

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	23/11/2018
Planning Development Manager authorisation:	AN	27/11/18
Admin checks / despatch completed	SK	27/11/18

**Application:** 18/01621/FUL **Town / Parish:** Ardleigh Parish Council

**Applicant:** Mr Farrer

**Address:** Birchwood Nursery Harts Lane Ardleigh

**Development:** Removal of condition 1 of TEN/180/71 to allow unrestricted occupation.

### 1. Town / Parish Council

No comments received.

### 2. Consultation Responses

None required.

### 3. Planning History

93/01351/FUL	Continued occupation of bungalow without compliance with Condition No. 1 on planning permission TEN/180/71 (removal of agricultural occupancy)	Refused	11.01.1994
98/00752/FUL	Erection of stables and store building and additional use of land for grazing of horses with continued use for cropping of hay	Approved	29.07.1998
80/00396/FUL	Extn to existing bungalow	Approved	07.05.1980
80/02001/FUL	Use of dwelling in variation of agricultural occupancy	Refused	24.03.1981
85/00166/FUL	Two bedroom extn together with store and shower room	Approved	19.03.1985
87/00905/FUL	Reconstruct existing utility / W.C and construct double garage	Approved	20.07.1987
88/01310/FUL	Three bedroom bungalow	Refused	27.09.1988
10/00139/FUL	Demolition of existing glasshouses and erection of single storey timber framed and clad mobile lodge for residential use only in association with equine use and together with all necessary external works, landscaping, parking arrangements	Refused	08.06.2010



and drainage, as amended by drawing no. 301A received on 12/04/10.

10/00986/FUL	Change of use of privately used equine land to use of land for running livery business.	Refused	23.11.2010
11/00657/FUL	Demolition of existing glass-house and erection of mobile home with associated landscaping, parking and drainage works for residential use in association with authorised commercial livery use.	Refused	15.09.2011
15/00779/FUL	Permanent retention of bungalow previously approved for a temporary period under application number 11/00657/FUL for use in connection with commercial livery business.	Approved	27.08.2015

#### 4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework July 2018

National Planning Practice Guidance

Tendring District Local Plan 2007

HG19 Removal of Occupancy Conditions

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

PP13 The Rural Economy

#### Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) 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. Paragraph 48 of 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.

Section 1 of the Local 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. They raise 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 Local 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 Local 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 paragraph 48 of 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 adopted Local Plan.

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

### Site Description

The application relates to Birchwood Nursery, Harts Lane, Ardleigh. The property is a 3 bed bungalow situated on the north side of Harts Lane. It is a dwelling typical of the 1970's in terms of design and form. It is located upon a plot extending to 0.5 acres (0.2 hectares) largely laid to lawn. The land to the north comprises a series of paddocks and stables operating as an equestrian and livery business unconnected to the occupation of Birchwood Nursery bungalow. This land has the benefit of a separate dwelling unit, for which planning permission was granted in 2015 (reference 15/00779/FUL).

### Description of Application

The application seeks the removal of Condition 1 imposed upon planning permission TEN/180/71 relating to an agricultural occupancy restriction as set out below;

*'The occupation of the dwelling shall be limited to a person employed, or last employed, locally in agriculture as defined in section 221 (1) of the Town and Country Planning Act 1962, or in forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person).'*

*Reason - The site lies outside any area which would be considered for normal residential development but in view of the agricultural significance attaching to the proposal the Local Planning Authority have decided to grant consent on condition that the dwelling remains for an agricultural worker.'*

### Assessment

The main considerations in this instance are;

- Planning History;
- Policy Considerations;
- Evidence and Justification;
- Representations.

### Planning History

The Agent's supporting statement provides a summary of the site history as follows;

Planning permission was granted in 1971 for the dwelling subject to the agricultural occupancy condition in conjunction with the use of the land as a horticultural nursery. The site was subsequently developed with a number of glasshouses. In 1993 the then owner decided to sell the property due to retirement. An application to remove the occupancy condition was submitted but refused permission (reference TEN/93/01351). The current owner then acquired the property and continued to use the site for horticultural purposes until 2005. At that time, the applicant was unable to maintain two contracts, which left him with no choice but to cease horticultural production.

The land was subsequently used by the applicant's daughter to develop an equine business. This activity developed to the stage where in 2010, permission was granted to cease use of the land for horticultural purposes and to develop the paddocks and livery use which continues today. The following year, permission was granted on appeal for the siting of a mobile home in connection with the equine business (reference 11/00657/FUL). This permission was made permanent in 2015 (reference 15/00779/FUL). The dwelling unit remains occupied pursuant to the terms of that permission.

Following the appeal decision in 2011, the applicant has had no requirement to occupy the property for an agricultural or horticultural worker. In fact, the property has been let on a formal tenancy basis since that time to a person who has no connection with agriculture. This situation remains today.



### Policy Considerations

Saved Policy HG19 of the adopted Tendring District Local Plan 2007 states that:

Applications to relax planning conditions that restrict occupancy of agricultural or forestry workers dwellings will only be permitted in the following circumstances:

- (i) where an applicant is able to demonstrate that there is no long term demand for an agricultural or forestry workers dwelling on the particular unit or in the locality generally; and
- (ii) where all reasonable attempts have been made to market the property for a period of 12 months immediately prior to the application date at a discounted value to reflect the agricultural occupancy condition.

Whilst PPS7 was superseded by the NPPF published in 2012, it is important to note that in the absence of any subsequent guidance, Annex A of this document still remains pertinent to decision making for agricultural, forestry and other occupational dwellings. Moreover, Annex A is still referred to by the Planning Inspectorate when deciding appeals and therefore we believe it to be relevant to this case. Annex A makes it clear that special justification is required for the removal of agricultural occupancy conditions to be considered acceptable.

### Evidence and Justification

Applications to relax occupancy conditions will only be granted in exceptional circumstances. Reasonable efforts must be shown to have been made over a period of at least 12 months to dispose of the property either by sale or rent at a discounted rate that would enable its occupation by a local farm worker or retired farmer.

The application is accompanied by a statement and appendices providing information on the marketing particulars and interest expressed in the property and why these did not result in the sale of the property. This statement is dated September 2018. The most recent offer is detailed within the supporting statement as follows;

'JK - Claimed he could meet the occupancy condition as he worked on a local farm but would not provide details of his place of employment. Has made a number of offers from £280,000 to £330,000 but no further response received.'

The interested party known as JK has also provided information on the offers made and the correspondence declining these offers including an offer for the full asking price declined on 19th October 2018.

The Agent provided additional information in response to this stating that 'his offer remains in conflict with the terms of the sale.' However, the terms to which he relates (electricity supply, water supply and new separate access as the expense of the purchaser) are not included within the sales particulars and were introduced at later stage verbally following offers from JK. The sales particulars refer to the front of the property as having a shared driveway.

JK approached the Council to seek guidance on his eligibility for occupation of the property under the condition of planning permission TEN/180/71 and was advised that his circumstances do comply with the occupancy restriction given that he is locally employed in agriculture by S&G Wooldridge Ltd, Rookery Farm, Ardleigh.

Collectively, the evidence demonstrates that there is a demand for an agricultural workers dwelling in the locality and that offers have been made by an eligible person on this property itself. Furthermore, the terms of the sale were changed and do not match those on the marketing campaign suggesting that the marketing campaign was not carried out fairly.

The application therefore fails to comply with the requirements of the aforementioned policy.

### Representations

Objections and additional information has been received from JK - Mr Jacek Krajewski.



No other letters of representation have been received.

#### Conclusion

The application and supporting justification does not satisfy the requirements of the aforementioned policy in that interest has been expressed in the property and offers made by an eligible agricultural worker demonstrating there is demand for the property.

#### **6. Recommendation**

Refusal - Full

#### **7. Reasons for Refusal**

- 1 Policy HG19 of the adopted Tendring District Local Plan 2007 states applications to relax planning conditions that restrict occupancy of agricultural or forestry workers dwellings will only be permitted in the following circumstances:

(i) where an applicant is able to demonstrate that there is no long term demand for an agricultural or forestry workers dwelling on the particular unit or in the locality generally; and,

(ii) where all reasonable attempts have been made to market the property for a period of 12 months immediately prior to the application date at a discounted value to reflect the agricultural occupancy condition.

Collectively, the information provided by the Agent and the letters of objections from the interested party demonstrate that there is a demand for an agricultural workers dwelling in the locality and that offers have been made by an eligible person on this property itself.

Furthermore, at the time the offers were received the terms of the sale were changed from those detailed on the sales particulars, specifically in relation to the shared access arrangements, suggesting that the marketing campaign was inaccurate and hindering.

The application and supporting justification does not satisfy the requirements of the aforementioned policy. Interest has been expressed in the property and offers made by an eligible agricultural worker demonstrating there is demand for the property.

#### **8. Informatives**

##### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application. 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 for the refusal, approval has not been possible.