



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
19 MAY 2022**

Application Number	21/00745/VAR
Location	Land Rear Of Red Lyons Farm, Burnham Road, Latchingdon, Essex
Proposal	Variation of condition 2 on approved application 14/00418/FUL (Change of use of unit 10 from a restricted B8 use (Household Storage) to B1) Change the permitted working to 6:00 until 20:00 Monday to Saturday.
Applicant	Mr J Sinclair
Agent	Miss Catrin Davies - Warner Planning
Target Decision Date	02.11.2021 (EoT agreed: 10.12.2021)
Case Officer	Anna Tastsoglou
Parish	LATCHINGDON
Reason for Referral to the Committee / Council	Member Call In Councillor R G Boyce has called in the application for the following policy reason: Local Development Plan (LDP) policy E4 (Agricultural and rural diversification)

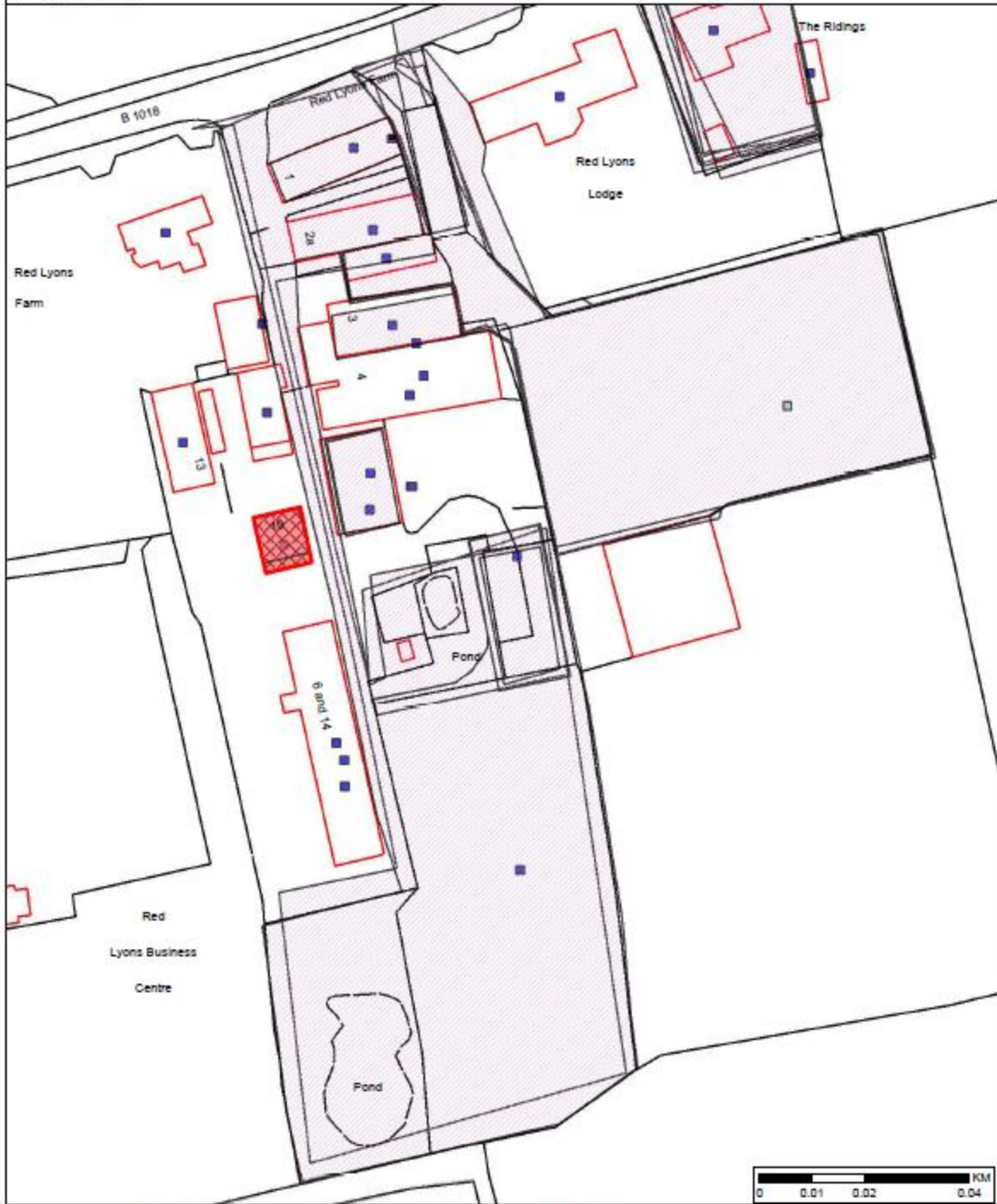
1. RECOMMENDATION

The Council is minded to APPROVE subject to the conditions (as detailed in Section 8 of the report attached at **APPENDIX A**).

2. SITE MAP

Please see below.

South Eastern Area Committee
21/00745/VAR



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Maldon District Council 100018588 2014



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Scale:	1:1,000
Organisation:	Maldon District Council
Department:	Department
Comments:	Not Set
Date:	26/11/2021
MSA Number:	100018588



3. Update following deferral of the application

- 3.1 The application seeks to vary condition 2, imposed on application 14/00418/FUL (Change of use of unit 10 from a restricted B8 use (Household Storage) to B1), to alter the permitted working hours to 6:00 until 20:00 Monday to Saturday. The application was presented at the South Eastern Area Planning Committee on 8 December 2021. The Committee deferred the item in order to give the Applicant the opportunity to provide additional information and for further information and clarity in relation to various matters, including noise and the lawful use of the site.
- 3.2 Although the Applicant originally agreed to an extension of time of the application until the 11 February 2022 and officers entered into discussions with the Applicant, no further information in relation to the deferral reason was submitted by the agreed extended time period. Furthermore, whilst a number of subsequent attempts were made by the Council to engage with the Applicant, no response was received confirming whether additional information to address the matters raised by Members was to be submitted for consideration.
- 3.3 On 5 April 2022 a letter was received by the Planning Inspectorate confirming validity of an appeal for 'non-determination' in relation to the above application. Although no start letter for the appeal has been received yet, given that a valid appeal has been lodged, the Local Planning Authority (LPA) no-longer has control over the determination of the application. Although Planning Policy Guidance (PPG) advises that applicants should first consider engaging with the LPA to establish when an application might be decided, before deciding whether to appeal against non-determination, as noted above, no correspondence has been received by the Applicant since 10 December 2021.
- 3.4 In light of the above, the application is to be determined by the Planning Inspectorate. However, the Council's intention to either approve or refuse the application would be requested by the Planning Inspectorate as part of the appeal process. The officer's report and recommendation to approve the application, subject to conditions, is included in **APPENDIX A**. An update in relation to the enforcement matters is provided in section 4 below.

4. Enforcement update

- 4.1 It should be noted that the business park has an extensive planning enforcement history. There are currently three enforcement matters relevant to the Red Lyons Farm; however, none of the cases relating to the Red Lyons Farm are directly relevant to unit 10. These cases relate to matters including the unauthorised changes of use of units, additional operational development and a breach of conditions relating to operational hours. Within the public domain a Breach Condition Notice was served on 8 July 2021 in relation to the breach of the approved operating hours. However, a number of applications for the variation of conditions relating to the working hours of the units within the business park were recently approved (please refer to planning history in the original committee report).
- 4.2 The unit subject of this application's lawful use is a use falling within Classes E(g)(ii) research and development of products or processes and/or E(g)(iii) industrial processes, this was granted planning permission under application 21/00799/VAR (Variation of condition 4 on approved planning permission 02/01212/FUL (Continued use of land and buildings for business uses) to alter working hours to 06.00 hours - 20.00 hours Monday to Saturday). The current use of the site is considered to be

tyre and service centre; this is considered to fall within the B2 general industrial use class. Therefore, the current use of the site is considered to be a breach of planning control. Furthermore, conditions were imposed regarding matters such as all machinery to be used within the building, as well as storage of materials and goods and a condition restricting external illumination. It would appear that there are breaches occurring in relation to these conditions.

- 4.3 It should be noted though that matters relevant to enforcement, either on the application site of the wider business park, are not considered to be material considerations relevant to the determination of the current application.