

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	TF	10/3/20
Planning Development Manager authorisation:	AN	10/3/20
Admin checks / despatch completed	CE	11/03/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	AP	11/3/2020

**Application:** 19/01899/LUPROP                      **Town / Parish:** Mistley Parish Council  
**Applicant:** Anglia Maltings (Holdings) Limited  
**Address:** Land South West of Horsley Cross Roundabout Clacton Road Horsley Cross

**Development:** This certificate seeks to confirm that the outline planning permission granted on 4 August 2014 granted under reference 13/00745/OUT permitting the following development will be lawfully implemented by construction the base to a telecommunications mast in accordance with the approved drawings 66-2014-01P; 66-2014-02P and 66-2014-03P: Development of site to provide a new industrial park with up to 28,280 m2 of floorspace for B2 and B8 uses, a bus depot and 30m high telecommunications mast. All with associated access, landscaping, parking and highway improvements.

### 1. Town / Parish Council

Mistley Parish Council                      The Planning Committee of the Parish Council noted this large employment site. Approval was recommended, where the Committee would encourage more employment in the area.

### 2. Consultation Responses

No responses received.

### 3. Planning History

06/00891/OUT                      1) Use of agricultural land for employment purposes by formation of seven plots and the erection of buildings to enable relocation and expansion of existing businesses in North East Tendring District (one in Colchester) as follows:-  
PLOT 3 - 0.7ha, building 2,500sq. m, manufacture/refurbishment of filling and packing machinery contract packing operation, Class B2.  
PLOT 4A/4B, 1.3 ha, total.  
PLOT 4A, (building 2,000 sq. m, logistics depot serving Tendring District, Class B8.  
PLOT 4B, (building 1,775 sq. m,                      29.03.2007

	<p>storage involving manufacture of specialist brick related products for the construction industry, Class B8/B2.</p> <p>PLOT 5 - 1.0 ha, building 1,900 sq. m, logistics depot national and international, Class B8.</p> <p>PLOT 6A - 0.5 ha, (ancillary building) 240sq. m, car transporter depot.</p> <p>PLOT 7 - 0.75 ha, 1,900sq. m, labelling operation, Class B2.</p> <p>PLOT 8 - 0.75 ha, 1,900sq. m, logistics depot, Class B8.</p> <p>2) PLOT 1 - 1.3ha, erection of 80 bedroom hotel.</p> <p>3) Remainder of the site to be comprehensively landscaped.</p> <p>PLOT 6B, waste recycling centre (to be the subject of a separate application for full planning permission to Essex County Council).</p>		
13/00745/OUT	<p>Development of site to provide a new industrial park with up to 28,280m<sup>2</sup> of floorspace for B2 and B8 uses, a bus depot and <b>30m high telecommunications mast.</b></p> <p>All with associated access, landscaping, parking and highway improvements.</p>	Approved	04.08.2014
14/01296/DETAIL	<p><b>Erection of 30m telecommunications mast.</b></p>	Approved	01.12.2014
17/01310/DETAIL	<p>Submission of reserved matters pursuant to outline planning permission 13/00745/OUT with details pursuant to Conditions 1 (appearance, landscaping, layout and scale), 3 (Strategic Phasing Plan), 4 (Design Code), 5 (phasing arrangements), 6 (levels), in part 7 (external materials), in part 12 (roundabout), 15 (landscaping), 18 (loading, turning and parking) and in part Schedule 7 (details of an air quality monitoring programme) of Legal Agreement for the development of the site to provide a new industrial park for B2 and B8 uses.</p>	Approved	04.05.2018
19/00002/EIASC	<p>Proposed construction of nine industrial, storage and distribution (Class B1(c), B2 and B8) buildings, together with associated access, car parking, landscaping and drainage pond.</p>		14.01.2019

19/30009/PREAPP	Construction of 10 industrial, storage and distribution (Class B1c, B2 and B8) buildings, together with associated access, car parking, landscaping and drainage pond.	10.05.2019
19/01706/OUT	Outline planning application for employment development, comprising Phase 1 for 15,350 sqm of B2 development rising to a maximum building height of 21.7m and Phase 2 for up to 18,117 sqm of B1c / B2 and B8 uses rising to a maximum building height of 12m, together with associated access, landscaping, parking and drainage pond.	Current
19/01898/DISCON	Discharge of conditions 11 (wheel cleaning) and 21(dust management) for approved application 13/00745/OUT, and condition 2 (Construction Method Statement) for approved application 14/01296/DETAIL.	Approved
19/01899/LUPRO P	This certificate seeks to confirm that the outline planning permission granted on 4 August 2014 granted under reference 13/00745/OUT permitting the following development will be lawfully implemented by construction the base to a telecommunications mast in accordance with the approved drawings 66-2014-01P; 66-2014-02P and 66-2014-03P: Development of site to provide a new industrial park with up to 28,280 m2 of floorspace for B2 and B8 uses, a bus depot and 30m high telecommunications mast. All with associated access, landscaping, parking and highway improvements.	Current
20/00023/S106A	Formal application to modify a Section 106 Planning Obligation for planning permission 13/00745/OUT.	Current

#### 4. Relevant Policies / Government Guidance

*Town & Country Planning Act 1990 Section56(1)*

*NPPF National Planning Policy Framework February 2019*

## *National Planning Practice Guidance*

### *Tendring District Local Plan 2007*

- QL1 Spatial Strategy
- QL4 Supply of Land for Employment Development
- QL5 Economic Development and Strategic Development Sites
- QL7 Rural Regeneration
- QL12 Planning Obligations
- ER2 Principal Business and Industrial Areas
- ER7 Business, Industrial and Warehouse Proposals

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

- CP3 Improving the Telecommunications Network
- DI1 Infrastructure Delivery and Impact Mitigation

### **Status of the Local Plan**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) 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)**

#### Proposal

This application seeks a Certificate of Lawfulness for Proposed Use or Development (LUPROP) to certify that the following is lawful:

*'This certificate seeks to confirm that the outline planning permission granted on 4 August 2014 granted under reference 13/00745/OUT permitting the following development will be lawfully implemented by construction of the base to a telecommunications mast in accordance with the approved drawings 66-2014-01P; 66-2014-02P and 66-2014-03P:*

*Development of site to provide a new industrial park with up to 28,280 m<sup>2</sup> of floorspace for B2 and B8 uses, a bus depot and 30m high telecommunications mast. All with associated access, landscaping, parking and highway improvements.'*

### Assessment

The applicant's agent has advised in a supporting covering letter that this application has been submitted as a consequence of Condition 2 of Reserved Matters approval reference 17/01310/DETAIL which requires that development of the new industrial park be commenced before the expiration of two years from the date of approval of the reserved matters by 3 May 2020. The intention of this application is to seek confirmation that the construction of the telecommunications mast base in advance of 3 May 2020, forms a 'material operation' that constitutes a commencement of development in advance of that date and will keep this consent extant.

The Planning Agent has further advised that, in relation to the outline planning permission (ref. 13/00745/OUT), all planning conditions, save for conditions 11 (wheel cleaning) and 21 (dust management plan), specifically exclude works to the mast. In relation to the first reserved matters consent (ref. 14/01296/DETAIL), only condition 2 (construction management plan) is a condition precedent. Accordingly, it is only these three conditions that need to be discharged in order to lawfully implement the foundations to the mast. It can be confirmed that these three conditions were subject of a recent 'discharge of condition' application (ref. 19/01898/DISCON) which was approved on 7 February 2020.

In terms of the telecommunications mast specifically, the 'Reserved Matters' approval for the mast (ref. 14/01296/DETAIL) contained the following three drawings:

- 66/2014/01P – Proposed plans and elevations
- 66/2014/02P – Proposed elevations
- 66/2014/03P – Detailed block plan

These drawings show that the telecoms mast would be positioned to the south-west side of the site, adjoining the site boundary. The telecoms mast would have a concrete base, which would measure 4m x 4m x 2m.

Section 56(1) of the Town and Country Planning Act 1990 states at subsection 2 that '*...development shall be taken to be begun on the earliest date on which any material operation comprised in development begins to be carried out*'.

Section 56(1), subsection (4) refers to '*...any works of construction in the course of the erection of a building*' and '*...the digging of a trench which is to contain the foundations, or part of the foundations, of a building*' as constituting a 'material operation'.

Given the above - and the fact that all relevant planning conditions on the outline and reserved matters approvals have been discharged – it is considered, in conclusion, that the proposed works to provide the concrete base to the approved telecommunications mast would be sufficient to implement the three planning permissions.

### Conclusion

On the basis of the legal submissions, and confirmation that all relevant conditions have been discharge to allow for the commencement of work on the telecommunications mast, that implementation of the outline planning permission can lawfully occur in advance of the 3 May 2020 time limit for implementation required by condition 2 of detailed approval ref. 17/01310/DETAIL.

Accordingly, it is considered that a Certificate of Lawfulness for Proposed Use or Development (CLOPUD) can be issued to confirm that the following is lawful:

*'This certificate seeks to confirm that the outline planning permission granted on 4 August 2014 granted under reference 13/00745/OUT permitting the following development will be lawfully implemented by construction of the base to a telecommunications mast in accordance with the approved drawings 66-2014-01P; 66-2014-02P and 66-2014-03P:*

*Development of site to provide a new industrial park with up to 28,280 m2 of floorspace for B2 and B8 uses, a bus depot and 30m high telecommunications mast. All with associated access, landscaping, parking and highway improvements.'*

## 6. Recommendation

Certificate of Lawfulness for Proposed Use or Development (CLOPUD) granted.

## 7. Conditions / Reasons for Refusal

1. On the basis of the legal submissions, and confirmation that all relevant conditions have been discharged to allow for the commencement of work on the base to the telecommunications mast, that implementation of the outline planning permission can lawfully occur in advance of the 3 May 2020 time limit for implementation required by condition 2 of detailed approval ref. 17/01310/DETAIL.

Accordingly, it is considered that a Certificate of Lawfulness for Proposed Use or Development (CLOPUD) can be issued to confirm that the following is lawful:

*This certificate seeks to confirm that the outline planning permission granted on 4 August 2014 granted under reference 13/00745/OUT permitting the following development will be lawfully implemented by construction of the base to a telecommunications mast in accordance with the approved drawings 66-2014-01P; 66-2014-02P and 66-2014-03P:*

*Development of site to provide a new industrial park with up to 28,280 m2 of floorspace for B2 and B8 uses, a bus depot and 30m high telecommunications mast. All with associated access, landscaping, parking and highway improvements.'*

## 8. Informatives

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