

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		AN	20/08/24
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		ML	20/08/2024
Assistant Planner final checks and despatch:		JJ	21/08/2024

Application: 24/00959/FUL **Town / Parish:** Clacton Non Parished

Applicant: Steve Dalton - Nico Manufacturing Limited

Address: 109 Oxford Road Clacton On Sea Essex

Development: Planning Application - erection of workshop/storage shed.

1. Town / Parish Council

None

2. Consultation Responses

N/a

3. Planning History

02/00633/FUL	Replacement and extension to existing 2.4 m high fence around perimeter of property	Approved	21.05.2002
94/00963/FUL	Amendment to Phase 2 of TEN/470/82 to change brick cladding to profiled metal sheeting on external walls	Approved	08.09.1994
95/00507/FUL	(Land at Cotswold Road, Clacton on Sea) External alterations and access ramp	Approved	05.06.1995
98/00056/FUL	Erection of free standing shed	Approved	26.02.1998
02/01746/FUL	Extension to factory plus disabled ramp and fire escape stairs.	Approved	30.10.2002
07/00263/OUT	Residential development and industrial building.	Approved	08.08.2007
13/00403/FUL	Extension to existing tool store.	Approved	03.06.2013
19/00499/FUL	Proposed single storey rear extension to existing factory, including revised link road & parking.	Approved	08.10.2019
22/01378/FUL	Proposed erection of insulated steel clad building (garage) on existing Nico site at rear on wasteland.	Approved	04.01.2023

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>

There is currently no Neighbourhood Plan for this area.

6. Relevant Policies / Government Guidance

National:

National Planning Policy Framework December 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)

SP1 Presumption in Favour of Sustainable Development

SP7 Place Shaping Principles

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

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

PP6 Employment Sites

PPL1 Development and Flood Risk

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

CP1 Sustainable Transport and Accessibility

7. Officer Appraisal (including Site Description and Proposal)

Site Description

The application site is located on the western side of Oxford Road, Clacton-on-Sea within a mixed commercial/residential area. The application site itself accommodates a large brick built factory building that fronts Oxford Road and other various outbuildings. The land to the rear of the factory is used for parking purposes and beyond is a large grassed/overgrown area. Directly to the north of the site is an Asda Supermarket and to the south are further commercial units. Part of the southern boundary is marked by a Public Right of Way. To the west of the site are residential properties within Berkeley Road.

Proposal

This application proposes the erection of a workshop/storage shed to the rear of the established metal manufacturing business. The building would measure 5.3m x 12.3m (65sqm in floor area) and 3.9m to the ridge. This is identical to the neighbouring building recently erected under planning permission 22/01378/FUL which is currently being used to store stainless coiled steel.

The application was originally submitted as encompassing the entire site and was therefore a major application, however the site plan has been amended to reduce the application site to only the proposed building, with the remaining land outlined in blue therefore making this a minor application.

Principle of development

The application site is designated as a protected employment site under Local Plan Policy PP6 which seeks to safeguard B2 and B8 uses on these sites.

The development, whilst not specifically generating additional employment, does maintain an existing established employment use by providing additional storage space for the business which is a large local employer.

Furthermore, the site is located within the Settlement Development Boundary of Clacton, therefore there is no principle objection to the proposal, subject to the detailed considerations discussed below.

Siting and Design

Section 1 Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Section 2 Policy SPL3 of the 2013-33 Local Plan also requires, amongst other things, that the development respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Paragraph 135 of the Framework requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place.

This modest commercial building is to be sited next to an existing identical building with another outbuilding beyond it, at the rear of the site largely obscured by the main building from public view. It is also separated from the rear of the site and the Asda car park by overgrown land. The building will not therefore result in any harm to visual amenity or the character of the area.

Neighbouring Amenities

The NPPF, at paragraph 135 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Section 1 Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.

The proposed building is further from neighbouring dwellings along Cotswold Road and Berkeley Road than the neighbouring identical building. Given the degree of separation between the proposed building and the nearest residential properties, its relatively modest scale and the presence of other intervening structures, the development would not cause any material loss of outlook or light to nearby residents.

The building is to be used solely for storage purposes and therefore would not give rise to any adverse noise impacts to local residents. A condition will be imposed ensuring that construction activities take place between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays) to avoid any neighbouring complaints.

Highway Safety

Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Paragraph 135 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. These objectives are supported adopted Policy SP7 of the Tendring District Local Plan 2013-2033.

The development is for additional storage purposes only and would comprise of a modest floor area when having regard to the large buildings present on the wider site. Consequently, the development would not give rise to additional traffic movements that would be detrimental to highway safety and does not reduce the existing level of parking on site.

Habitats, Protected Species and Biodiversity Enhancement

Ecology and Biodiversity

This report addresses the distinct legal requirements, ensuring a comprehensive analysis of the ecology and biodiversity impacts of the proposal in line with regulatory standards.

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. The requirements of Biodiversity Net Gain as set out below will ensure the proposal positively impacts biodiversity, offsetting requirements necessary for the development to take place.

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. The minimum requirement is for a 10% net gain in biodiversity value achieved on a range of development proposals.

The applicant asserts on the application form that the proposal is exempt as it is de minimis, however this is incorrect as the proposal will not be sited on an existing concrete base. The statutory framework for BNG therefore applies. This involves the imposition (automatically applied as a deemed condition) of a planning condition on approvals to ensure the objective of at least 10% net gain over 30 years. The determination of the Biodiversity Gain Plan (BGP) under this planning condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the BGP, via planning condition discharge, is approved.

Given this position, the government strictly provides it would generally be inappropriate for decision makers to refuse an application on the grounds that the biodiversity gain objective will not be met. It is considered logical to confirm this closer to commencement of development, given the potential number of options available. This further supports the position that the biodiversity gain objective can always be met in some form.

Protected Species

In accordance with Natural England's standing advice the application 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 committed to actively contributing to the conservation and enhancement of biodiversity as set out above and within the BNG planning condition. In conclusion, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

Other Considerations

No letters of representation have been received.

8. Recommendation

Approval - Full

9. Conditions

1. COMPLIANCE REQUIRED: COMMENCEMENT TIME LIMIT

CONDITION: The development hereby permitted shall be begun not later the expiration of three years from the date of this permission.

REASON: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

NOTE/S FOR CONDITION:

The development needs to commence within the timeframe provided. Failure to comply with this condition will result in the permission becoming lapsed and unable to be carried out. If commencement takes place after the time lapses this may result in unlawful works at risk Enforcement Action proceedings. You should only commence works when all other conditions requiring agreement prior to commencement have been complied with.

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.

The approved red line plan drawing is 010.B received 29.07.2024
Drawing numbers 001, 002, and 003

REASON: For the avoidance of doubt and in the interests of proper phased planning of the development.

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. FURTHER APPROVAL: BIODIVERSITY NET GAIN PLAN

CONDITION: The development may not be begun unless (a) a biodiversity gain plan has been submitted to the planning authority (see note), and (b) the planning authority has approved the plan (see note).

REASON: In order to accord with Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) and amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024

NOTE - CONTEXT AND APPLICATION:

Planning conditions are typically established upon the granting of planning permission under sections 70(1) and 72 of the Town and Country Planning Act 1990. However, it's essential to note that the biodiversity gain condition operates under a distinct statutory framework, specifically outlined in paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990.

This condition is deemed to apply to all planning permissions granted for land development in England, unless specific exemptions or transitional provisions are applicable (for further details, please refer to the provided web link <https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments> or contact us directly.

The government advises against including this condition in decision notices to avoid confusion. However, for clarity and accountability, we have opted to highlight this condition within the decision notice. This ensures that all involved parties are aware of its requirements, facilitating effective tracking and monitoring throughout the development process, including the discharge of conditions.

In certain instances, this condition may be imposed even if the applicant believes that biodiversity net gain (BNG) does not apply. Based on the available information, it is determined that this permission necessitates the approval of a biodiversity gain plan before commencing development, as none of the statutory exemptions or transitional arrangements apply.

For further details, please consult the officer report as needed. If you believe this condition does not apply, we strongly recommend contacting the Local Planning Authority (LPA) for clarification. Tendring District Council serves as the planning authority responsible for determining the approval of a Biodiversity Gain Plan in relation to this permission.

BIODIVERSITY GAIN PLAN REQUIREMENTS:

For the Biodiversity Gain Plan requirements, please refer to both paragraphs 14 and 15 of the Environment Act Sch 14 Part 2 as amended by The Biodiversity Gain (Town and Country Planning) Modifications and Amendments (England) Regulations 2024.

<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>

In summary, the Biodiversity Net Gain (BNG) plan must achieve a minimum biodiversity net gain of 10% and should typically include the following:

- Steps taken or to be taken to minimize adverse effects of the development on the biodiversity of the onsite habitat and any other habitat.
- Pre-development and post-development biodiversity assessments of the onsite habitat.
- Allocation of any registered offsite biodiversity gain to the development and its biodiversity value in relation to the development.
- Details of any biodiversity credits purchased for the development.
- Plans for maintaining and securing the net gain on and/or off site for at least 30 years after completion of the development.

The Local Authority will ensure the submitted details meet the requirements of the Town and Country Planning Act 1990 as amended, Environment Act as amended, associated legislation and guidance.

Ways to achieve 10% BNG may include:

- 1) Enhancement and restoring biodiversity on-site (within the red line boundary of a development site).
- 2) If proposals can only achieve part of their BNG on-site, they can deliver through a mixture of on-site and off-site. Developers can either make off-site biodiversity gains on their own land outside the development site or buy off-site biodiversity units on the market as close as possible to the site.
- 3) If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government. This must be a last resort. The government will use the revenue to invest in habitat creation in England.

Developers may combine all 3 options but must follow the steps in order. This order of steps is called the biodiversity gain hierarchy.

CONDITIONS AND LEGAL AGREEMENT:

The Local Authority is responsible for ensuring that the biodiversity gain objective is achieved, whether it be onsite, offsite, or through the purchase of credits, and that it is secured by legal agreement as necessary. It is essential to highlight that planning conditions operate within a strict timeframe. Therefore, any legal agreements required to secure the biodiversity gain must be completed prior to the consideration of the planning condition. Failure to comply with this requirement may result in the refusal of the condition.

4. COMPLIANCE REQUIRED CONSTRUCTION HOURS

CONDITION: Construction hours shall be restricted to between 08:00 and 18:00 Monday to Friday, and 08:00 and 13:00 on Saturdays, with no working of any kind permitted on Sundays or any Public/Bank Holiday.

REASON: In the interests of residential amenity.

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.

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:		NO
Are there any third parties to be informed of the decision? If so, please specify:		NO