

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	02.01.19
Planning Development Manager authorisation:	AN	3/1/19
Admin checks / despatch completed	[Signature]	04/01/19

[Signature]

Application: 18/01949/COUNOT **Town / Parish:** Clacton Non Parished

Applicant: Mr Mandair

Address: Ground Floor Shop 166 Old Road Clacton On Sea

Development: Conversion of shop (A1) into 1No. residential flat (C3).

1. Town / Parish Council

Clacton – Non Parished.

2. Consultation Responses

N/A

3. Planning History

05/00948/FUL	Proposed external staircase	Approved	18.07.2005
08/01522/FUL	Change of use from A1 Sui Generis Veterinary Surgery to D1 Physiotherapy Clinic.	Withdrawn	11.12.2008

4. Relevant Policies / Government Guidance

N/A

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of

planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the Council is able to demonstrate a robust five year supply of deliverable housing sites (as confirmed in recent appeal decisions) and housing delivered over the previous three years has been comfortably above 75% of the requirement. There is consequently no need for the Council to consider an exceptional departure from the Local Plan on housing supply grounds and applications for housing development are to be determined in line with the plan-led approach.

5. Officer Appraisal

Proposal

The proposal is to change the use of the ground floor of the building from Class A1 (shop) to Class C3 (Dwelling Houses) under the new permitted development allowances as set out in Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

The proposed change of use would result in the creation of one residential dwelling with a floor space of approximately 25 square metres.

This is a "prior notification" under Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015. The applicant is seeking the Council's determination as to whether its "prior approval" is required for the change of use of the existing A1 (shop) use to C3 (Residential).

Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 sets out that development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class A1 (shops) of that Schedule shall not be permitted development where:

- (a) the building was not used for a use falling within Class A1 (shops) of the Schedule to the Use Classes Order;
 - (i) on 20th March 2013, or
 - (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;

The building is currently unoccupied but evidence has been provided to demonstrate it was in use as Class A1 (shops) on 20th March 2013 and earlier.

- (b) permission to use the building for a use falling within Class A1 (shops) or Class A2 (Financial/Professional Services) of the Schedule to the Use Classes Order has been granted only by this Part:

The premises were not granted permission as an A1 or A2 use by this Part.

(c) the cumulative floor space of the existing building changing use under Class M exceeds 150sqm.

The proposed flat is approximately 26sqm.

(d) the development (together with any previous development under Class M) would result in more than 150sqm of floor space in the building having changed use under Class M.

No other part of the building has changed use under Class M. Therefore, this criterion is met.

(e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

The external works proposed do not result in an extension of the existing external dimensions. This is therefore met.

(f) the development consists of demolition

No demolition works are proposed.

(g) the building is;

(i) on article 2(3) land (Conservation Area)

The site is not within a Conservation Area.

Therefore, the application meets the requirements of Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015, subject to the following conditions:

(1) Where the development proposed is development under Class M(a) together with development under Class M(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

(a) transport and highways impacts of the development,

The area consists of a mixture of commercial and residential properties, of which most have limited off-street parking arrangements. The proposal however has one parking space allocated that accords with Adopted Car Parking Standards measurements. These standards also state for an A1 shop there should only be provision for one parking space per 20 square metres, and therefore there will be no change in circumstances as a result of the proposed changes. Further, the site is also located in a sustainable location within easy walking distance of public transport links and local services within the town centre. It is therefore considered that a development of this scale would not result in any adverse impacts on transport or highways.

(b) contamination risks in relation to the building,

This is not applicable to this application.

(c) flooding risks in relation to the building,

This is not applicable to this application as the site is not within a flood zone.

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or

(ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and

The site is located within the 'Old Road, Clacton' District Centre in the 2007 Adopted Local Plan and the 'Old Road, Clacton' District Centre in the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017). Paragraph 85 of the National Planning Policy Framework states the local planning authorities should:

- Recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;*
- Retain and enhance existing markets and, where appropriate, re-introduce or create new ones;*
- Promote competitive town centres that provide customer choice and diverse retail offer and which reflect the individuality of town centres.*
- Recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites.*

Policy ER31 of the Tendring District Local Plan 2007 states that development proposals which adversely affect the vitality, viability and the urban or rural regenerations objectives associated with each centre will not be permitted. Furthermore, Policy PP2 of the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft highlights this location as a key location that can be resilient to future economic changes.

This proposal is considered to be contrary to the above policies as it results in the permanent loss of ground floor commercial premises within a designated District Centre. The loss of this commercial shop will not accord with the existing commercial character to this section of Old Road, creating an unnecessary break to the frontage of shops and other commercial uses in this District Centre, and resulting in an adverse impact on the vitality, viability and sustainability of the area. It is therefore undesirable for the building to change to use falling with Class C3 because the impact of the use on the sustainability of this shopping area.

(e) the design or external appearance of the building, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

There are no external changes as a result of the proposed works.

Conclusion

Having regard to the above it is considered that the change of use of the A1 (shop) building to C3 (residential) requires Prior Approval, as it fails to meet the conditions set out in Schedule 2, Part 3, Class M.2 (1) (d) (i and ii) of the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014.

6. Recommendation

Prior Approval required.

7. Reason for Refusal

- 1 Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 states, under M.2 (d), that works are not permitted by Class M if;(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or

(ii) where the building is located in a key shopping area, on the sustainability of that shopping area.

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8. Informatives

N/A