

DELEGATED DECISION OFFICER REPORT

| AUTHORISATION | INITIALS | DATE |
|--|----------|------------|
| Planning Officer recommendation: | AP | 16/5/2024 |
| Team Leader authorisation / sign off: | ML | 17/05/2024 |
| Assistant Planner final checks and despatch: | ER | 17/05/2024 |

Application: 24/00227/LUEX **Town / Parish:** Lawford Parish Council

Applicant: Ms N Gooch

Address: Barleycorn Cottage Tile Barn Lane Lawford

Development: Application for Lawful Development Certificate for Existing Use for occupation in non compliance with Condition 3 of planning permission TEN/2009/89 (agricultural occupancy condition).

1. Town / Parish Council

Lawford Parish Council No comments received

2. Consultation Responses

Not applicable

3. Planning History

| | | | |
|---------------|--|----------|------------|
| 89/02009/FUL | Proposed new house (revision to design of house approved on approval No. TEN/1444/89) | Approved | 09.01.1990 |
| 92/01257/FUL | (Barleycorn Nursery, Tile Barn Lane, Lawford) Additional dormer and detached garage | Approved | 14.12.1992 |
| 91/00012/FUL | Detached chalet bungalow. | Refused | 02.04.1991 |
| 24/00227/LUEX | Application for Lawful Development Certificate for Existing Use for occupation in non compliance with Condition 3 of planning permission TEN/2009/89 (agricultural occupancy condition). | Current | |

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.

In relation to housing supply:

The Framework requires Councils to significantly boost the supply of homes to meet the District's housing need. However, the revised Framework, published on 19th December 2023, sets out in Paragraph 76 that (for applications made on or after the date of publication of this version of the Framework) local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:

- their adopted plan is less than five years old; and
- that adopted plan identified at least a five-year supply of specific, deliverable sites at the time that its examination concluded.

The adopted Local Plan meets these criteria.

Notwithstanding this updated provision, the Council will continue to demonstrate an updated supply of specific deliverable sites within its Strategic Housing Land Availability Assessment (SHLAA), which is published annually. The most recent SHLAA was published by the Council in November 2023, and demonstrates a 6.44-year supply of deliverable housing sites against the annual requirement of 550 dwellings per annum set out within the adopted Local Plan, plus a 5% buffer to ensure choice and competition in the market. (The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>)

On 19th December 2023 the Government published the Housing Delivery Test (HDT) 2022 measurement. Against a requirement for 1,420 homes for 2019-2022, the total number of homes delivered was 2,207. The Council's HDT 2022 measurement was therefore 155%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

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>

There are no neighbourhood plans in force in the Lawford area.

6. **Relevant Policies / Government Guidance**

The Town & Country Planning Act 1990 (as amended) ('the Act')
The Planning and Compensation Act 1991 (as amended)
Town and Country Planning (Development Management Procedure) (England) Order 2015
The National Planning Practice Guidance

7. **Officer Appraisal (including Site Description and Proposal)**

The Site and Context

The application site is a detached dwelling with associated private garden and double garage with parking in front of, constructed under planning permission TEN/1444/89. The dwelling is situated on the eastern side of Tile Barn Lane, a rural location, surrounded by agricultural land and other dwellings, set apart, with smallholdings or agricultural based businesses. As constructed the dwelling was intended that it would only be used in conjunction with local agricultural activity or forestry, and that the occupiers allowed to use it would be restricted because of an agricultural occupancy condition on the planning permission.

The Development

The application is for a Lawful Development Certificate for an existing use in breach of a condition. The application form described the use for which the certificate is sought as being 'Occupation of Barleycorn Cottage, Lawford in non compliance with Condition 3 of planning permission TEN/2009/89 (agricultural occupancy condition)'. The application form goes on to state that the use/activity commenced 1st December 1999 and that the certificate is sought as the use began more than 10 years before the date of this application.

The condition concerned is Condition 3 of planning permission TEN/2009/89 which stated:

"The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly or last employed locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or in forestry; or a dependent of such person residing with him or her (but including a widow or widower of such person)".

Agriculture is defined in Section 290(1) of the Town and Country Planning Act 1971 as:

"includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly".

Main Issues

The Planning Practice Guidance explains that the statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act 1990, and that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

The time limits for taking enforcement action are set out in [section 171B of the Town and Country Planning Act 1990](#) (see also [The Planning Act 2008 \(Commencement No. 8\) and Levelling-up and Regeneration Act 2023 \(Commencement No. 4 and Transitional Provisions\) Regulations 2024](#) for transitional arrangements).

In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- **within 10 years for any other breach of planning control (essentially other changes of use)**

In certain circumstances, the above time limits do not prevent enforcement action after the relevant dates:

- [section 171B\(4\)\(b\) of the Town and Country Planning Act 1990](#), which provides for the taking of "further" enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or

served, as the case may be, even though the normal time limit for such action has since expired. It also includes the situation where an enforcement warning notice is issued within the relevant time limit but further enforcement action is subsequently required. This is known as the “second bite” provision

- where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired
- where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered.

Sections 191 and 192 of the Town and Country Planning Act 1990 provides for anyone (not just a person with a legal interest in the land) to apply to the local planning authority for a lawful development certificate. A certificate is a statutory document certifying:

• in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

• in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

Applications for Lawful Development Certificates should include the following information:

a) whether the application relates to:

- i. a use
- ii. a building operation
- iii. a condition not complied with

b) the date that the use (or breach of condition) started, or the date on which the building was substantially complete.

c) any use class the applicant considers to be applicable;

d) the reasons the applicant thinks they are entitled to a Lawful Development Certificate

e) any other relevant information.

f) a plan identifying the land, and.

g) a certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person.

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. This could include:

i. proof that any building was ‘substantially complete’ more than four years before the date of the application; and/or

ii. proof that any use (or breach of condition) has been carried out continuously for a period of 10 years (four years in the case of a dwelling).

The Submission

The application contains the following information:

A completed application for an Existing Lawful Development Certificate. The applicant provides the following information on the form:

- The application form confirms that the applicant has an ownership interest in the land.
- The certificate is being sought for a use, operation, or activity in breach of a condition or limitation.
- The use/activity for which the certificate is sought began more than 10 years before the date of the application.
- The use or activity began on 01.12.1999 and has been carried out without interruption.
- There has not been any material change of use of the land since the start of the use for which a certificate is sought.

A red edged site plan at a scale of 1:1250 identifying the application site.

Witness statement by Nikki Gooch (applicant)

Letter from Beaumont Seymour, Chartered Accountants confirming the applicant's father was a roofer from at least 2002 until his retirement in 2019.

P60 of Jessica Joslin for tax years ending 2022 and 2023.

P60 of Nikki Gooch for tax years ending 2021, 2022 and 2023.

Conclusion

Paragraph: 006 Reference ID: 17c-006-20140306 of the Planning Practice Guidance confirms that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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.

During the period from 1999 to 2020, Mr M Gooch, the applicant's father and from 1999 to 2010, Mrs J Gooch, the applicant's mother was not employed in local agriculture or forestry and thus the condition of planning permission TEN/2009/89 was breached. Their period in breach of the condition was 11 years. The current period of occupation from February 2020 for Nikki Gooch and from January 2021 for Jessica Joslin to the present time, who are not employed in local agriculture or forestry, has again breached the condition.

In addition to the submissions from the applicant, historic aerial views of Barleycorn Cottage demonstrate that there has been no agricultural or forestry activity on the land since at least 2000.

On balance, no occupation of Barleycorn Cottage by a person wholly or mainly employed locally in agriculture or forestry has taken place since 1st December 1999.

The Council does not have any compelling evidence of its own to refute these statements and therefore on the balance of probabilities the case for a Certificate of Existing Lawful Use is made.

A further requirement for the issue of a Certificate is that the Local Planning Authority has not taken enforcement action against that use or uses within the 10 year period. There is no current outstanding enforcement notice as to the breach of condition and specific occupancy of Barleycorn Cottage.

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, Barleycorn Cottage, Tile Barn Lane, Lawford, Manningtree, Essex, CO11 2LT has been used without compliance with condition 3 of planning permission TEN/2009/89 for a continuous period of at least 10 years prior to the date of this application, and that this use has not been superseded by another material change of use and nor has it been abandoned.

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.

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.

8. Recommendation

Lawful Use Certificate Granted

9. Conditions

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, Barleycorn Cottage, Tile Barn Lane, Lawford, Manningtree, Essex, CO11 2LT has been used without compliance with condition 3 of planning permission TEN/2009/89 for a continuous period of at least 10 years prior to the date of this application, and that this use has not been supervened by another material change of use and nor has it been abandoned.

10. Informatives

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>

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 |