

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND
COMPENSATION ACT 1991)

ENFORCEMENT NOTICE

ISSUED BY: TENDRING DISTRICT COUNCIL

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at St.John's Nursery or Nurseries, (also known as "St John's Plant Centre" and/or "Winter Wonderland") Earls Hall Drive, Clacton On Sea Essex CO16 8PB shown edged red on the attached plan.("the Land")

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**
 - a. Without the benefit of planning permission an unauthorised material change of use of the Land to a mixed use of a garden centre (either sui generis use or within Class A1 of the Town and Country Planning (Use Classes) Order 1987 and also retail sales within Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended together with associated customer parking. This mixed use is combined with the lawful activity of the Land which is in operation as a wholesale nursery operated for horticultural and thus agricultural purposes and;
 - b. Without the benefit of planning permission an unauthorised material change of use of the Land to a mixed use for use as a "Winter Wonderland" as a sui generis use comprising retail sales akin to the holding of a market but also for use within Use Class A1 of the Town And Country Planning (Use Classes) Order 1987 as amended combined with sales of plants trees and shrubs together also with amusements rides, animatronic displays and visitor attractions (including a Santa Claus's grotto) and a café within Use Class A3 of the Town And Country Planning (Use Classes) Order 1987 as amended This mixed use is combined with the lawful activity of the Land being in operation as a wholesale nursery operated for horticultural and thus agricultural purposes plus associated customer parking.

4. REASONS FOR ISSUING THIS NOTICE

These unauthorised material changes of use are unacceptable for the following reasons:

The National Planning Policy Framework (NPPF) advises in paragraphs 8 and 11 that all development should be sustainable and that in particular as a social objective support strong healthy and vibrant communities by fostering a well-designed environment. As an environmental objective the NPPF also seeks that development should protect and enhance the built environment making effective use of land. Local Planning Authorities are advised in general to grant planning permission for proposals which comply with a current local plan unless there are reasons why the development would conflict with the advice in the NPPF or current policies in the current local plan. In Tendring District Council this refers to the saved policies in the Tendring District Local Plan 2007 ("the 2007 plan").

The 'development plan' for Tendring is the 2007 Plan. The NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. The NPPF also 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 policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft ("The emerging Plan").

Section 1 of the emerging Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. Importantly the Inspector has confirmed that the housing requirement for Tendring of 550 new homes per annum for the period up to 2033 is based upon sound evidence. There are however concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the emerging Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the emerging Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the 2007 Plan.

The Land is currently outside the Clacton settlement boundary but is designated as transferring into the settlement boundary for Clacton in the emerging Plan. At present however it has a rural location on the outskirts of Clacton On Sea.

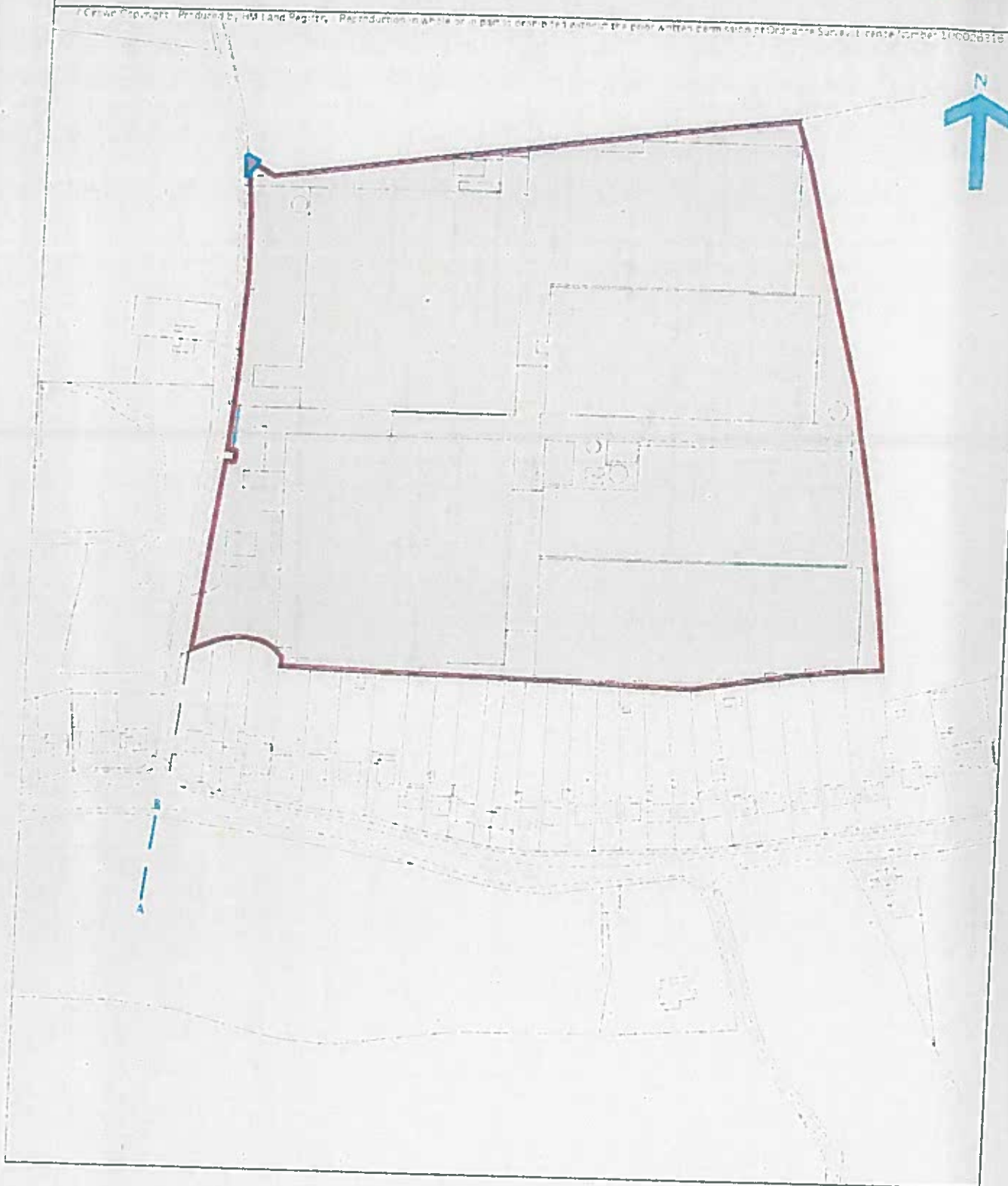
Paragraph 85 of the NPPF seeks to support and ensure the vitality of town centres by taking a positive approach to their growth management and adaptation and seeking to define primary shopping centres. Paragraph 90 advises that development

HM Land Registry
Current title plan

Title number **EX790813**
Ordnance Survey map reference **TM1416SE**
Scale **1:2500**
Administrative area **Essex : Tendring**



© Crown Copyright. Produced by HM Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence number: 100026216



This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 30 November 2017 at 12:31:44. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by HM Land Registry, Peterborough Office.

likely to have a significant adverse impact on one or more of these considerations should be refused.

Paragraph 124 of the NPPF further advises that good design is a key aspect of sustainable development. Paragraph 127 advises that development should also optimise the potential of the site to accommodate an appropriate amount and mix of development.

Paragraph 130 then advises that planning 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.

The 2007 Plan designates Clacton Town Centre (within its settlement boundary) as a Primary Shopping Frontage and Major Town Centre. Here more traditional and well-designed shops and retail units are to be expected. It also designates the area as an Urban Regeneration Area.

Policy ER31 of the 2007 plan states that development must be properly related in its scale and nature to the hierarchy set out in the policy which designates Clacton On Sea a major town centre. Development which adversely affects the vitality viability and the urban regeneration objectives associated with each centre will not be permitted. Policy ER32 provides that proposals for town centre uses outside existing town centres will be considered against a sequential approach and needs assessment. Proposals need to be satisfactory against these tests prior to any consideration of its suitability. Policy ER32a then provides that proposals for uses within Classes A1-A5 of the Town and Country Planning (Use Classes) Order 1987 will be directed towards the primary shopping centre in Clacton on Sea.

Other potential retail sites are The Clacton Shopping Village outside central Clacton and as a more limited site for small scale retail uses Bockings Elm, Clacton sited on and off St Johns Road, Clacton around a mile away from the Land.

The Land is not featured as a site within the hierarchy of retail sites in Policies ER31 and ER32a and thus here any major retail activity would be unacceptable unless meeting the sequential and needs tests or purpose built and specifically granted planning permission as part of a larger overall scheme. The site in general is in a rural location under current policies within the 2007 local plan.

There is a small parade of shops and a takeaway restaurant at a new housing development off St Johns Road, Clacton around half a mile away but these provide a local supermarket and facilities for occupiers of a new housing estate. These do not provide major retail activity. There was a conscious decision for that site via the grant of planning permission to allow small scale retailing in purpose built new units to serve residents of a new housing estate. This is unlike the major and unplanned activity on the Land. This small scheme can be accessed via an adopted highway connecting to St Johns Road via a traffic light controlled junction which contrasts to the Land where access can only be made by using the un-adopted road known as Earls Hall Drive.

Policies ER31 and ER32 of the 2007 Local Plan control Town Centre Hierarchies and uses and deal with Town Centre Uses taking place outside town centres. They help promote overall sustainable development. No sequential and needs assessment has been made to show why these type of uses cannot be located in Clacton Town Centre or at another more suitable site such as Clacton Shopping Village where such activity would not be dependent on a narrow and unsatisfactory access track..

Development adversely affecting the vitality of the Clacton Town Centre and the Local Centre at Bockings Elm, Clacton (served by St John's Road and thus vulnerable to the effects of congestion caused by this use) is not to be permitted.

Policy ER7 of the 2007 plan as to new business proposals requires that the scale and nature of the proposal is appropriate to its locality including the relationship with adjacent uses. Here the unauthorised uses are detriment to adjacent domestic and agricultural uses due to the problems caused by local traffic congestion and the amount of traffic using Earls Hall Drive. These proposals must also provide satisfactory vehicular access and parking. Here the access is unsatisfactory for the reasons set out in this notice and as yet no justification or plan has been submitted to show that adequate parking can be provided for these uses at all times of the year. In relation to any change of use the existing premises must also be suitable for the purpose and once again the difficulties as to the access argue that they are not suitable for these uses. No comprehensive design brief as required by Policy ER7 has been submitted. Whilst in rural locations permission may be exceptionally be granted for extensions to existing business where new employment opportunities can be created they can only be granted planning permission if the above criteria are met and here this is not the case..

Policy QL11 of the 2007 local plan further provides that development will only be permitted if its scale and development is appropriate to the locality. Development must not impact on the amenity of nearby occupiers. Development must also not have any adverse impact as to nuisance. This development adversely affects rural and domestic amenity by the introduction of major garden centre retail and visitor attraction type uses into a site served by an unsatisfactory and narrow un-adopted entrance track at Earls Hall Drive.

The unauthorised development by virtue of the unsatisfactory and narrow entrance track at Earls Hall Drive and congestion caused elsewhere contributes to nuisance to nearby occupiers due to the traffic issues raised by Essex County Council in their objection to Planning Application 17/01775/FUL as set out below.

In general the NPPF requires that all development must be sustainable. Development involving poor design is to be opposed. Here the central issue to the use of this location is the poor access derived off a narrow private access track. Although the junction with St John's Road is wider and adopted there appears to be a problem with traffic queuing on St Johns Road as it waits to turn into Earls Hall Drive when coming from Clacton and also when it exits from Earls Hall Drive in the direction of St. Osyth. The traffic from the nursery and the Winter Wonderland would be the main traffic at present on Earls Hall Drive.

An objection to Planning Application 17/01775/FUL was received from Essex County Council highways team. It states that in the run up to the Yuletide season 2016 a similar attraction was held at the site. This lead to numerous complaints regarding traffic congestion and queues along St Johns Road. Further on November 28th 2016 a collision was reported at the junction of Earls Hall Drive and St John's Road.

Earls Hall Drive is of insufficient width to allow two vehicles to pass. This increases the conflict between opposing vehicles creates queues of traffic in St Johns Road and increases the risk of collisions in the highway.

Without any improvements to the highway the access remains as a conflict point and these issues will remain. The proposal is

therefore in conflict with Essex County Council's Highway Authority Policies on Development Management adopted in February 2011 as County Council supplementary guidance. In particular ECC Policy A) Safety-Policy DM1 of the Highway Authorities Development Management policies.

This in turn would conflict with paragraph 108 of the NPPF re sustainable transport 109 re the refusal of development on highways grounds and paragraphs 124 and 130 of the NPPF as to promoting good design. It would also be contrary to saved Policy TR1A of the Tendring District Local Plan 2007 as it would involve development causing not reducing or preventing road hazards or inconvenience to traffic and would adversely affect the transport system and its physical and environmental capacity to accommodate the traffic generated. No transport assessment has so far been produced for these uses which have transport implications and thus it would be in conflict with policy TR1 of the 2007 Plan as a use which may have materially adverse impacts on the transport system thus arguing for the refusal of planning permission. No travel plan has been submitted for the use to show how it would mitigate local traffic or air quality problems associated with the use again contrary to Policy TR2 of the 2007 Local Plan. Policy TR7 of the 2007 Plan also requires adequate parking to be provided for out of town centre uses but no plan has been submitted to show that the parking is in fact adequate for those visiting the site especially during the use for the Winter Wonderland Wonderland attraction.

Paragraph 109 of the NPPF provides that development should only be prevented on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. Here there is an unacceptable impact on highway safety and congestion via the poor turning arrangements from St Johns Road onto Earls Hall Drive and the congestion caused at certain times by the unlawful uses in relation to traffic on St Johns Road.

Whilst paragraph 83 of the NPPF promotes a prosperous rural economy that should not be at the expense of allowing development which is unsustainable. Policy ER7 of the 2007 Plan states that all new business changes of use must be appropriate to their locality and must have satisfactory vehicular access and adequate car parking. The existing premises must be suitable for any change of use. In rural areas where new employment opportunities can be generated these criteria must be met. This use fails to meet those requirements in view of the adverse highway impact caused by the use and the inadequate highway access. No Transport Statement or Travel Plan has been submitted in support of the use and it again fails Policy ER7 of the 2007 Plan. Under Policy ER11 of the 2007 Plan any conversion and reuse of rural buildings will only be permitted subject to the suitability of the level of traffic generated and the impact on local amenity. Here there is an unacceptable impact due to the objection of Essex County Council and local traffic issues must then affect the amenity of the public. The use is therefore again contrary to Policy ER11 of the 2007 Plan.

All new development should avoid undue reliance on the motor car and encourage alternative modes of transport in order to meet the requirements of Policy QL2 of the 2007 Local Plan. As a mixed use when allowing for the combination of nursery retailing and Winter Wonderland this is not sited within the Clacton settlement development boundary and would be harmful to the amenity of the local area contrary to Policy QL8 of the 2007 Plan. All new development should meet local needs. Policy QL10 of the 2007 Plan states that planning permission should only be

granted if access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate. Circulation within the site and access to the site must also reflect the need to avoid reliance on car derived uses as set out in Policy QL2 of the 2007 Local Plan. The access to the site is not practical and the highway network cannot safely accommodate the additional traffic generated by the proposal contrary to Policy QL10 of the 2007 Local Plan. Policy QL11 of the 2007 Local plan further provides that any new development must minimize environmental impacts and that development will only be permitted where any additional road traffic arising will not have a materially damaging impact or traffic cause nuisance. The scale and nature of the development must be appropriate to the vicinity. Due to the nature of the unsuitable access and local highway concerns the use is also contrary to Policy QL11 of the 2007 plan.

The emerging policies of the emerging Plan are also relevant to this case.

Draft Policy SP1 sets an overall presumption in favour of sustainable development but here the development is unsustainable for the above reasons.

Draft Policy SPL3 requires all new development to have a sustainable design and requires changes of use to have access to the site that is practicable and requires that the highway network will be able to safely accommodate the additional traffic the proposal will generate. It should not lead to an unacceptable increase in congestion. Due to the objection of Essex County Council as highway authority these unacceptable uses fails these requirements. Furthermore Policy SPL3 requires that the use should not generate additional road traffic which is unacceptable for safety or nuisance reasons. Once again this use is contrary to the Policy.

Draft Policy CP1 states that all new development must be sustainable in terms of transport and accessibility. It also requires the submission of Transport Statements and Travel Plans. It seeks to avoid reliance on car derived development and to encourage the use of other means of transport. Here whilst the site is accessible by footpaths and bus routes the objection of Essex County Council refers to the problems caused by car journeys affected by or involving the Winter Wonderland use at the site. In this respect the development is unsustainable in terms of transport and accessibility. It is therefore contrary to draft Policy CP1.

Draft Policy PP1 provides that new retail development (this use involving retailing) will be focused on the main retail centres such as Clacton town centre. All development will be subject to local traffic considerations. Due to the poor access and highway issues identified in the objection from Essex County Council this would not meet the requirements of the draft Policy nor can the out of town centre location automatically be justified.

Draft Policy PP2 as to retail hierarchy expects that new retail uses will normally be located in Clacton Town Centre. Retail uses which serve day to day needs of the community might be located in Bockings Elm, Clacton also on St Johns Road but these uses does not meet day to day needs in the same way as a post office or convenience store. No compelling case has been made as to why this use should operate in this site with poor access and highway links rather than at a better serviced site in Clacton Town Centre or alternatively at a recognized site such as Clacton Shopping Village. The use is therefore contrary to Policy PP2.

Draft Policy PP4 as to local impact thresholds provides that any retail development which is for an area of over 929 Square metres outside Clacton Town Centre will require a local impact threshold assessment where it is not in accordance with the Local Plan. Here no such assessment has been submitted and the use is not in

accordance with the emerging Plan. Thus the use is not in accordance with draft Policy PP4.

Whilst a case is made that these unauthorised uses provide permanent and temporary employment which help keep the horticultural enterprise going during months when there is less custom for that business that is insufficient to overcome these policy objections to these uses. The site is not one specifically allocated for major retailing or employment uses. Here the development is contrary to Policy 84 of the NPPF due to the unacceptable impact on local roads.

For the above reasons this unauthorised material change of use is unacceptable and is contrary to both national and local planning policies together also with the emerging local policies in the draft Local Plan.

The Council would not therefore be willing to grant planning permission for the unauthorised development to remain. Planning permission for the temporary use of part of the Land as "Christmas Wonderland" seasonal sales event operating from 16th October 2017 to 6th January 2018 to include a Santa's Grotto and Miniature train was refused under reference 17/01775/FUL on 21st December 2017. No planning permission has been sought otherwise for the unauthorised uses of the Land.

Whilst the Council has granted planning permission for the improvement of Earls Hall Drive as 17/01935/FUL dated 16th May 2018 that would not overcome these objections to these unlawful uses as any such improvement has yet to take place and secondly the informative to that decision indicates that proposed widening of the access is not accepted as providing an effective solution to the highway issues associated with any other uses of the Land and in particular resulting traffic congestion at the junction with St John's Road. That decision although issued is currently subject to a planning appeal as to non-determination and therefore the status of the decision may yet be a matter for the appeal.

It is considered necessary and proportionate to interfere with the owners and occupiers rights under the Human Rights Act 1998 and European Convention on Human Rights as to respect for their possessions and property together with their rights under the Equalities Act 2010 in the greater interests of the right of the public to have faith in a planning system which takes proportionate action to ensure that development is sustainable and that unauthorised and potentially harmful development is eliminated.

The Council does not accept that these mixed unauthorised uses would be allowed by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. Furthermore development within Use Class A1 cannot claim permitted development rights if overall it forms part of an unauthorised material change of use.

The Council believes these unauthorised material changes of use are less than ten (10) years old

5. WHAT YOU ARE REQUIRED TO DO

A. Cease the unauthorised material uses of the Land for

- 1 A mixed use of a garden centre (either sui generis use or within Class A1 of the Town and Country Planning (Use Classes) Order 1987 and also retail sales within Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended together with associated customer

18/00047/CHGUS3

parking. This mixed use is combined with the lawful activity of the Land which is in operation as a wholesale nursery operated for horticultural and thus agricultural purposes and;

2. A mixed use for use as a "Winter Wonderland" as a sui generis use comprising retail sales akin to the holding of a market but also for use within Use Class A1 of the Town And Country Planning (Use Classes) Order 1987 as amended combined with sales of plants trees and shrubs together also with amusements rides, animatronic displays and visitor attractions (including a Santa Claus's grotto) and a café within Use Class A3 of the Town And Country Planning (Use Classes) Order 1987 as amended This mixed use is combined with the lawful activity of the Land being in operation as a wholesale nursery operated for horticultural and thus agricultural purposes plus associated customer parking.

B Cease any other material change of use of the Land within Use Class A1 of the Town And Country Planning (Use Classes) Order 1987 (as amended)

C Cease the use of the Land for customer parking in connection with the uses set out in A and B

D Remove from the Land all goods for sale, stock and items sold on the Land in conjunction with the unauthorised uses

E Cease the use of all animatronic displays, miniature railways, rides and roundabouts used in conjunction with the unauthorised uses

F. Cease the use as a Santa's Grotto or any other Santa Claus visitor attraction used in conjunction with the unauthorised uses

G Cease all sales of fireworks on the land and remove any trailer or container used for such sales in conjunction with the cessation of the unauthorised uses in A-B

H Cease any use of any part of the Land as a café or restaurant or other catering facility used in connection with the uses in A-B whether used for a use within Class A3 of the Town And Country Planning (Use Classes) Order 1987 as amended or as an ancillary use to the unauthorised uses set out in this notice and referred to in steps A-B

I Remove from the Land all materials resulting from steps A-H of these requirements.

Note: the Council accepts that it would be lawful to carry on wholesale horticultural (agricultural) activity at the land after these steps are met.

6. TIME FOR COMPLIANCE

All Steps- six weeks from the date this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 18th October 2018 unless an appeal is made against it beforehand.

Dated: 14th September 2018

Signed: *Cath Bicknell*

Catherine Bicknell
Head of Planning

On behalf of: Tendring District Council, Council Offices, Thorpe Road,
Weeley, CLACTON-ON-SEA, Essex. CO16 9AJ

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of the notice. Your rights of appeal and the process by which you may make an appeal are set out in the enclosed "Enforcement Information Sheet" and "Planning Inspectorate Leaflet".

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

SERVICE

Copies of this notice have been served on: -

St John's Nursery or Nurseries (otherwise St. Johns Plant Centre)
Earls Hall Drive
Clacton On Sea
Essex
CO16 3PB

Kelsworth Limited
3rd Floor Sterling House,
Langston Road,
Loughton,
Essex,
IG10 3TS

St Johns Nursery (Clacton) Limited
33 Wood Street,
Barnet,
Hertfordshire,
EN5 4BE

Park View Nursery (Enfield) Limited
Parkview Nurseries
Theobalds Park Road,
Crews Hill, Enfield,
Middlesex,
EN2 9BQ

St Johns Plant Nursery
St John's Nursery or Nurseries (otherwise St. Johns Plant Centre)
Earls Hall Drive
Clacton On Sea
Essex
CO16 3PB

St John's Nursery Limited
161 Forest Road,
London,
United Kingdom,
E17 6HE

The Owner
St John's Nursery or Nurseries (otherwise St. Johns Plant Centre)
Earls Hall Drive
Clacton On Sea
Essex
CO16 3PB

The Occupier
St John's Nursery or Nurseries (otherwise St. Johns Plant Centre)
Earls Hall Drive
Clacton On Sea
Essex
CO16 3PB

Bank Of Scotland PLC
Bank of Scotland Corporate
Security For Advances
Citymark
Fountainbridge,
Edinburgh
EH3 9PE

Moondrop Limited
Regency House,
33 Wood Street,
Barnet,
Hertfordshire,
EN5 4BE

St John's Nursery Limited
Springfield House
99/101 Crossbrook Street
Waltham Cross
Herts
EN8 8JR

**Continuation of Annex
Relevant Planning Policies**

NATIONAL PLANNING POLICY FRAMEWORK

Paragraphs 8 and 11 re sustainability
Paragraphs 83 and 84 re vibrant rural areas
Paragraphs 85 and 90 re vibrant town centres
Paragraphs 102-111 Sustainable transport
Paragraphs 124, 127 and 130 re good design

NATIONAL PLANNING PRACTICE GUIDANCE

Paragraph 207 re issuing enforcement notices.

**TENDRING DISTRICT LOCAL PLAN 2007 (ADOPTED 11 DECEMBER
2007)**

ER7 New business Uses
ER11 Conversion and reuse of rural buildings
ER31 Hierarchy of uses
ER32 Town centre uses outside existing town centres
ER32a Clacton Primary Shopping centre
QL2 Promoting transport use
QL11 Appropriate development
TR1a Development affecting highways
TR1 Transport assessment
TR2 Travel Plans
TR7 Vehicle parking at new development

**TENDRING DISTRICT REPLACEMENT LOCAL PLAN 2013-2033 AND
BEYOND PUBLICATION DRAFT-EMERGING POLICIES**

SP1 Sustainable development
SPL3 Sustainable design
CP1 Sustainable transport and activity
PP1 New retail development
PP2 Retail hierarchy
PP4 Local impact threshold

