

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AP	19/8/2020
Planning Development Manager authorisation:	AN	20/08/2020
Admin checks / despatch completed	CC	20/08/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	BB	20/08/2020

Application: 20/00658/LUEX **Town / Parish:** Lawford Parish Council

Applicant: Mr Ian Warder

Address: 83 Hungerdown Lane Lawford Manningtree

Development: Siting of a mobile home to provide living accommodation ancillary to the main dwelling.

1. Town / Parish Council

n/a

2. Consultation Responses

n/a

3. Planning History

99/01160/FUL	First floor extension (2 studies and bathroom) over existing flat roofed single storey extension, plus refurbishment and extension to existing conservatory	Approved	14.10.1999
05/01140/FUL	Outbuilding for smallholding to house food processing room, training room, office and toilet.	Approved	08.09.2005
10/60168/HOUEN Q	Proposed solar pv pannels on roof of out building		17.12.2010
10/60180/HOUEN Q	Install dormer window to roof		17.12.2010
12/60071/HOUEN Q	To put in 5 PV panels 1642mm x 994mm ground mounted.		22.02.2012
17/01652/FUL	Single storey rear extension.	Approved	23.11.2017
20/00120/FUL	Proposed retention of mobile home for occupation as an annexe.	Refused	23.04.2020
20/00658/LUEX	Siting of a mobile home to provide living accommodation ancillary to the main dwelling.	Current	

4. Relevant Policies / Government Guidance

The Town & Country Planning Act 1990; Section 191 (1) (a)

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 Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF.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, with further hearing sessions in January 2020. The Inspector issued his findings in respect of the legal compliance and soundness of the Section 1 Plan in May 2020. He confirmed that the plan was legally compliant and that the housing and employment targets for each of the North Essex Authorities, including Tendring, were sound. However, he has recommended that for the plan to proceed to adoption, modifications will be required – including the removal of two of the three Garden Communities 'Garden Communities' proposed along the A120 (to the West of Braintree and on the Colchester/Braintree Border) that were designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033.

The three North Essex Authorities are currently considering the Inspector's advice and the implications of such modifications with a view to agreeing a way forward for the Local Plan. With the Local Plan requiring modifications which, in due course, will be the subject of consultation on their own right, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications – increasing with each stage of the plan-making process.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will progress once modifications to the Section 1 have been consulted upon and agreed by the Inspector. 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

The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

The time limits are:

- four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed
- four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken
- 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed

Once these time limits have passed, the development becomes lawful, in terms of planning.

Subsection (1) of section 191 provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

Applications for Lawful Development Certificates should include the following information:

- whether the application relates to:
 - a use
 - a building operation
 - a condition not complied with
 - the date that the use started
 - any use class the applicant considers to be applicable
 - the reasons the applicant thinks he is entitled to a Lawful Development Certificate
 - any other relevant information
 - a plan identifying the land
 - a certificate as to the applicant's interest (ownership, tenancy etc.) in the land and any interest of any other person

Question 7 of the application form submitted on 25th June 2020 confirms that the application relates to a use.

Question 10 of the application form submitted on 25th June 2020 confirms that the use begun on 1st November 2019.

The email received on 1st July 2020 confirms that the application relates to an existing C3 use in that the mobile home is used as ancillary to the current residential dwelling of 83 Hungerdown Lane.

Question 9 of the application form submitted on 25th June 2020 confirms that the grounds for the Lawful Development Certificate are that the use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years.

An application plan identifies the land to which the application relates as land edged red. Other land in the applicant's ownership is outlined in blue.

Question 5 of the application form submitted on 25th June 2020 confirms that the applicant's interest in the land is as the owner.

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. In this case a supporting statement submitted on 27th May 2020 has been provided confirming the siting of the mobile home and how it complies with the provisions of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. The statement further confirms the current use of the mobile home as ancillary to the main dwelling at 83 Hungerdown Lane.

Section 191 of the Town and Country Planning Act 1990 is the relevant section when dealing with issues of Certificates of Lawful Use or Development. Section 191 (1) (a) states that the use will be lawful if no enforcement action or Breach of Condition Notice could be served and, that the use or development does not constitute a contravention of any of the requirements of any Enforcement Notice then extant. In this case there is no record of an Enforcement Notice in respect of this property.

Up to date guidance on the issue of lawful use certificates is given in paragraph 6 of the National Planning Practice Guidance which states that the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

The Court has held (see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority have no evidence of their own, or from others, to

contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

By virtue of section 191(5)(b), a LDC must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", a LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously.

In this case the case made is that the mobile home itself as a structure does not require planning permission as it complies with the provisions of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 and meets the tests set out in the Acts legally defining the mobile home as a caravan. Further to this the use of the mobile home sited within the curtilage of the dwelling known as 83 Hungerdown Lane is confirmed as being ancillary for use currently by the owner/occupier's elderly father with services that are shared with the main dwelling.

In this case the Council has no credible evidence of its own to challenge the case now made.

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, the mobile home at 83 Hungerdown Lane, Lawford, Manningtree, has been used as an annexe ancillary to the main dwelling (Use Class C3) since 1st November 2019, that this use has not been supervened by another material change of use and nor has it been abandoned.

6. Recommendation

Lawful Use Certificate Granted

7. Conditions

- 1 The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, the mobile home at 83 Hungerdown Lane, Lawford, Manningtree as shown edged red on the plan annexed to this Certificate, has been used as an annexe ancillary to the main dwelling (Use Class C3) since 1st November 2019, that this use has not been supervened by another material change of use and nor has it been abandoned.

8. Informatives

n/a

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