



**REPORT of  
CHIEF EXECUTIVE**

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**to  
NORTH WESTERN AREA PLANNING COMMITTEE  
10 JULY 2017**

<b>Application Number</b>	<b>FUL/MAL/17/00167</b>
<b>Location</b>	The Griffins Tudwick Road Tolleshunt Major Essex
<b>Proposal</b>	Removal of Condition 3 imposed on approved planning permission MAL/143/78 relating to an agricultural/kennels occupancy condition, as amended on appeal (reference FUL/MAL/15/00301)
<b>Applicant</b>	Mr & Mrs R Vallis
<b>Agent</b>	Mr Peter Le Grys - Stanfords
<b>Target Decision Date</b>	24.04.2017 EOT – 14.06.2017
<b>Case Officer</b>	Hilary Baldwin, TEL: 01621 875730
<b>Parish</b>	<b>TOLLESHUNT MAJOR</b>
<b>Reason for Referral to the Committee / Council</b>	Parish Trigger

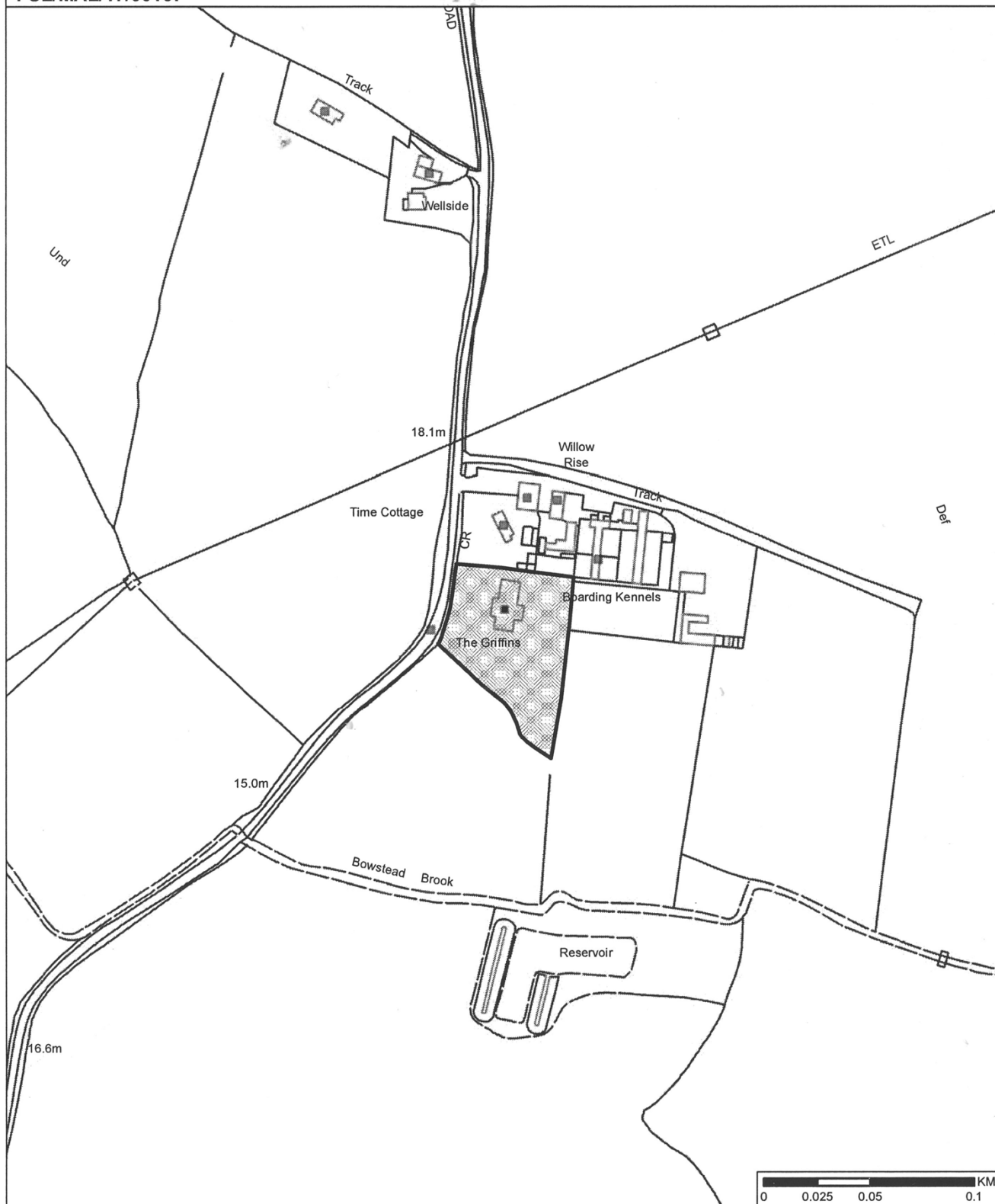
**1. RECOMMENDATION**

**APPROVE** with no conditions.

**2. SITE MAP**

Please see overleaf.

**The Griffins, Tudwick Road, Tolleshunt Major**  
**FUL/MAL/17/00167**



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Scale: 1:2,500

Organisation: Maldon District Council

Department: Department

Comments: North West Committee

Date: 28/06/2017

MSA Number: 100018588

### **3. SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information**

- 3.1.1 The proposal is for the removal of condition 3 in respect of approved planning permission MAL/143/78 and subsequently amended on appeal reference FUL/MAL/15/00301, which seeks to remove the agricultural occupancy condition for the dwelling known as the griffins at the site.
- 3.1.2 The Inspector on the previous appeal concluded that no justification had been provided to warrant the removal of condition 3 relating to MAL/143/78 however, found that in order that it should reflect current planning legislation and guidance an amended condition should be imposed alongside the original permission.
- 3.1.3 For reasons of clarity the amended conditions reads as follows:

*“The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in agriculture or forestry, or a widow or widower of such a person, and to any resident dependents.”*

#### **3.2 Conclusion**

- 3.2.1 It is considered that the level of marketing for both rental and leasehold tenancy together with the level of marketing appears to lead to a robust claim to enable the Council to consider that the condition has outlived its usefulness or that the dwelling is no longer needed by the agricultural community. The Council maintains concerns with regard to the loss of a dwelling tied to agricultural activity when there is evidence through recent submissions for such a requirement albeit within the wider district. However, in this instance the submission is considered to accord with policy CC16 of the local plan and the guidance and provision as contained within the National Planning Policy Framework (NPPF).

### **4. MAIN RELEVANT POLICIES**

Members’ attention is drawn to the list of background papers attached to the agenda.

#### **4.1 National Planning Policy Framework (NPPF)**

#### **4.2 Maldon District Replacement Local Plan 2005 – Saved Policies:**

- S1 - Development Boundaries and New Development
- BE1 - Design of New development and Landscaping
- CC16 - Agricultural Occupancy Conditions

#### **4.3 Maldon District Local Development Plan submitted to the Secretary of State for Examination-in-Public on 25 April 2014:**

- S1 - Sustainable Development
- S8 - Settlement Boundaries and the Countryside
- D1 - Design Quality and Built Environment

- T1 - Sustainable Transport

## **5. MAIN CONSIDERATIONS**

### **5.1 Principle of Development**

- 5.1.1 The planning regime has permitted dwellings in the rural areas for agricultural workers as an exception to the general national policy of protecting the countryside from unnecessary and instructive build development. In most cases conditions are attached to such dwellings to ensure that they remain part of the dwelling stock that assists the agricultural industry in this District in maintaining its viability and functionality.
- 5.1.2 The purpose of Policy CC16 is to ensure that dwellings built as exceptions to the normal restraints upon development in rural areas continue to serve the needs of the agricultural community unless rigorous examination demonstrates otherwise. This is consistent with the overarching principles of the NPPF to protect the character and beauty of the countryside and to avoid new isolated homes.
- 5.1.3 It is therefore not considered appropriate to remove such conditions unless it is shown that the existing need for dwellings for agricultural workers in the locality no longer warrants reserving houses for that purpose.
- 5.1.4 The criteria set out in policy CC16 provides the basis for such an assessment.

### **5.2 Assessment**

- 5.2.1 The District Council recognises that circumstances may change, rendering a property surplus to requirements. Policy CC16 ‘Agricultural Occupancy Conditions’ identifies the relevant criteria and states that permission to occupy a dwelling without compliance with a restrictive condition will only be granted where all of the following criteria are met:
1. Proof of no further agricultural need for the property;
  2. Evidence of circulation/marketing of availability of the property for sale, rent or lease to other farmers in the area at a price that reflects the imposition of a restrictive occupancy condition and confirmation of their lack of interest;
  3. Evidence of advertising the property for sale, rent or lease, by estate agents and agents specializing in this type of property, in farming journals and newspapers nationally for a minimum period of three months, including specific reference to the agriculture occupancy condition and at a price to reflect the occupancy condition;
  4. A period of 10 years elapsing from the date the house was first occupied.
- 5.2.2 The evidence submitted with this application is as follows:
- Copy of agents sales particulars of the property.

- Copy of advert placed in Essex County Standard on 7 October 2016.
- Copy of advert placed in Farmers Weekly on 28 October 2016.
- Planning Statement.
- Sales List dated 18 March 2017.

5.2.3 From the evidence submitted with the application it is indicated that the property was re-marketed on 7 October 2016 within Essex County Standard and advertised within the Farmers Weekly on 28 October 2016 both show an asking price of OIRO (offers in the region of) £490,000. It is stated that details of the property were advertised within the East Anglian Daily times on 29 October 2016. However, there is no evidence provided to support this. It is also stated that the property was also advertised on Rightmove, Zoopla and Stanfords websites, only evidence in relation to the publication on Stanfords website has been provided and upon a preliminary search the property does not appear on Rightmove's website to be for sale and the listing has been removed however, it does not indicate when the listing was removed.

5.2.4 During a period of four and half months marketing it is stated that an initial mailing exercise from Stanfords database two letters and particulars were sent out amongst the local farming community within an 8 mile radius of the dwelling offering the property for sale and for rent, however no replies were received to the date of the production of the planning statement.

5.2.5 Having regard to RLP Policy CC16 and its set criteria set out below:

5.2.6 Criteria A – Proof of no further agricultural need

5.2.6.1 It is understood from the submission that the kennels business to which the restrictive occupancy condition relates is retained within the ownership of the applicants along with a further dwelling known as Willow Rise. It is claimed that there is no longer a need for an additional dwelling connected to the Kennels and that the business has been in decline. This assertion has not been supported by any evidence, such as books relating to the kennels business. Furthermore the applicants are currently complying with the restrictive occupancy condition as they were employed in connection with the kennels business and are now retired.

5.2.6.2 It is acknowledged that the dwelling itself comes with limited land for agriculture and due to the applicants retirement there could be no requirement for an addition dwelling to be employed by Willow Rise, this in itself does not preclude it from being required within the agricultural community as the occupant could work on a local farm or lease/buy additional land within the local area. Furthermore, the rewording of the restrictive occupancy condition, under the previous appeal decision, states *“The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in agriculture or forestry, or a widow or widower of such a person, and to any resident dependents.”* and does not require the occupants to be employed or previously employed at Willow Rise.

5.2.6.3 However, the inspector at the previous appeal stated, ‘I conclude that condition 3 continues to serve a useful purpose in providing accommodation for a rural worker or their dependents, and it has not been satisfactorily demonstrated that there is no longer a long term need to retain the dwelling for this purpose.’

5.2.6.4 Furthermore, the extent of marketing within the current submission and the further evidence submitted for evidence of continued marketing during the course of this process and the additional sales information dated 18 March 2017 is considered satisfactory evidence over that provided within the previous proposal and therefore is it considered that the information provided does satisfy this criterion of Policy CC16.

5.2.7 Criteria B Evidence of Marketing to Confirm Lack of Interest.

5.2.7.1 It is acknowledged that the property has been marketed nationally through the use of internet sites, in an issue of Farmers Weekly on 28 October 2016 and within the Essex County Standard 7 October 2016; however, whilst this evidence does not suggest the period of time or the amount of issues produced that the advert was advertised for, this together with further information dated March 2017 has been submitted which evidence that the property was further marketed by Stanfords who specialize in this type of property five months after the original listings. This listing clearly states that the property is restricted to that of an agricultural workers dwelling. It is therefore considered that in this instance, sufficient marketing has taken place to accord with this criterion of Policy CC16. However, the Council has sought confirmation of the period of advertisement.

5.2.7.2 It is noted that during the course of the appeal for the previous application on the site (referenced in a subsequent section of this report, the Appeal Inspector stated that for that application, the appellants intention to sell resulted in a lack of marketing for rental purposes. It is noted that the current proposal has included marketing information for lease of the property and which clearly states the agricultural tenancy. Furthermore, the previous Appeal Inspector stated that the time period for advertising was sufficient. Therefore that period of advertising, together with the current period of advertising is considered sufficient to meet the policy criterion in this instance; subject to written confirmation from the agent.

5.2.8 Criteria C Evidence of Advertising at a Price to Reflect the Restriction

5.2.8.1 Paragraph 6.6 of the Planning Statement states that no independent valuations or marketing appraisals were undertaken by the agents and that this is not their common practice when placing a property on the open market. Criterion b) is unequivocal in its requirement that the property price should reflect the restriction and there is therefore no reliable or evidence basis that the price reflects this. From the evidence submitted the asking price of OIRO £490,000 has taken 30% off the higher end of the open market valuation. This valuation was considered acceptable by the inspector at the previous appeal which is considered a material consideration. Therefore, it is considered that since that time as property prices have moved upwards and that the price as of March 2017 is £490,000, this would in effect have regularized the overall price for this site. Furthermore, the Council has sought an informal valuation (i.e. no site appraisal was undertaken), from an estate agent and this was broadly in line with the agents valuation.

5.2.9 Criteria D – Period of ten years elapsing from occupation

5.2.9.1 There is no dispute that the dwelling has been occupied in excess of ten years.

**6. ANY RELEVANT SITE HISTORY**

- **MAL/143/78** – New dwelling in connection with boarding kennels. Approved
- **FUL/MAL/15/00301** - Removal of Condition 3 on approved planning permission MAL/143/78 relating to an agricultural/kennels occupancy condition. – Allowed on Appeal (It should be noted that whilst allowing this appeal, the Inspector varied the wording of the original condition).

**7. CONSULTATIONS AND REPRESENTATIONS RECEIVED**

**7.1 Representations received from Parish / Town Councils**

<b>Name of Parish / Town Council</b>	<b>Comment</b>	<b>Officer Response</b>
Tolleshunt Major Parish Council	The dwelling is still part of the kennels activity on this site and has not been marketed as such. It lies outside the village envelope, does not meet any housing need and would therefore be an inappropriate development in the countryside. A past Appeal decision for the site stated that there was no justification for the removal of the agricultural occupancy.	Noted.

**7.2 Representations received from Interested Parties (*summarised*)**

7.2.1 There were none.