

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	ER	08/01/2025
EIA Development - Notify Planning Casework Unit of Decision	N/A	
Team Leader authorisation / sign off:	ML	09/01/2025
Assistant Planner final checks and despatch:	ER	09/01/2025

Application: 24/01762/FUL **Town / Parish:** Harwich Town Council

Applicant: Mr Darren Deex

Address: Land Adj 35 Artillery Drive Dovercourt Harwich

Development: Planning Application - Proposed change of use from grass verge to garden.

1. **Town / Parish Council**

Harwich Town Council Harwich Town Council has no objection to this application

2. **Consultation Responses**

ECC Highways Dept
11.12.2024

The information provided with the application has been assessed by the Highway Authority and conclusions reached from a desktop study based on the submitted material. No site visit was undertaken in conjunction with this planning application. It is noted that this application is like an application from last year (23/00942/FUL), and the proposal is adjacent to Public Footpath 19 (Harwich_169), the route has a legally defined width of 4 metres, which includes the central tarmac path and a verge either side. So, the width would extend for 2 metres from the centreline of the tarmac path on both sides. There is a strip of land beside the path which is, or was, in third party ownership, the 2023 application purchased the land from that third party, 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 condition:

1. There shall be no obstruction or encroachment onto Public Footpath 19 (Harwich_169) and a legally defined width of 4 metres shall be retained at all times. The width would extend for 2 metres from the centreline of the tarmac path on both sides.

Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

The above condition is to ensure that the proposal conforms to the relevant policies contained within the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance and National Planning Policy Framework.

Informative:

i) Prior to commencement of any works, the applicant should obtain a Land Registry Plan to establish whether any of the land is in third party ownership, to the rear of the property, to avoid any part of the boundary fence encroaching onto third party owned land.

ii) 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

iii) The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath 19 (Harwich_169) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

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

02/01216/FUL	Conservatory extension.	Approved	09.08.2002
93/00135/OUT	Proposed residential development including the provision of a private temporary underground sewage treatment plant (plant to be removed on completion of AWSL'S new sewage treatment works)	Approved	14.09.1993
96/00862/FUL	Application to vary condition 9 attached to the schedule of the outline planning permission reference TEN/93/0135 granted 14.9.1993 to not permit occupation of dwellings until such time as the clearwater sewage treatment is operational.	Refused	20.08.1996
96/00863/FUL	Application to vary condition 02 attached to Schedule 2 of the outline planning consent reference TEN/93/0135 granted 14th September 1993 to extend the period for submission of reserved matters by a further three years	Approved	20.08.1996
98/00127/FUL	Application to vary condition 9 attached to the schedule of the outline planning permission reference TEN/93/0135 granted 14 September 1993 to not permit occupation of dwellings until	Approved	14.07.1998

such time as the Clearwater sewage is operational

99/01070/FUL	Application to vary Condition 01 attached to Schedule 2 of planning consent TEN/96/0863 granted on 20th August 1996 to extend the period for submission of reserved matters by a further three years until 14th September 2002	Approved	01.09.1999
99/01675/DETAIL	Proposed residential development. Estate roads and ancillary works.	Approved	17.02.2000
18/00262/FUL	Proposed erection of a single storey rear extension, following the demolition of existing conservatory.	Approved	17.04.2018

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>

At the time of writing, there are no draft or adopted neighbourhood plans relevant to this site.

6. Relevant Policies / Government Guidance

NATIONAL:

National Planning Policy Framework 2024(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
SP7 Place Shaping Principles

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

SPL1 Managing Growth
SPL3 Sustainable Design
LP3 Housing Density and Standards
LP4 Housing Layout
CP1 Sustainable Transport and Accessibility

7. Officer Appraisal (including Site Description and Proposal)

Application Site

The application site comprises of a detached house with existing garage and driveway.

The site benefits from an existing rear garden which backs onto a public footpath known as “Gypsy Lane”.

Proposal

This application seeks planning permission for the proposed change of use from grass verge bordering the public footpath to garden land incorporated within the curtilage of no. 35 Artillery Way. The newly formed garden lane will be enclosed by 1.8m high close boarded fencing.

Assessment

Visual Impact

Paragraph 135 of the NPPF (2024) 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. Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context, and to protect the district's landscape and the quality of existing places and their environs.

The proposal is to the rear of the house and therefore views will not be achieved from Artillery Drive.

The site backs onto a public footpath known as Gypsy Lane; however, given the layout of the surrounding houses elements of the footpath can also be seen from Ramsey Road. The new fencing would therefore be publicly visible.

A previous application for similar works has been assessed and approved by the Council for 19 Artillery Drive under planning reference 23/00942/FUL. The previous works is complete and were noted upon the officer's site visit.

The existing land is currently adjacent to the footpath and comprises of some planting but is largely unmaintained. The proposed change of use will remove this land from the public realm allowing the applicants to incorporate it within their garden area by new fencing. The fencing itself will be 1.8m in height and significantly set back from the boundary shared with Ramsey Road preventing it from appearing as a prominent feature from the highway to the north. This approach will result in a visual improvement to the footpath removing an area of overgrown planting and will be consistent with similar development in the area as detailed above.

The proposal is therefore considered to be an acceptable change and alteration which would not be detrimental to the appearance/ character of the host dwelling or local area.

Highway Safety

Paragraph 115 of the National Planning Policy Framework 2024 seeks to ensure that safe and suitable access to a development site can be achieved for all users, whilst Paragraph 109 requires that streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places.

Adopted Policy CP1 (Sustainable Transport and Accessibility) of the Tendring District Local Plan 2013-2033 states that planning permission will only be granted if amongst other things; access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate, and the design and layout of the development provides safe and convenient access for people.

The ECC Highways team have been consulted as part of the application and have no objections to the proposal. They have also mentioned the earlier planning application 23/00942/FUL. Within their comments they have noted that the footpath has a legally defined width of 4 metres, which includes the central tarmac path and a verge either side. So, the width would extend for 2 metres from the centreline of the tarmac path on both sides.

The officer notes these comments and upon measuring the plans confirms that the footpath and verge will maintain a width of 4m and that the proposal will not reduce this. A condition will be imposed to ensure that the footpath maintains this required width and to ensure there will be no obstruction for users of the footpath.

Since receipt of these comments the applicant has provided correspondence confirming that the strip of land between the footpath and associated verge and sites current boundary is now owned by the applicant and that the land registry is currently being updated to reflect this.

The fence itself is set back from the main highway and will not result in a obstruction to vehicles.

The proposal is therefore acceptable in terms of access of the footpath and highway safety.

Impact to Neighbours

Paragraph 135 of the National Planning Policy Framework (2024) confirms planning policies and decisions 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.

Policy SP7 of Section 1 of the 2013-33 Local Plan requires that the amenity of existing residents is protected. Section 2 Policy SPL 3 (Part C) seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

The proposal is of a minor nature which will be sited sufficiently away from the shared boundaries preventing a significant loss of amenities to neighbouring sites.

Ecology and Biodiversity

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.

Whilst the application is for full planning permission given the nature of the proposal it is considered the change of use would be in conjunction with householder development in this instance and not therefore applicable for Biodiversity Net Gain. Moreover, there is no evident loss of habitat, as the application involves the change of use and enclosure of the land in question.

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.

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.

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.

Other Considerations

Harwich Town Council have no objections to the proposal.

One letter of objection has been received raising concerns that the works has already commenced as much of the vegetation has been removed.

Officer Response – Upon visiting the site it was evident that the trees had been removed prior to the determination of this application; however, the land had not been enclosed by any fencing. The trees and vegetation were not protected by a legal preservation order and were therefore not of special merit and therefore did not need separate consent for their removal.

This piece of land is well within the footpath and set back from the main highway of Ramsey Road limiting views onto the public realm and therefore the loss of the trees and other vegetation is considered to not have a detrimental impact to the visual amenity of the streetscene.

Whilst works have commenced to clear the site it is noted that the fence has not been erected and therefore these actions are not so significant to refuse planning permission upon in this instance.

One further representation has been received from the applicant providing a rebuttal to the comments already received and addressed above.

Conclusion

The proposal is therefore considered to be compliant with national and local policy as assessed in the above report. In the absence of material harm resulting from the proposed development the application is recommended for approval.

8. Recommendation

Approve

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 (except for Listed Building Consents). Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

BLOCK PLAN - REC'D 29/11/24
SITE PLAN - REC'D 29/11/24
FENCE ELEVATION - REC'D 29/11/24

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. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

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. COMPLIANCE – FOOTPATH WIDTH

CONDITION: There shall be no obstruction or encroachment onto Public Footpath 19 (Harwich_169) and a legally defined width of 4 metres shall be retained at all times. The width would extend for 2 metres from the centreline of the tarmac path on both sides.

REASON: To ensure the continued safe passage of the public on the definitive right of way and accessibility.

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.

Highways Informative

i) Prior to commencement of any works, the applicant should obtain a Land Registry Plan to establish whether any of the land is in third party ownership, to the rear of the property, to avoid any part of the boundary fence encroaching onto third party owned land.

ii) 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

iii) The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath 19 (Harwich_169) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

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.

v) The above condition is to ensure that the proposal conforms to the relevant policies contained within the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance and National Planning Policy Framework.

Ecology and Biodiversity

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:		NO
Are there any third parties to be informed of the decision? If so, please specify:		NO
Has there been a declaration of interest made on this application?		NO