying traffic freely and safely between centres of population. The existence of an access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety.

2. Again, it is noted from the Planning Statement that on average, between 35-70 sellers were attracted to the previous site every year with approximately 150-250 buyers each day, dependent upon weather and school holidays. However, as far as can be determined from the submitted information there is no indication what the maximum car park capacity will be for the new site compared to the old site. This could lead to parking within the highway introducing additional kerbside stress, obstruction, or congestion contrary to

highway safety on the B1035 Clacton Road.

The proposal is therefore contrary policies DM1, DM8 and DM12 contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Note:

1: The Highway Authority would wish to see the number of vehicles they expect to arrive and over what time period they would be arriving and leaving e.g. all at the same time or spread over a period of time, this will give an idea of traffic volumes and flow rates.

2: A site plan / layout of the car park with calculations of spaces available, and also how the arriving vehicles will be managed when parking, making sure they do not hold up the flow of vehicles off the public highway, e.g. not taking money etc. the moment a vehicle leaves the road thereby causing queues.

3: Details on what facilities are available to move vehicles off the site if bad weather causes the ground to become muddy and vehicles are getting stuck and can't move. This could be incorporated in a Car Park Management Plan.

4: Subject to points 1 and 2 above parking outside of the site may not be a problem provided the car park has sufficient capacity and is well managed to get vehicles in and out, however, if this does start to be an issue the applicant will need to look at parking restrictions (financial contribution) on the surrounding road network as these vehicles will be their responsibility to manage as they are visiting the boot sale. Obviously, if a problem doesn't arise over the first year then the contribution could be handed back.

5: Temporary advance signage advising of the boot sale on the day it operates should be considered to the south of the site, to advise drivers heading northwards that a boot sale is in operation and queues could be expected ahead.

Highways England  
07.07.2021

Council's Reference: 21/00085/FUL

Referring to the planning application referenced above, dated 16 June 2021, Proposed change of use from agricultural land to use of land for additional car boot sales, Land North West of Horsley Cross Manningtree Essex. Notice is hereby given that Highways England's formal recommendation is that we:

c) recommend that planning permission not be granted for a specified period (see Annex A - further assessment required);

Highways Act Section 175B is / is not relevant to this application.<sup>1</sup> This represents Highways England formal recommendation and is copied to the Department for Transport as per the terms of our Licence.

Should you disagree with this recommendation you should consult the Secretary of State for Transport, as per the Town and Country Planning (Development Affecting Trunk Roads) Direction 2018, via [transportplanning@dft.gov.uk](mailto:transportplanning@dft.gov.uk).

Annex A Highways England recommended further assessment required

HIGHWAYS ENGLAND has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such we work to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

This response represents our formal recommendations with regards to 21/00085/FUL and has been prepared by Shamsul Hoque.

The proposed development site location is approximately 500m northwest of the Horsley Cross Roundabout, A120/B1035 junction (part of SRN). Highways England are in communication with the applicant's agent via the planning case officer.

As this development site is close to A120/B1035 junction (SRN), we like to understand the proposed trip distribution pattern for those expected 150-250 buyers and 35-70 sellers (mentioned in the Planning Statement). It is not clear about which mode of transport these above-mentioned buyers and sellers would be arriving to this car boot sale event and from which travel route or direction of travel. The applicant's agent has mentioned about the 'level of visitors (both buyers and sellers) are remarkably similar to the previous activity'. Nevertheless, it is likely that the number of trips within COVID and post COVID may not be the same.

This proposed development is from an existing car boot sale, we still require seeing the future traffic impact on the strategic road network (A120/B1035 junction). The submitted planning statement has mentioned that there would be expected 150-250 buyers and 35-70 sellers. If the proposed vehicular trips are over 30 two-way trips per hour to this SRN junction, then we would require a road junction capacity assessment to demonstrate that the traffic impact from this proposed development would not have a severe impact to A120/B1035 SRN junction (Horsley Cross Roundabout).

Following our queries on the Planning Statement, the applicant's agent has mentioned the proposed parking area location is marked with written text, on the site plan. The agent already stated, "The layout as submitted has operated without difficulty to date, with more than adequate parking available. No queuing has occurred on the B1035. Finally, the site does not attract any HGV's."

As the proposed development is on a local road (B1035) where Essex County Council are the highway authority, and therefore, their comments/view should be sought for this proposal. For Highways England, we would be interested seeing that there would be no traffic queuing back to the A120/B1035 junctions from this proposed development.

We therefore recommend that the application not be determined before 23 September 2021. If we are in a position to respond earlier than this, we will withdraw this recommendation accordingly.

### 3. Planning History

21/00085/FUL	Proposed change of use from agricultural land to use of land for additional car boot sales.	Current
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### 4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

ER39 Market Trading and Car Boot Sales

EN1 Landscape Character

EN6 Biodiversity

EN6A Protected Species

EN23 Development Within the Proximity of a Listed Building

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

QL11 Environmental Impacts and Compatibility of Uses (part superseded)

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021)

SP1 Presumption in Favour of Sustainable Development

SP7 Place Shaping Principles

SPL3 Sustainable Design

PP13 The Rural Economy

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL9 Listed Buildings

CP1 Sustainable Transport and Accessibility

### Status of the Local Plan

Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the Framework.

The 'development plan' for Tendring comprises, in part, the 'Saved' policies of the 2007 Local Plan. Paragraph 213 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication, according to their degree of consistency with the policies in the Framework. On the 26th January 2021 Section 1 of the 2013-2033 Local Plan was adopted and therefore now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets have been found sound, including the housing requirement of 550 dwellings per annum.

Paragraph 48 of the Framework allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and the degree of consistency with national planning policy. In this regard, 'Proposed Modifications' to Section 2 of the 2013-33 Local Plan, which contains more specific policies and proposals for Tendring, has been examined and hearing sessions have now closed. The main modifications recommended to make the plan legally compliant and sound were considered at the Council's Planning Policy and Local Plan Committee on 29th June 2021. A six-week public consultation began on the 16<sup>th</sup> July 2021, and will close on 31<sup>st</sup> August 2021. Adoption is expected in late 2021. Section 2 will then join Section 1 as part of the development plan superseding in full the 2007 Local Plan. Part 2 of the 2013-33 Local Plan is therefore at a very advanced stage of preparation and should therefore be afforded considerable weight.

## **5. Officer Appraisal (including Site Description and Proposal)**

### Site Description

The site comprises part of an open field situated approximately 730m northwest of the Horsley Cross roundabout, extending to 3.83 hectares. The site is visible from Clacton Road, with no hedgerow or trees on the site. The site contains two recently constructed field accesses from Clacton Road that have been utilised to provide access for boot sales operating under permitted development rights.

The site is in agricultural use in conjunction with the activities of T & R Fairley Farms. The site is currently laid to grass.

### Proposal

Proposed change of use from agricultural land to use of land for additional car boot sales. The site currently operates 14 boot sales per year (these have recently commenced) under the provisions of Part 4 of Schedule 2 to the Town & Country (General Permitted Development) Order 1995. This application seeks a further 14 boot sales a year to facilitate the use from Mid-March through to early October every year.

The intention is to continue the car boot sales in an identical manner to the previous events on a nearby site to the south of Horsley Cross Roundabout that has recently received planning permission for re-development. The events will take place once a week on a Friday, weather permitting, and commence with sellers arriving on site from 0530 hours and buyers from 0700 hours, with the event usually finishing around 1300 hours.

The boot sales previously operated from a site located on the southern side of Horsley Cross Roundabout.

### Appraisal

The principle planning issues in this instance are:

- Policy Considerations and Principle of development,
- Impact upon residential amenity,
- Impact upon character of the area,
- Impact upon highway safety.

- Ecology Considerations
- Heritage Matters

#### Policy Considerations and Principle of development

Saved Policy EN1 requires that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted. Development management will seek in particular to conserve the following natural and man-made features which contribute to local distinctiveness skylines and prominent views, including those of ridge tops and plateau edges.

Saved Policy ER39 requires that planning permission will be granted for proposals for market trading or car boot sales if the proposal can demonstrate that it would not

- undermine the retailing vitality or character of the town centre
- adversely affect the character or appearance of an area or residential amenities
- prejudice redevelopment or other proposals on the site or in the vicinity
- be detrimental to highway safety, or
- result in the loss of the best and most versatile agricultural land

Saved Policy TR1a requires that proposals for development affecting highways will be considered in relation to the road hierarchy to reducing and preventing hazards and inconvenience to traffic and to the effects on the transport system including the physical and environmental capacity to accommodate the traffic generated.

In respect of the requirements of saved policy ER39, it is considered that the development would not undermine the retailing vitality of a town centre given that the site is located a significant distance from any town centre and the boot sale operations replaces a previously operating market to the south. The principle of providing a car boot sale operation on this site may be acceptable subject to other criteria such as landscape impacts and highway safety, covered below.

#### Impact upon Residential Amenity

The nearest dwellings are located to the south and north of the site, both of these dwellings are separated from the south/north boundaries either by fields or intervening commercial buildings, or both. Due to these separating features and the proposed operating hours/days/frequency of the proposed car boot sales as put forward by the applicant it is considered that no significant detrimental impact will occur on the amenities currently enjoyed. Whilst the proposed use will undoubtedly result in an increase in traffic during the days/times the car boot sale are in operation, this increase in traffic is not considered to result in a significant harmful impact on the amenities currently enjoyed by nearby occupiers because the B1035 Clacton Road (a secondary distributor within the County's Route Hierarchy) already carries a relatively high volume of traffic. Impact on highway safety is covered in sections below.

#### Impact upon Character of the Area

The application site is currently in agricultural use. There are no trees or other significant vegetation within the main body of the land but are one or two small trees on the boundary with the highway. The retention of these trees is not compromised by the development proposal.

The boundary with the highway is demarcated by open ditch and allows clear views of the whole site for users of the highway. The proposed change of use of the land will have a detrimental impact on the local landscape character whilst the site is in use however when the site is not in use its character and appearance will not be significantly different to that of the surrounding agricultural land.

The potential harm to the appearance of the landscape could be mitigated by new soft landscaping associated with the development proposal. If site boundaries were to be planted with a new

hedgerow comprising indigenous species with specimen trees at approximately 10m spacing then a good level of screening could be achieved.

There could be potential for a few specimen trees to be planted in the main body of the land.

If approval was forthcoming a condition would be applied to the permission to secure the landscaping along with a requirement to remove all equipment from the site when the boot sale is not in operation.

It is therefore considered that owing to the temporary nature of the proposed development and the planting mitigation proposed, no significant impact upon the character or appearance of the area will occur.

#### Impact upon Highway Safety

Highways England have stated that as this development site is close to A120/B1035 junction (SRN), they would like to understand the proposed trip distribution pattern for those expected 150-250 buyers and 35-70 sellers (mentioned in the Planning Statement). It is not clear about which mode of transport these above-mentioned buyers and sellers would be arriving to this car boot sale event and from which travel route or direction of travel. The applicant's agent has mentioned about the 'level of visitors (both buyers and sellers) are remarkably similar to the previous activity'. Nevertheless, it is likely that the number of trips within COVID and post COVID may not be the same.

Furthermore Highways England explained that they require seeing the future traffic impact on the strategic road network (A120/B1035 junction). The submitted planning statement has mentioned that there would be expected 150-250 buyers and 35-70 sellers. If the proposed vehicular trips are over 30 two-way trips per hour to this SRN junction, then they would require a road junction capacity assessment to demonstrate that the traffic impact from this proposed development would not have a severe impact to A120/B1035 SRN junction (Horsley Cross Roundabout).

Essex County Council Highways Authority were also consulted as part of the application process and made the following comments with regards to this proposal:

As far as can be determined from the submitted information the applicant has failed to provide specific additional information requested in respect of highway safety impacts, to the satisfaction of the Highway Authority. The proposal would intensify the use of existing accesses onto B1035 Clacton Road (secondary distributor within the County's Route Hierarchy). The main function of this highway is that of carrying traffic freely and safely between centres of population. The existence of an access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety.

Again, it is noted from the Planning Statement that on average, between 35-70 sellers were attracted to the previous site every year with approximately 150-250 buyers on the days the car boot sale were in operation, dependent upon weather and school holidays. However, as far as can be determined from the submitted information there is no indication what the maximum car park capacity will be for the new site compared to the old site. This could lead to parking within the highway introducing additional kerbside stress, obstruction, or congestion contrary to highway safety on the B1035 Clacton Road.

As the requested information has not been provided the application is contrary to saved policies TR1a, ER39 and emerging policy CP1.

#### Ecology

ECC Place Services (Ecology) have reviewed the Planning Statement (Stanfords, January 2021), aerial imagery, the Great Crested Newt Strategic Operation Areas, and the Multi Agency Geographic Information for the Countryside (MAGIC) map, relating to the likely impacts of

development on designated sites, protected species and Priority species & habitats and are satisfied that there is sufficient ecological information available for determination.

Given the distance to designated sites and the highly unsuitable nature of two nearby water bodies for Great Crested Newts they are satisfied that the proposed development is unlikely to affect designated sites, protected and Priority species and habitats.

A condition securing biodiversity enhancements would be applied to any approval to provide bat/bird boxes on the site.

### Heritage

The proposals concern the setting of the following heritage assets:

- The Grade II listed Abbot's Hall (List UID: 1261150).
- New Lodge, identified as a non-designated heritage asset.
- Bradfield lodge, identified as a non-designated heritage asset.

ECC-Place Services (Heritage) have reviewed the submitted information and do not object to the application.

### Other Considerations

Mistley Parish Council raised its concerns about the potential highway safety issues and the access ingress issues on this fast and busy road and stated that Essex County Council Highways as statutory consultee should look carefully at the details.

No further letters of representation have been received.

## **6. Recommendation**

Refusal

## **7. Reasons for Refusal**

- 1 The proposed development fails to accord with Policies ER39 and TR1a of the Tendring District Local Plan (2007) and the requirements of the National Planning Policy Framework (2019). There is also conflict with policy CP1 of the emerging Tendring District Local Plan 2013-2033.

The National Planning Policy Framework (2019) at paragraph 108 states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be - or have been - taken up, given the type of development and its location;
- b) safe and suitable access to the site can be achieved for all users; and
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Saved Policy ER39 requires that (amongst other things) planning permission will be granted for proposals for market trading or car boot sales if the proposal can demonstrate that it would not be detrimental to highway safety.

Saved Policy TR1a requires that proposals for development affecting highways will be considered in relation to the road hierarchy, to reducing and preventing hazards and inconvenience to traffic and to the effects on the transport system including the physical and environmental capacity to accommodate the traffic generated. Emerging policy CP1 is

broadly consistent with this policy and the NPPF and can therefore be afforded significant weight in the determination of this application.

In this instance the application fails to provide specific additional information requested in respect of highway safety impacts to the satisfaction of the Highway Authority and Highways England. Given the proximity of the site to the A120/B1035 junction, additional information is required in respect of the proposed trip distribution pattern for those expected 150-250 buyers and 35-70 sellers (as mentioned in the Applicant's Planning Statement). It is not clear about which mode of transport these above-mentioned buyers and sellers would be arriving to this car boot sale event and from which travel route or direction of travel. Moreover a road junction capacity assessment is required to demonstrate that the traffic impact from this proposed development would not have a severe impact to A120/B1035 SRN junction (Horsley Cross Roundabout).

In addition the proposal would intensify the use of existing accesses onto B1035 Clacton Road (secondary distributor within the County's Route Hierarchy). The main function of this highway is that of carrying traffic freely and safely between centres of population. The existence of an access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier to the detriment of highway safety.

In this respect there is no indication what the maximum car park capacity will be for the new site compared to the previous boot sale site. This could lead to parking within the highway introducing additional kerbside stress, obstruction, or congestion contrary to highway safety on the B1035 Clacton Road. In the absence of the above mentioned information the application has failed to demonstrate that the proposal will be acceptable from a highways safety perspective, and/or would not have a severe impact to A120/B1035 Strategic Road Network junction.

The proposed development would therefore fail to accord with the above mentioned national and local planning policies.

## 8. Informatives

### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

<b>Are there any letters to be sent to applicant / agent with the decision? If so please specify:</b>	YES	<b>NO</b>
<b>Are there any third parties to be informed of the decision? If so, please specify:</b>	YES	<b>NO</b>