

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	DC	07/10/2021
Planning Development Manager authorisation:	JJ	07/10/2021
Admin checks / despatch completed	CC	11.10.2021
Technician Final Checks/ Scanned / LC Notified / UU Emails:	TF	11.10.2021

Application: 21/00198/FUL **Town / Parish:** Thorpe Le Soken Parish Council

Applicant: Strutt and Parker (Farms) Limited

Address: Damonts Farm Damants Farm Lane Thorpe Le Soken

Development: Removal of condition 2 (Agricultural Occupancy) of Planning Permission ref: TEN/475/65 (Erection of new farmhouse on site of existing substandard dwelling at Damonts Farm House, Thorpe Le Soken) dated 10/12/1965

1. Town / Parish Council

Not received.

2. Consultation Responses

Not relevant.

3. Planning History

Application site:

TEN/295/60	Erection of overhead powerlines	Deemed Consent
TEN/475/65	Erection of new farmhouse on site of existing substandard dwelling at Damonts Farm House, Thorpe Le Soken (subject of current application)	Approved
TEN/475/65/A	Farmhouse (detail)	Approved
TEN/475/65/B	Erection of single storey farm office adjacent to farmhouse	Approved
TEN/1386/86	Extensions to dwelling and alterations	Approved

Other Dwellings on the farm unit:

TEN/151/51	Erection of pair of agricultural Cottages (Landmere Hall Farm, now Nos. 1 & 2 Seaview Cottages)	Approved
TEN/178/61	Farm Bungalow and garage	Approved

(Kents Hill Farm)

TEN/60/52	Erection of pair of agricultural Cottages (Landmere Hall Farm, now Nos. 1 & 2 New Hall Cottages)	Approved
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4. Relevant Policies / Government Guidance

National:

National Planning Policy Framework 2021 (the Framework)
Planning Practice Guidance

Local:

Saved Tendring District Local Plan 2007 Policies (the 2007 Local Plan)

HG12	Extensions to or Replacement of Dwellings outside Settlement Development Boundaries
HG19	Removal of Occupancy Conditions

Tendring District Local Plan 2013-2033 and Beyond (the 2013-33 Local Plan)

Section 1 (adopted 2021):

SP1	Presumption in Favour of Sustainable Development
SP2	Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)
SP3	Spatial Strategy for North Essex
SP4	Meeting Housing Needs

Section 2 (emerging – adoption expected later in 2021):

PP13	The Rural Economy
LP7	Self-Build and Custom-Built Homes
DI1	Infrastructure Delivery and Impact Mitigation

Supplementary Planning Guidance:

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

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 National Planning Policy Framework 2021 (the Framework).

The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 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 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 were found sound and have been fixed, 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 the policies of the Framework. In this regard 'Proposed

Modifications' to the emerging 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. The Council held a six-week public consultation on the Main Modifications and associated documents which began on 16th July 2021. The consultation closed at 5pm on 31st August 2021 and adoption is expected later this year. Section 2 will then join Section 1 as part of the development plan, superseding in full the 2007 Local Plan. Section 2 of the 2013-33 Local Plan is therefore at a very advanced stage of preparation and should be afforded considerable weight.

5. Officer Appraisal

The Site/Background

Damonts Farmhouse is a substantial two-storey and hipped-roofed dwelling constructed of brick that has been altered and significantly extended, together with a detached farm office building. The dwelling is located within an agricultural landscape on the eastern side of Damonts Farm Lane, midway along it south-east of Thorpe-le-Soken. The Farmhouse was approved as the replacement of a dilapidated dwelling in 1965 and is the subject of an agricultural occupancy condition (Condition 2 of TEN/475/65).

Damonts Farm now forms part of a larger agricultural unit which comprises an agglomeration of neighbouring farms (including New Hall, Kents Hill, and Landmere Farms). Collectively, the agent states the overall unit is now called Landmere Farm. Landmere farm is owned and managed by Strutt and Parker (Farms) Limited. The submitted planning statement states that Landmere Farm extends in total to approximately 657 hectares (1,600 acres) of arable land, currently producing wheat and sugar beet, with 60 hectares (150 acres) let to a third party for the growing of potatoes.

Other than Damonts Farmhouse the supporting statement confirms that there are 5 further dwellings on the unit, 4 of which are stated as being let out to non-agricultural tenants and one which is occupied by a farm worker who is employed fully time by the applicant on the unit. Agricultural buildings on the unit are said to include a grain store and cold/ambient stores.

The Proposal

The application seeks the removal of Condition 2 of TEN/475/65 which states:

"The dwelling erected in accordance with this permission may only be occupied by persons employed locally in agriculture as defined in Section 221 (1) of the Town and Country Planning Act 1962, or in forestry, and the dependents of such persons".

The case put by the applicant can be summarised as follows:

- The condition is no longer necessary; the land is arable and has no stock or agricultural production needing close care or attention.
- The only farm worker responsible for day to day farm work lives in a farm workers cottage.
- The farm business is managed by Strutt and Parker (Farms) Ltd and a team of staff in Lavenham.
- Dumont's Farmhouse is no longer required to house a farm worker.
- There is no evidence of any planning applications for farm works dwellings in the area.
- Agricultural employment in the area, and Essex in general, continues to decline.
- A dwelling unrestricted in terms of occupancy previously existed on the site as it pre-dated the planning system. Therefore, the condition would not have been necessary to make the development acceptable at the time it was granted.
- The restriction is no longer reasonable for the following reasons:
 1. There is no wish to sell the building as it is part of the fabric of the farm, but there is no longer a need for the restriction.
 2. The situation of a lack of need will not change in the future with the land remaining in arable production.

3. In any case there is predicted to be a drop in livestock production in the UK due to CAP reform and BREXIT.
4. It is unreasonable to insist that the property is marketed, even if there were a market, because the applicant is not prepared to sell.

The evidence submitted in support of the application makes the case that there is no unmet functional requirement for housing on the unit for agricultural workers who are not already housed; the sole full-time farm worker who requires to live on the unit resides at No. 2 Seaview Cottages which is the subject of an agricultural occupancy (Condition 1 of TEN/151/51).

During meetings with the applicant it has been confirmed that sugar beet is harvested by contractors and stored off-site. There is only one farm worker responsible for day-to-day tasks who is overseen by the farm manager, who works remotely in an office based at Thorpe Morieux, Suffolk. The Farm Manager assists contractors on site when necessary which is mainly during harvest time. To avoid it remaining empty, the farmhouse has been let and is currently occupied in breach of the condition (since 2019) to a couple who work in the railway industry. It is advanced by the applicant that, due to the size of the arable holding and the way that it is run, that there is no longer a functional requirement for Damonts Farmhouse, and that the condition is therefore no longer reasonable or necessary.

The supporting statement refers to 5 other dwellings on the unit in addition to Damonts Farmhouse - 4 being rented to non-agricultural workers, and 1 occupied by the farm worker. Following a request for further information on these other dwellings and checks of the Council's records, they are as follows:

- 1 & 2 Seaview Cottages (restricted to agricultural occupancy by condition of TEN/131/51)
- 1 & 2 Newhall Cottages (restricted to agricultural occupancy by condition of TEN/60/52)
- Kents Hill Bungalow (restricted to agricultural occupancy by condition of TEN/178/61)

The following appeal decision is cited in support of the application:

- APP/H1840/W/18/3197353, Martinbrook Farm, Claines

Principle of Development and the Development Plan

The main issue is whether or not the condition continues to be reasonable and necessary, having regard to isolated dwellings in the countryside and the provision of the development plan for agricultural workers and replacement dwellings, and national planning policy, and, if not, whether there are any overriding material considerations.

Saved Policy HG19 addresses the principle of section 73 applications for the removal of an agricultural occupancy condition and 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.”*

In relation to the first criterion, the applicant submits that there is no need on the unit for the dwelling to house a farm worker because other residential units on the farm cater for their established functional needs. The agricultural need is low because the land is arable and planting and harvesting is contracted out. Furthermore, the applicant points to a lack of evidence of a demand for farm workers dwelling in the locality and there is no evidence to dispute this. However, because the dwelling has not been marketed with the condition or advertised for rent (though not

explicitly required under the policy), the proposal clearly conflicts with criterion ii) of saved Policy HG19. In accordance with S38(6) of the Planning and Compensation Act 2004 development which conflicts with the development plan should be refused, unless material considerations indicate otherwise.

Material Considerations

The applicant states that the property has not been marketed because they are not wishing or willing to sell the property (they see it as an integral part of the fabric of the unit). The applicant has explained that such marketing would be in breach of Consumer Protection from Unfair Trading Regulations introduced in 2008. The Council's Legal Services Team were asked to comment and confirm that, as the applicant is not intending to sell the property, they are not lawfully allowed to market the property for sale. Of course this would not prevent marketing for rent. Nevertheless, it is considered given the scale of the extended property that, even if it were marketed for sale or rent at a substantially discounted rate to reflect the occupancy condition, currently at this time it is extremely unlikely that it would be within the financial reach of the vast majority of rural workers, especially if they were relying on their income to secure a mortgage; it is not a small workers cottage.

Furthermore saved Policy HG19 presupposes that an agricultural condition were necessary in the first instance to make the development acceptable in planning terms. No earlier planning history can be identified and it is therefore likely that the dwelling it replaced will have predated the planning system. It could not therefore have been the subject of any occupancy condition. That said, the proposal is for an S73 variation that would result in a new planning permission and it therefore requires consideration of the principle of development afresh against the provision of the development plan in force at the time of decision.

Saved Policy HG19 is out of date. Following Para 219 of the Framework it therefore attracts reduced weight as it is not entirely consistent with Para 80(a) of the Framework, which refers to "...essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside". While emerging Policy PP13 provides for the provision of new dwellings for agricultural and key workers' in the countryside outside of settlements, there is no direct equivalent replacement of saved Policy HG19 in the emerging plan, insofar as applications for the removal of occupancy conditions are concerned.

The development plan seeks to resist isolated dwellings in the countryside and this is consistent with the Framework. The original proposal was for a replacement dwelling in an isolated location outside of any identified settlement development boundary. Such proposals are now governed by saved Policy HG12, which would not ordinarily require an occupancy restriction. To some extent the provisions of Policy HG12 are carried forward under emerging modified Policy LP7, which allows for the '*one-for-one replacement of an existing dwelling, of any size, in the countryside outside of settlement development boundaries with a single unit of Self-Build Housing*'. Following public consultation on modified Policy LP7 there are a number of unresolved comments to be considered. However, none are in objection to the policy and it is therefore likely to be formally adopted. The policy should therefore be afforded significant weight in accordance with Paragraph 48 of the Framework. Significantly, this policy would also not require proposals for a replacement dwelling to be the subject of an agricultural or other occupancy restriction.

Following legal challenge in the case of *Hambleton v SSE & Others* [1994] it was found that the inspector was entitled to take account of the probability that the occupancy condition would not have been imposed had there been a contemporary application for planning permission. In that case, the condition might not have been imposed because the site now fell within a settlement development boundary. In this case, the proposal was for replacement of a dwelling that was unrestricted in terms of occupancy, and were the Council to deal with that proposal today, for the above policy reasons, occupancy of the replacement dwelling would be unrestricted.

Paragraph 56 of the Framework makes clear that planning conditions should be:

1. necessary;
2. relevant to planning;

3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

Having regard to these tests for the use of conditions and the above considerations, it is considered that the condition has outlived its relevance and is no longer necessary following changes in the farm's operational circumstances. While the Council could consider varying the condition to more accurately reflect current national planning policy (to include rural workers), it would not be reasonable to do so in light of the foregoing considerations.

Other Considerations

The Planning Practice Guidance is clear that decision notices for the planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Because the dwelling has already been constructed there is no requirement for a standard time condition. The proposal does not generate any requirement for contributions in relation to RAMS, or any other consideration, because there would be no net increase in the number of dwellings. No physical development is proposed and it is not therefore necessary for the Council to carry out a Habitat Regulations Assessment.

The appeal decision submitted by the applicant relates to a proposal in Worcester. The proposal was for the erection of dwelling and change of use of part of a pig farm to a fencing contractors and vehicle repair business. In any case, the Council does not have full details. The circumstances were different and for these reasons this appeal decision is afforded little weight, save for the fact it confirms that an application to vary or remove a condition results in a new permission being created.

Conclusion and Planning Balance

The proposal would conflict with criterion ii) of saved Policy HG19 in the absence of any marketing with the occupancy restriction. However, in the circumstances of this isolated case the Council agrees it would not be appropriate for the applicant to market a dwelling they are not willing to sell. In any event, Policy HG19 was adopted in 2007 and it is inconsistent with the Framework, and therefore attracts reduced weight. Moreover, even if the dwelling were to be marketed at a significant discount to reflect the occupancy condition, it is highly unlikely to be affordable to a rural worker in view of its substantial scale.

A contemporary application for the construction of a replacement dwelling to replace a previously unrestricted dwelling would accord with saved Policy HG12 and emerging Policy LP7, and there would be no policy requirement for an occupancy condition. The Council accepts that following the agglomeration of historically smaller farm units which would be likely to have been more labour intensive, together with the use of contractors and remote farm management, there is a reduced labour requirement on the unit. Furthermore the existing functional labour requirement for housing is currently met by occupancy restricted accommodation located elsewhere on the unit, and there is no robust evidence of an unmet demand for farm workers dwelling in the locality.

Therefore, bringing all these considerations together, while the proposal is contrary to saved Policy HG19 ii), the condition is no longer reasonable or necessary and planning permission should be granted.

Recommendation

Approve - Full

6. Conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location & Block Plan, Drawing Number 100-01

Reason - For the avoidance of doubt and in the interests of proper planning.

7. Informatives

1. Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

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