



## MEMBERS' UPDATE

DIRECTOR OF STRATEGY,  
PERFORMANCE AND GOVERNANCE  
Paul Dodson

26 May 2021

Dear Councillor

### **SOUTH EASTERN AREA PLANNING COMMITTEE - WEDNESDAY 26 MAY 2021**

Please find enclosed the Members' Update for the above meeting, detailing any further information received in relation to the following items of business since the agenda was printed.

5. **20/01347/FUL - The Barn, Steeple Road, Mayland** (Pages 3 - 8)
6. **21/00102/FUL - Land North of Riversleigh, Nipsells Chase, Mayland** (Pages 9 - 12)

Yours faithfully

Director of Strategy, Performance and Governance



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**CIRCULATED  
BEFORE THE  
MEETING**



**REPORT of  
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

**To  
SOUTH EASTERN AREA PLANNING COMMITTEE  
26 MAY 2021**

**MEMBERS' UPDATE**

**AGENDA ITEM NO. 5**

<b>Application Number</b>	20/01347/FUL
<b>Location</b>	The Barn, Steeple Road, Mayland
<b>Proposal</b>	Within the curtilage of the dwelling house form a fenced enclosure (40m x 21.2m) to provide a drained all-weather surfaced area for exercising horses owned by the occupiers
<b>Applicant</b>	Mr F Wiffen
<b>Agent</b>	Chris Francis – West & Partners
<b>Target Decision Date</b>	28.05.2021 - EOT
<b>Case Officer</b>	Hayleigh Parker-Haines
<b>Parish</b>	Steeple Parish Council
<b>Reason for Referral to the Committee / Council</b>	Member Call In – Cllr. Michael Helm – Policy Reasons D1 and S8

**CONSULTATIONS AND REPRESENTATIONS RECEIVED**

**7.4 Representations received from Interested Parties**

- 7.4.2 Two letters of objection from the same party have been received in total; with an additional letter of objection being received following the consultation expiry date for the application. However, the points from this letter and the previous letter of objection are summarised in the table below:

<b>Objection Comment</b>	<b>Officer Response</b>
The applicant details listed upon the application include a company name. However Mr Wiffen is not a listed Director. However the nature of the business is buying and selling of own real estate. This is of concern as to why the menage is required unless the future intention is to use the area of land for an additional or alternative purpose	Comments noted. However, the planning application can only be assessed based on the information provided. Any future use of the site is likely to require another permission.
Concerns in relation to the nature and intended use of the development. The development is not incidental. The size	Comments noted – however, the use of the proposed enclosure to remain

<b>Objection Comment</b>	<b>Officer Response</b>
and positioning of the development is not aligned to the dwelling, it is instead of a more commercial nature.	ancillary to the dwelling can be secured via an appropriately worded condition
Degree of separation from the host dwelling which results in the development having a limited impact on the applicant's property but maximum impact upon the neighbouring landowners	The impact on neighbouring amenity is discussed in section 5.3 of the report
There is only a Shetland pony and an elderly horse (30+ years) owned by the Applicant – the proposed menage is excessive if it is proposed to be used to exercise these horses	Comments noted
Concerns that the Applicant is gradually and continually extending the request of the LPA as to what should be sited on the address. What was a single residential property has already matured into a house, loose boxes and now a menage. This in turn might seek to permit further development or the incurrence of a large stable/commercial riding school or the extension of the menage into an additional area for residential development	The planning application must be determined on the basis of the information provided. Any subsequent changes of use on site would be subject to another planning permission
As part of the approval for the dwelling conditions were imposed to secure the appearance was appropriate to the locality. These conditions, which have originally been met, should not now be disregarded by the allowance to construct an alternative external surface	Comments noted and the impact of the proposal on the character and appearance of the site and surrounding area is discussed in section 5.2 of this report.
Condition 8 of the original planning permission restricted permitted development rights for the construction of outbuildings and extensions. The applicant has already been granted certificates which contravene such planning conditions	Having looked at the site history there is not an approved application with an 8 <sup>th</sup> condition. The dwelling was constructed under the permission 17/00860/FUL which was allowed at appeal; whereby as stated at the start of this report, permitted development rights were not removed.
The access road is not fit for access by large commercial vehicles that would be required for the development and upkeep of the menage itself	Essex County Council Highways were consulted as part of this application and raised no objection
The track which runs alongside the menage is owned wholly by the owners of the neighbouring property to the south. The Applicant has no right of way and no right of access to this track. The construction of a menage over that land would in fact amount to a trespass and a civil nuisance	From the plans submitted it is not shown that the menage would be constructed on the bordering track, these current plans compared to the original approval and that nothing has been submitted to suggest that this is the case, it is considered that the menage is to be constructed on land within the Applicants ownership.

Objection Comment	Officer Response
<p>Steeple Road itself is narrow and the presence of machinery or commercial vehicles required to construct and maintain the menage would cause a substantial and inherent safety risk for road users</p>	<p>Comments noted, however, given the use of the menage in association with the residential dwelling rather than a commercial use it is not considered that this would result in a significant increase in traffic to and from the site. Furthermore, there is no evidence to suggest that following the completion of the construction of the enclosure, any heavy machinery would be required to access the site on a regular basis.</p>
<p>The proposal would also impact on noise pollution and potential flooding onto the privately owned track. Condition 5 of the original permission sought details in relation to surface water drainage</p>	<p>Comments noted however, there is no residential amenity afforded to the track and the impact on neighbouring amenity is assessed within section 5.3 of this report. Environmental Health have been consulted in relation to the application and have raised no concerns in relation to either noise or flooding, subject to the imposition of appropriate conditions. In relation to condition 5 – this was in relation to that original development and is a standard condition for new dwellings.</p>
<p>The eastern edge of the proposed menage is not located on land within the Applicants ownership.</p>	<p>From the plans submitted it is not shown that the menage would be constructed on the bordering track, these current plans compared to the original approval and that nothing has been submitted to suggest that this is the case, it is considered that the menage is to be constructed on land within the Applicants ownership.</p>
<p>Condition 4 of the original permission sought to protect the hedgerow to the northern boundary, part of this has been removed to accommodate the enclosure and therefore, this condition has been breached</p>	<p>Comments noted, as only part of the hedge has been removed it is not considered to have a detrimental impact on the character and appearance of the site or surrounding area. Furthermore the condition attached to the original permission for the dwelling house secured details for protecting the hedge and did not state that the hedge or part of, could not be removed.</p>
<p>No drainage details have been supplied in support of the application and as this would fall within the legal definition of development this should be provided as part of the application.</p>	<p>Comments noted, however environmental health have raised no objections on these grounds. Drainage details are not normally required for this type of development. Environmental Health have advised that these are not required as if it is not sufficiently drained than it becomes unusable</p>
<p>Condition 6 of the original application secured landscaping details, it is not possible to ascertain what the planting</p>	<p>This is not something to be dealt with under this application; if there are concerns regarding the planting scheme and subsequent breach of condition this</p>

Objection Comment	Officer Response
scheme was and whether this has been implemented prior to occupation.	should be raised as an enforcement enquiry.
The Applicant claims that the menage is within the residential curtilage, the appeal application only dealt with the conversion of the barn to a dwelling, with no reference to the field to the east to become residential curtilage, this is also fenced off from the residential garden adjoined to the property	Comments noted; however, the red line boundary for this current application only includes the area for the enclosure and the application does not seek to change this land to residential curtilage, the application states that the enclosure is to be used in association with the residential dwelling.
A stable block has been constructed within the field to the east of the barn and a lawful development certificate was granted for this. However, permitted development rights do not apply for the erection of stables in a field and that the change of use of this field to be included in the residential curtilage has never been subject of a planning application. The Council has been misled by the Applicants that the change of use of the land was agreed to	Comments noted – however, as stated above, whether this land was residential curtilage or not does not impact the assessment of this application. The enclosure is to be used in association with the residential use of the dwelling and this application does not give permission for the change of use of this land to residential curtilage. The lawfulness of the stable building was dealt with under application 19/01180/LDP and that development and does not have any bearing on the assessment of this current application.
The Council's previous decision to refuse the certificate of lawfulness was based on the fact that the facility was not for the enjoyment of the occupiers of the barn	Comments noted; however a lawful development certificate is assessed against the specific criteria within the GDPO whereas this application is assessed against material planning considerations with no need for reference to the stipulations of the GDPO. The LDP assessed the proposal as not 'incidental' to the use of the dwelling house. It does not mean the ménage cannot be used in association with a dwelling house, just that the relationship has to be assessed under a planning application given the size and distance of the ménage from the dwelling house.
The imposition of a condition restricting the use, is considered to be insufficient given the Applicants seem to pay little regard to the planning conditions already imposed	Comments noted. However, if there are concerns regarding this condition not being complied with this would need to be raised with enforcement. It is not reasonable or legal for the LPA to presuppose or form a view on a persons behaviour and determine an application on that basis.
Although, MDC refused the lawful development certificate, the Council is yet to serve an enforcement notice, if enforcement action is not taken in the prescribed time then this unlawful development could be considered lawful	Comments noted; however, whilst there is an active planning application awaiting determination, it is not considered reasonable behaviour to commence enforcement proceedings, especially as a planning application is currently under consideration for the

<b>Objection Comment</b>	<b>Officer Response</b>
and the ability for the Council to serve an enforcement notice would be lost.	same development. Furthermore, the f works for the enclosure commenced in 2020 and the physical works would need to be in place for 4 years before gaining immunity from enforcement action.

7.4.4 One letter from the Applicant has been received in response to the other comments received and is summarised below:

<b>Comment from objector</b>	<b>Applicants Response</b>	<b>Officer response</b>
The applicant details listed upon the application include a company name.	We believe this is a misunderstanding – the application was submitted by West & Partners – town planning consultants acting for the applicants	Comments noted
Concerns in relation to the nature and intended use of the development	There will be no commercial use	Comments noted
Degree of separation from the host dwelling	The neighbouring property Little Ashtree Farm is further away than the applicants dwelling The Barn as may be seen on the site plan and the aerial photograph	Comments noted
There is only a Shetland pony and an elderly horse (30+ years) owned by the Applicant	No comment	N/A
Concerns that the Applicant is gradually and continually extending the request of the LPA as to what should be sited on the address	There is no restriction on PD rights attached to the appeal permission for the adaptation of The Barn which is a single residential dwelling.	Comments noted
As part of the approval for the dwelling conditions were imposed to secure the appearance was appropriate to the locality	All pre-commencement and pre-occupation conditions were discharged at the appropriate time	Comments noted
Condition 8 of the original planning permission restricted permitted development rights for the construction of outbuildings and extensions	As above and as per the officer's comments there is no restriction on PD rights attached to the appeal permission for the adaptation of The Barn	Comments noted

<b>Comment from objector</b>	<b>Applicants Response</b>	<b>Officer response</b>
The access road is not fit for access by large commercial vehicles	This is not a town planning consideration	Comments noted
The track which runs alongside the menage is owned wholly by the owners of the neighbouring property to the south. The Applicant has no right of way and no right of access to this track. The construction of a menage over that land would in fact amount to a trespass and a civil nuisance	There is no intention to access the site from or across the neighbour's land	Comments noted
Steeple Road itself is narrow and the presence of machinery or commercial vehicles required to construct and maintain the menage would cause a substantial and inherent safety risk for road users	No comment	Comments noted
The proposal would also impact on noise pollution and potential flooding onto the privately owned track.	No comment	Comments noted
The eastern edge of the proposed menage is not located on land within the Applicants ownership	Not Correct	Comments noted



**CIRCULATED  
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**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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to  
**SOUTH EASTERN AREA PLANNING COMMITTEE  
26 MAY 2021**

**MEMBERS' UPDATE**

**AGENDA ITEM NO. 6**

<b>Application Number</b>	21/00102/FUL
<b>Location</b>	Land North Of Riversleigh, Nipsells Chase, Mayland
<b>Proposal</b>	Construction of a single storey dwelling
<b>Applicant</b>	Mr and Mrs Kenny Paton
<b>Agent</b>	Mr Anthony Cussen - Cussen Construction Consultants
<b>Target Decision Date</b>	07.05.2021
<b>Case Officer</b>	Louise Staplehurst
<b>Parish</b>	MAYLAND
<b>Reason for Referral to the Committee / Council</b>	Councillor/Member of Staff

**5.2 Self-Build Housing**

5.2.7 The applicant has raised concerns over the accuracy of the self-build register and whether it is 48 or 24 sites granted permission suitable for self-build dwellings. It can be clarified that there have been 48 total sites granted permission (no. dwellings); this includes 24 self-build permissions granted and 24 sites granted outline permission that would be suitable for self-build dwellings. Notwithstanding, there are 11 people on the list and more than enough plots available within the District. The Policy team have confirmed that the applicant was placed on part 1 of the self-build register in July 2017. Following the register update in September 2018, the only change to the register was that those who no longer wished to be on the register were removed. There was no change in the registration for people who wished to remain on the register. Therefore, the applicant's registration remained in the same base period as the original registration (that is: Oct 2016-Oct 2017).

5.2.8 Notwithstanding the above, although the planning statement refers to the proposal as a self-build dwelling, the application form states that the proposal is for a market dwelling and therefore the proposal is a market dwelling and therefore the self-build argument hold limited weight.

**5.8 Ecology**

5.8.5 An updated Ecology report has been undertaken. A consultation response from ECC Place Services (Ecology) has been received and they consider that subject to the mitigation measures identified in the Extended Phase 1 Ecology report being implemented, the development is not objected to. The proposal would involve a 7% net gain for biodiversity; a Biodiversity Enhancement Strategy should be sought via condition if the application is to be approved. The applicant has stated that the

proposal is beneficial in terms of ecology, and whilst there is no objection in terms of ecology, this is not considered to outweigh the harm identified within the report.

## **5.9 RAMS and Impact on Designated Sites**

- 5.9.4 The legal agreement has been checked however it contains incorrect information. As the application is recommended for refusal, an amended legal agreement has not been sought. In light of this, in the absence of a signed legal agreement to secure the abovementioned contribution, the impact of the development would not be able to be mitigated and thus, this would constitute a reason for refusal of the application.

## **5.11 Other Material Considerations**

- 5.11.2 The applicant has sent in supporting information in the form of news articles regarding the government's proposed schemes in relation to self-build housing. This is noted however this is not considered to alter the assessment of the application.
- 5.11.3 The applicant has submitted bus timetables of the D2 and 31 service. These were taken into account when writing the report and are noted in section 5.1. The applicant maintains that the site is sustainable; this has been discussed in section 5.1 of the report which considers the accessibility of the site and also section 5.10 which discusses the sustainability of the site.
- 5.11.4 The applicant has stated that the bungalow is required for health reasons; however, this does not justify the development of a bungalow on the application site given the concerns raised in the report. The lifetime of the development must be considered and not only the personal circumstances of the applicant. No evidence has been submitted showing why alternative bungalows within the District cannot be utilised.
- 5.11.5 The applicant has sent in details of the renewable energy / heating systems to be used. As the proposal relates to one dwelling this would be a limited benefit and would not outweigh the harm identified in the report. The applicant has stated that the roof has been designed to incorporate solar panels however solar panels have not been included in the proposal.
- 5.11.6 The applicant has stated that the development would be built by local tradespeople. This cannot be guaranteed however given the scale of the proposal for one dwelling, even if local tradespeople were used, this would be a very limited benefit and would not outweigh the concerns raised in the report.
- 5.11.7 The applicant has stated that policy S7 encourages the provision of live/work units. This is correct however the application is not for a live/work unit, it is for a dwelling that would also have a study. This is different to a specified live/work unit.
- 5.11.8 The applicant has references policy H3 which relates to accommodation for specialist needs. This policy is not relevant to the proposal as the proposal is for a market dwelling. Although the applicant considers the proposal is necessary for health reasons, no evidence has been submitted in this regard. Furthermore, this would not outweigh the concerns raised particularly as the Council has to consider the lifetime of the development.
- 5.11.9 The applicant has referred to applications 12/00452/OUT and 16/01423/RES which approved permission for a 60-bed nursing home in Mayland however this is not relevant to the proposal.

- 5.11.10 The applicant has stated that there are lots of application approved on unmade road for example 16/01362/FUL. This application was allowed on appeal prior to the adopted on the LDP and the site was located within the settlement boundary where the principle of development the site could be established, unlike the current application.
- 5.11.11 The applicant considers the development to accord with policy D1 as it compliments and enhances the local area. The impact on the character of the area has been discussed in section 5.4.
- 5.11.12 The applicant has offered to install lighting, bollards and a speed limit along the unmade part of Nipsells Chase, leading to the application site. However, this area of land lies outside of the red line boundary of the application site and outside the applicant's ownership and therefore it cannot be ensured that these works will take place. Furthermore, as the proposal is for only one dwelling, these works would not be proportionate to the scale of the proposal and a condition requiring this would not meet the six tests.
- 5.11.13 The applicant considers the proposal would not have an impact on the countryside, however the site and wider field are currently used for activities acceptable in the countryside such as equestrian related activities which are materially different to the construction of a dwelling.

## 7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee	Comments	Officer Response
Essex County Council Place Services – Ecology (ECC)	The mitigation measures identified in the Extended Phase 1 Ecological Habitat Survey Report (Hone Ecology, May 2020) should be secured as a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and Priority Species.	Comments noted. See section 5.8
	Undertake assessment in relation to RAMS	Comments noted. See section 5.9.
	The proposed documents demonstrate that there will be a loss of natural, albeit sub-optimal, habitat onsite for the creation of the proposed dwelling and therefore could contravene Policy N1. However, the Biodiversity Net Gain Assessment, submitted as part of the Extended Phase 1 Ecological Habitat Survey Report (Hone Ecology, May	Comments noted. See section 5.8

	<p>2020) identifies that the development will involve a 7% Net Gain for Biodiversity.</p> <p>We also support the proposed reasonable biodiversity enhancements, which have been recommended to secure measurable net gains for biodiversity, as outlined under Paragraph 170d of the National Planning Policy Framework 2019. The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Strategy and should be secured as a condition of any consent</p> <p>No objections subject to conditions</p>	
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#### 7.4 Representations received for the application

##### 7.4.2 Representations received supporting the application

Two letters of support have been received.

Supporting Comment	Officer Response
The site is in a sustainable location – walking distance of shops etc	See section 5.1.
Council has no 5 Year Housing Land Supply	See section 5.1.
The government encourages self-build dwellings	See section 5.2. The Council has more plots available than people on the self-build register.
Suitable design	See section 5.4
Another house was granted permission on surrounding land	It is not clear where this was as no application number has been given.

#### 8 REASONS FOR REFUSAL

- In the absence of a completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990, securing a necessary financial contribution towards Essex Coast Recreational disturbance Avoidance and Mitigation Strategy or an appropriate mitigation strategy to overcome the impacts of the development on the European designated nature conservation sites, the development would have an adverse impact on those European designated nature conservation sites, contrary to Policies S1, and I1 of the Maldon District Local Development Plan and the guidance contained within the National Planning Policy Framework.