

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		OA	03.10.24
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		JJJ	04/10/2024
Assistant Planner final checks and despatch:		ER	04/10/2024

Application: 24/01198/ROC **Town / Parish:** Ardleigh Parish Council

Applicant: Mr Timothy Ecott

Address: Holly Tree Nursery Hungerdown Lane Ardleigh

Development: Application under Section 73 of the Town and Country Planning Act 1990 (as amended) for Removal of Condition 4 (Occupation of the Dwelling) of application 00/00336/FUL to allow lifting of agricultural occupancy condition.

1. Town / Parish Council

Ardleigh Parish Council No Comments

2. Consultation Responses

N/A

3. Planning History

00/00336/FUL	Erection of dwelling for occupation by agricultural worker	Approved	24.08.2000
93/00082/FUL	Replace existing mobile home with four bedroomed house	Approved	08.06.1993
91/00778/FUL	Erection of glasshouse and packing house to serve the glasshouse and surrounding four acres devoted to horticulture.	Approved	03.09.1991
11/00815/AGRIC	Hay barn.	Determination	23.09.2011
13/00758/FUL	Construction of two series of polytunnels.	Refused	04.10.2013
22/00700/FULHH	Proposed replacement of existing flat roof over detached double garage with proposed hipped design, erection of storm porch and demolition of rear lean-to and erection of single storey flat roof rear extension.	Approved	17.06.2022
23/01778/LUEX	Application for an Existing Lawful Development Certificate for change of use		07.02.2024

of the land to the permanent stationing of 7 mobile homes for occupation by agricultural workers, mid february - mid november.

24/00269/LUEX	Application for Lawful Development Certificate for Existing Use or Development for erection of the building and its use for joinery purposes, including sawing of wood, the manufacture of joinery and furniture and the spray painting of furniture.	16.04.2024
24/01198/ROC	Application under Section 73 of the Town and Country Planning Act for Removal of Condition 4 (Occupation of the Dwelling) of application 00/00336/FUL to allow lifting of 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 July 2024, and demonstrates a 6.26-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>

Whilst the Ardleigh Neighbourhood plan (NP) is of relevance because the site is located in the parish of Ardleigh, the NP is in fact silent on proposals of this nature.

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 Plan (adopted January 2021)

SP1 Presumption in Favour of Sustainable Development
SP3 Spatial Strategy for North Essex
SP4 Meeting Housing Needs

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

SPL1 Managing Growth
SPL2 Settlement Development Boundaries
SPL3 Sustainable Design
LP1 Housing Supply
LP2 Housing Choice
LP4 Housing Layout

Neighbourhood Plan

Ardleigh Neighbourhood Plan – 2024 DRAFT – no relevant policies on proposals to remove agricultural tie conditions.

Supplementary Planning Documents

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

Tendring Provision of Recreational [Open Space for New Development SPD](#) 2008

[Essex Design Guide](#)

[Technical housing standards](#): nationally described space standard Published 27 March 2015
Biodiversity Net Gain Supplementary Planning Document June 2023 (DRAFT)

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

7. Officer Appraisal

Site Description

The application site is a detached dwelling with associated private garden and detached garage, constructed under planning permission 00/00336/FUL. The dwelling is substantial in its size and situated on the eastern side of Hungerdown 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 application site lies outside of any settlement development boundary as defined within the Tendring District Local Plan 2013-2033 and Beyond.

Description of Proposal

This application seeks permission for the removal of Condition 4 (Occupation of the Dwelling) of application 00/00336/FUL to allow lifting of agricultural occupancy condition. Condition 4 reads:

“The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly or mainly employed or last employed locally in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990 or in forestry, or a dependent of such a person residing with him or her or a widow or widower of such person”.

History

The property subject of this application was constructed in approximately 2000 following granting of permission. The previous owner of the property purchased it in 2009 following bankruptcy of the site. The business that the dwelling is linked to (ie the plant nursery at the rear) has been used from approximately 2000-2009 for the growing of bedding and ornamental plants with retail sales from the site along with egg/broiler production.

The applicant argues that between 2009-2021 there is clear evidence that the dwelling had not been used in connection with the agriculture tie as the previous owner has not been employed in agriculture or ever had been, instead working in a furniture shop in Halstead. The 30 acres to the rear of the application property has been contracted out to a local farmer with glasshouses and mobile homes used for a local Strawberry grower. This has operated to the rear since January 2013 and is still in operation.

The applicant of which this current application related to has inherited the property following probate and has resided since 2021, it has been explained in the application documents that the current occupier was unaware of the agricultural tie. The property has been for sale with David Burr Estate Agents since March 2024 advertised with an agricultural tie. Other evidence and supporting information also accompany the application and have been considered.

Assessment

The Planning Practice Guidance explains how conditions attached to a planning permission should be used and discharged effectively. Paragraph: 003 Reference ID: 21a-003-20190723 states:

“Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

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.

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply”.

Paragraph: 001 Reference ID: 21a-001-20140306 of the Planning Practice Guidance states that “When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission”. In this case the application site under planning application 00/00336/FUL was not located within a Settlement Development Boundary and was only acceptable in planning terms with such a condition included to restrict its usage.

The Tendring District Local Plan 2013-2033 and Beyond sets out the spatial strategy for the district as follows:

Growth needs to be carefully managed so as not to lead to unsustainable developments in remote and poorly accessible locations. The settlement hierarchy prioritises locations with access to the strategic road network, public transport and which have the potential to offer the widest range of services. All settlements which may experience growth have a development settlement boundary. Those without a settlement development boundary are considered to be part of the countryside.

Policy SPL2 of the Local Plan states that within the Settlement Development Boundaries, there will be a general presumption in favour of new development...outside of Settlement Development Boundaries, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies of the plan.

In the same way that the National Planning Policy Framework at paragraph 84 states that local planning authorities should avoid the development of isolated homes in the countryside unless there are special circumstances. As the circumstances have changed since the construction and original occupation of the dwelling none would apply in this case.

In this case the application site lies outside of the settlement development boundary and the statutory position is that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. As explained above, the proposal would be in conflict with Policy SPL2 of the Local Plan and would not meet the aims of the Framework insofar as it seeks to promote sustainable development in rural areas. However, based upon the supporting information that has been provided as part of the application, it is clear that the applicant has carried out an extensive marketing campaign both with a reputable Estate Agent and within the Farmers Weekly but with little to no tangible interest from agricultural workers. Officer accept this and holds no information to categorically challenge this evidence. Further, the search was broad and there is little evidence of concealment meaning that the opportunity was given to workers linked to agriculture who work outside of the district the opportunity to purchase the dwelling which would have complied with the relevant condition. Officers must assess all of the information provided to us as part of a reasoned assessment and have no reason to dispute the information provided.

Notwithstanding this, based on the information provided it must be stated that the business to the rear is clearly operating as a strawberry growing entity and there are ample evidence such as glasshouses etc to confirm this, moreover the entity is established and the LPA also, on balance, accepts the applicants argument (and for the reasons given) that there is no need for somebody to be present on the site (of the growers entity) to the rear 24 hours, 7 days a week. Also, the business is clearly geared to be growers whether that is strawberries or other crops, and given all the infrastructure and paraphernalia on site it is highly improbable and unlikely that the site will ever be suitable for livestock or any other agricultural use where 24 hours, 7 days a week surveillance will become needed again (for example for animal welfare reasons – which is clearly not relevant here).

For these reasons officers accept that there is no need for somebody to be present on site all the time neither now nor in the future (as per the arguments made by the applicant) and especially given that the LPA recently authorised a number of mobile homes on the site of the business to be occupied by seasonal workers only.

In Summary, Officers are satisfied that the agricultural occupancy condition can be removed on the dwelling only and this is compliant with both National and Local Policy.

Other Considerations

Six letters of objection have been received on the application raising the following concerns:

- Demand for growers in the area to create a rural business
- Insufficient advertising
- Marketed without a discount and for 6 months not 12.
- Advertised without the surrounding agricultural land
- Use of property as holiday let
- Proximity to National Grid substation

Officer Response – The applicant has provided further clarifying information in response to the letters of objection (Received 13.09.24). Officers consider that this clarifies some of the concerns raised but will now turn to address the planning matters outlined. The matter of commercial demand is beyond planning and officers are satisfied that a detailed marketing campaign has been carried out with no evidence to suggest the contrary. Further, there is no local plan policy which outlines that a marketing campaign must be carried out for 12 months but that all reasonable necessary steps have been taken to ensure this has been carried out appropriately. IN fact, the Local Plan is silent on proposals of this nature. The surrounding agricultural land is protected and unaffected by this application, if an application were to come forward in future for an agricultural dwelling on land to the rear then officers could assess this accordingly however for the reasons given above (and due to the arguments made in this very application) officers accept that there is no need for somebody to be present on site all the time neither now nor in the future. The allegation that use of the property as a private holiday let is a matter that will be passed to our enforcement team. Finally, an electricity substation could be located within any rural area subject to planning and land and is not considered a planning matter in relation to this application, specifically as house prices are not controlled by the planning system.

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.

8. Recommendation

Approval - Full

9. Conditions

NONE

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.

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
Has there been a declaration of interest made on this application? Please use the below options as required. No Declarations Of Interest Made	YES	NO