

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	JJ	10/04/2024
Team Leader authorisation / sign off:	AN	11/04/24
Assistant Planner final checks and despatch:	ER	12/04/2024

Application: 23/01821/ADV **Town / Parish:** Clacton Non Parished

Applicant: Wildstone Estates Limited

Address: Land On The East Side of Old Road Clacton On Sea

Development: Installation of 1 no. 48 sheet digital poster.

1. Town / Parish Council

Clacton Non Parished

2. Consultation Responses

ECC Highways Dept
05.03.2024

Original comments

From a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reasons:

The Highway Authority will protect the principal use of the highway as a right of free and safe passage of all highway users.

Following the results of a Highway Records search, it is confirmed that part of the proposed signage will encroached onto highway land. It is unlawful to construct on or enclose highway land and as such the Highway Authority cannot sanction the proposal.

The proposal creates an obstruction on the highway where members of the public are entitled to pass and repass over highway land unobstructed. It is therefore contrary policy DM1 contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Notes

i. Highway Land has highway rights which pass over the land. These rights do not extinguish over time.

ii. It is not uncommon for land to be under the ownership of a third party, i.e., the sub-soil, but also be public highway.

iii. The applicant should resubmit a drawing showing the proposed signage clear of the highway boundary.

ECC Highways Dept
09.04.2024

Amended comments

The information submitted with the application has been assessed by the Highway Authority and conclusions have been drawn from a desktop study with the observations below based on submitted material. No site visit was undertaken in conjunction with this planning application. It is noted that the poster has been re-positioned so the unit will be located on private land behind an existing fence to the rear of the footway in line with the existing house. The illumination levels will be regulated by an ambient sensor, the proposed advertisement

adjusts its output according to the prevailing levels of ambient light, up to a maximum threshold of 5000 cd/sqm luminance on the brightest of days considering these factors:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. The proposed works particularly to the external surface area directly abuts to the back of the footway. This is public highway, and the construction work must be carried out subject to arrangements made with the Development Management Team contact details in the informative at the foot of the page.

Reason: In the interests of highway safety in accordance with policy DM1.

2. For the internally illuminated sign, the maximum luminance of the sign shall not at any time exceed the standards contained within the Institution of Lighting Professionals, PLG05/23, which in this case is 300 Candelas per square metre (300cd/m²) at night and 3500 Candelas per square metre (3500cd/m²) during the day.

Reason: To ensure that users of the highway are not subjected to glare and dazzle in the interest of highway safety and in accordance with Policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

i) All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org

ii) On the completion of the installation of the poster the existing boundary fence to the rear of the footway, must be reinstated and left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority/ landowner.

iii) The Highway Authority reserves the right under Section 152 of the Highways Act, 1980 to remove or alter any sign overhanging or adjacent to the highway which is considered to be an obstruction or a hazard to the safe and convenient passage of the public in the highway.

iv) The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

3. Planning History

4. Status of the Local Plan

Planning law requires that decisions on 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 (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

5. Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

6. Relevant Policies / Government Guidance

National:

National Planning Policy Framework 2023 (NPPF)

National Planning Practice Guidance (NPPG)

Local:

Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 (adopted January 2021)

SP7 Place Shaping Principles

Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

SPL3 Sustainable Design

7. Officer Appraisal (including Site Description and Proposal)

Application Site

The application site comprises of triangular piece of land on the corner of Old Road and Wellesley Road. The site is currently derelict, with a chain fence to the front boundary line and a 6ft garden fence that runs through the site. The site is within the Settlement Development Boundary.

Proposal

The application seeks planning permission for the installation of 1 No. 48 sheet digital poster.

Assessment

Paragraph 141 of the NPPF confirms: The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple,

efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

Due to the position of the proposed digital poster, it will be clearly visible from several street scenes. These include Old Road, Wellesley Road and London Road. The digital poster will be used as advertising space for local and national companies for various advertising campaigns.

The site is currently derelict but previously had several 48 sheet poster advertising displays, however these are thought to have been removed at the end of 2016.

The proposed digital poster is to be placed in an area with a mix of residential properties and commercial businesses nearby. The other businesses within the area display their own advertisements, including the illuminated petrol sign and shop signage nearby. Due to the other signage nearby, it is considered that the proposal would not appear as a visually intrusive feature to the area.

Impact on Residential Amenities

The proposed digital poster is positioned to face away from the row of terraced houses on Old Road. It will however face on to the residential / commercial area of Wellesley Road and Old Road. The poster will be clearly visible from the surrounding residential properties within this area. Whilst there are not currently illuminated advertisements on the site, the proposed poster will be a significant distance from the nearest residential properties and will not result in an adverse impact in terms of residential amenities to nearby occupants subject to the recommended control over the brightness of the illumination.

The site currently has planning permission for 4 flats that was granted under planning application 21/01074/FUL on 8th July 2022. This application has not been commenced however is still within the 3 year time limit for commencement. If the proposal for 4 flats was to commence then this application for the proposed digital poster would not be able to be built due to its location within the site. Both applications cannot be implemented together, therefore there would be no impact on the properties from the advert if they were built.

Highway Safety

Essex County Council Highways have been consulted on this application and have raised no objections to the proposal provided the illuminance levels do not exceed 300 cd/m at night and 3500 cd/m during the day which will be placed as a condition on the consent.

The proposed sign directly abuts the back of the public footway. Highways have not raised any objections in regards to the highway safety however have suggested construction work to be carried out subject to arrangement with the Development Management Team, this will be placed as a condition on the consent in the interests of public safety for users of the footpath.

Other Considerations

No letters of representation have been received.

Ecology and Biodiversity

General duty on all authorities

The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." Section 40 states

authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.

This development is subject to the general duty outlined above. An informative has been imposed strongly encouraging the applicant to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Therefore the development on balance, with consideration of the impact of the development and baseline situation on site, is considered likely to conserve and enhance biodiversity interests.

Biodiversity net gain

Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. This excludes applications for Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Development Certificates, householders, self builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow). This proposal is not therefore applicable for Biodiversity Net Gain.

Protected Species

In accordance with Natural England's standing advice the proposed development site and surrounding habitat have been assessed for potential impacts on protected species. It is considered that the proposal is unlikely to adversely impact upon protected species or habitats.

Conclusion

In accordance with the overarching duty outlined above, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

Conclusion

The proposed development is consistent with the above mentioned national and local planning policies. In the absence of material harm the proposal is recommended for approval.

8. Recommendation

Approval – Advertisement Consent

9. Conditions / Reasons for Refusal

1 ADVERTISEMENT (SCHEDULE 2 CONDITIONS)

CONDITIONS:

1. No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

2. No advertisement shall be sited or displayed so as to:

(a) endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);

(b) obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or

(c) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.

3. Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.

4. Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.

5. Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

REASON: All advertisements displayed with the (express) consent of the Local Planning Authority are subject to these standard conditions by virtue of Schedule 2 to the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 (as amended).

2 APPROVED PLANS & DOCUMENTS

CONDITION: The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard (except for Listed Building Consents).

Drawing No's

14016/PA/01 - Received 14.03.24

14016/PA/02 - Received 14.03.24

14016/PA/03 - Received 14.03.24

14016/PA/04 - Received 14.03.24

Cover Letter - Received 22.12.23

REASON: For the avoidance of doubt.

NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

3 ONGOING REQUIREMENT IMPOSED: LEVEL OF ILLUMINATION

CONDITION: The maximum luminance of the sign/s shall not exceed 300 candelas/m² at night and 3500 candelas/m² during the day.

REASON: Any luminance in excess of this level would cause harm by reason of being detrimental to the prevailing character of the area, residential amenity, biodiversity and possible distraction to highway users.

NOTE/S FOR CONDITION:

Candelas/m² (cd.m²) is a measure of light emitted per unit area, this unit is frequently used to specify the brightness of a display device. For example, most consumer desktop liquid crystal displays have luminance of 200 to 300 cd/m². A HDR television display can range from 450 to up to 1600 cd/m²

- 4 CONDITION: On completion of the installation of the hereby approved poster, the existing boundary fence to the rear of the footway, must be reinstated/repared in accordance with details to have been previously agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details and retained and maintained thereafter.

REASON: In the interests of highway safety as the site directly abuts the footway.

10. Informatives

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.

Ecology Informative

In accordance with the Council's general duty to conserve and enhance biodiversity, you are strongly encouraged to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Suggested enhancements could include:
<https://www.rhs.org.uk/wildlife/in-the-garden/encourage-wildlife-to-your-garden>

Highways Informatives

i) All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org

ii) On the completion of the installation of the poster the existing boundary fence to the rear of the footway, must be reinstated and left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority/ landowner.

iii) The Highway Authority reserves the right under Section 152 of the Highways Act, 1980 to remove or alter any sign overhanging or adjacent to the highway which is considered to be an obstruction or a hazard to the safe and convenient passage of the public in the highway.

iv) The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

12. Notification of Decision

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