

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	OA	23.01.25
EIA Development - Notify Planning Casework Unit of Decision	NO	23.01.25
Team Leader authorisation / sign off:	ML	23/01/2025
Assistant Planner final checks and despatch:	ER	23/01/2025

Application: 24/01731/LUEX **Town / Parish:** Ardleigh Parish Council

Applicant: Mr Jamie Ashfield

Address: Lodge Farm Lodge Lane Ardleigh

Development: Application for Lawful Development Certificate for Existing Use for proposed garden use.

1. Town / Parish Council

Ardleigh Parish Council Ardleigh Parish Council does not object to the Lawful Development Certificate for Existing Use being granted for proposed garden use.

The Council requests that a condition be placed stating the land is to be used only for the purpose stated on the application form, a residential garden, and may not be used for any other purpose without seeking full planning permission.

2. Consultation Responses

N/A

3. Planning History

92/00868/LBC	Alterations to existing windows and lowering of kitchen floor	Approved	12.10.1992
88/00005/LBC	Conversion of barn into one dwelling	Approved	04.07.1989
89/00338/LBC	Conversion of barn into one dwelling	Approved	04.07.1989
09/00448/FUL	Extensions and alterations to existing garage building to form double garage with compressor room and use at ground floor with work room over.	Approved	13.07.2009
09/60341/HOUEN Q	Garage extension		23.03.2009
14/30409/PREAPP	Garden room extension.		22.12.2014
24/01731/LUEX	Application for Lawful Development Certificate for Existing Use for proposed garden use.	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. Paragraph 78 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 5% to ensure choice and competition in the market for land, unless the Housing Delivery Test (HDT) demonstrates significant under delivery of housing over the previous 3 years - in which case a higher buffer is required.

On 12th December 2024 the Government published the Housing Delivery Test: 2023 measurement. Against a requirement for 1,466 homes for 2020-2023, the total number of homes delivered was 2,343. The Council's HDT 2023 measurement was therefore 160%, and a buffer of 5% is to be used when calculating the Council's five year land supply position.

The Council demonstrates its supply of specific deliverable sites within the 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. The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>

As a result, the 'titled balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

5. Legislation

- Town and Country Planning Act 1990
- The Planning Act 2008 (Commencement No. 8)
- Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020
- Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provision Regulations 2024).

6. Officer Appraisal (including Site Description and Proposal)

Summary

Permission is sought through a Lawful Development Certificate to establish that the use of the land to the north of Lodge Farm has been in use as residential garden land for a period of at least 10 years, in accordance with the TCPA Use Classes Order, 2020 as amended. This report assesses whether the change is classed as lawful by virtue of the 10-year immunity rule as set out in Section 171B of the Town and Country Planning Act (1990), The Planning Act 2008 (Commencement No.

8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. If lawful use is identified then any future occupiers are entitled to use the land as private amenity residential garden and immune from any Enforcement action in this regard. A refusal would trigger the need for a regularisation planning application or Enforcement action may be required.

Planning History

There have been a number of applications for the site, but none are directly relevant to this application for a LUEX.

Site Description

The site relates to an area of land to the north of Lodge Farm, Ardleigh. The Wooden Fender Public House is located to the north of the site with Colchester Road to the East, Lodge Farm and Lodge Lane due south and agricultural fields to the west of the site.

Proposal

The proposal relates to an application for Lawful Development Certificate for Existing Use for proposed garden use of the land adjacent to Lodge Farm and that this has been established for a period of more than 10 years.

Planning Considerations

The proposal is assessed under Section 171B of the Town and Country Planning Act 1990, amended by the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provision Regulations 2024).

To establish whether the use of the land as residential garden is lawful, it is necessary to assess whether the land has been used in collaboration with the host dwelling for a period of more than 10 years.

The applicant has provided a basic block plan with no further evidence supporting the application. There have been no photographs or aerial views to indicate that the land has been used as residential amenity land for a period of at least 10 years. On this basis, officers consider that there is a clear lack of evidence, and it cannot be considered beyond all reasonable doubt that the land has been used as private amenity garden land for at least 10 years. For these reasons, and on the balance of probability based on the information before officers, the application for a certificate of lawfulness is refused.

7. Recommendation

Certificate of Lawfulness Refused

8. Reason for Refusal

1. The supporting information does not clearly show the land has been used as residential garden land for a period of more than 10 years. Insufficient information has been provided to demonstrate an established existing use whereby it would be immune from Enforcement Action.

Having regard to the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), a planning application would be required for a material change of use of the land for residential use and therefore given the sparsity of the evidence provided to support the claim that the use of the land as amenity garden is lawful, the Certificate of Lawfulness application is refused.

9. 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

10. 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?	YES	NO