

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	CBS	6/8/19
Planning Development Manager authorisation:	AN	8/8/19
Admin checks / despatch completed	SB	09/08/19

**Application:** 19/00419/LUEX

**Town / Parish:** Clacton non-parished

**Applicant:** Mr M Bareham

**Address:** 116A Jaywick Lane Clacton On Sea Essex

**Development:** Claim for a Certificate of Lawfulness: Use of games room as an independent dwelling unit.

### **1. Town / Parish Council**

Not Applicable as non-parished

### **2. Consultation Responses**

None received

### **3. Planning History**

19/00419/LUEX	Claim for a Certificate of Lawfulness: Use of games room as an independent dwelling unit.	Current
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### **4. Relevant Policies / Government Guidance**

The Town & Country Planning Act 1990; Section 191 (1) (a)

### **5. Officer Appraisal (including Site Description and Proposal)**

The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

The time limits are:

- four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed
- four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken
- 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed

Once these time limits have passed, the development becomes lawful, in terms of planning.

Subsection (1) of section 191 provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes

Applications for Lawful Development Certificates should include the following information:

- whether the application relates to:
  - a use
  - a building operation
  - a condition not complied with
- the date that the use started
- any use class the applicant considers to be applicable
- the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- any other relevant information
- a plan identifying the land
- a certificate as to the applicant's interest (ownership, tenancy etc.) in the land and any interest of any other person

Question 7 of the application form submitted on 13<sup>th</sup> March 2019 confirms that the application relates to a use.

Question 10 of the application form submitted on 13<sup>th</sup> March 2019 confirms that the use begun on 15<sup>th</sup> December 2013.

Question 7 of the application form submitted on 13<sup>th</sup> March 2019 confirms that the application relates to an existing C3 use. Question 8 of the application form states that this is a self-contained dwelling.

Question 9 of the application form submitted on 28<sup>th</sup> May 2019 confirms that the grounds for the Lawful Development Certificate are that the use as a dwelling began more than 4 years before the date of the application

An application plan identifies the land to which the application relates as land edged red. Other land in the applicant's ownership is

Question 5 of the application form submitted on 13<sup>th</sup> March 2019 confirms that the applicant's interest in the land is as the owner

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. This could include:

- proof that any use has been carried on continuously for a period of 4 years

The following evidence has been submitted in support of the LDC:-

<b>Identity</b>	<b>Type of Evidence</b>	<b>Date</b>
Stanfords	Statement re Application	March 2019
Tending District Council	Planning Contravention Notice	28 October 2013
Southern Electric	Electricity bills	2017-2018
Anglian Plumbing and Heating	Invoices	2014-2017
Steve Wilby	Receipted Invoices	2014-2015
Landscape Services	Invoice	14 August 2015
Classic Interiors	Invoice	18 March 2016
Paul Smith Glazier	Invoices	2013-2015
Peter Baker	Invoice	1 August 2014
Peter Baker	Invoice	10 March 2015
Peter Baker	Invoice	22 July 2016
The Applicant	Statement	17 June 2019
Homeview Surveillance	Alarm Installation Certificate	February 2012

Section 191 of the Town and Country Planning Act 1990 is the relevant section when dealing with issues of Certificates of Lawful Use or Development. Section 191 (1) (a) states that the use will be lawful if no enforcement action or Breach of Condition Notice could be served and, that the use or development does not constitute a contravention of any of the requirements of any Enforcement

Notice then extant. In this case there is no record of an Enforcement Notice in respect of this property.

Up to date guidance on the issue of lawful use certificates is given in paragraph 6 of the National Planning Practice Guidance which states that the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

By virtue of section 191(5)(b), a LDC must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", a LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously.

In this case the case made is that the premises were originally an outbuilding to 116 Jaywick Lane a dwellinghouse which the Applicant still retains but which is now rented out as a separate planning unit. The premises were originally a home games room/home gymnasium constructed in 2012 and would have been ancillary to the use of 116 Jaywick Lane. Council Tax has not been billed separately for 116a Jaywick Lane and so this is not a source to check unlike other similar applications. Aerial mapping applications appear to confirm the approximate date for the construction of 116A Jaywick Lane.

In October 2013 it was alleged that the building had become a separate residential unit and a Planning Contravention Notice was served but the use was not substantiated.

The case for the Applicant is that it is only in December 2013 that he moved into 116 A Jaywick Lane as a permanent residential dwelling. As inspected the premises contain one bedroom, a shower/WC and a combined kitchen and living room. Day to day there would be no link with 116 Jaywick Lane which is now rented out to a separate occupier. In these circumstances the premises are not an annexe to 116 Jaywick Lane nor are they some form of ancillary garden building. The Statement given by the Applicant in 2019 now confirms that there has been continuous residential occupation of the premises from 2013 to the date of the application 13 March 2019.

In this case the application seeks a certificate for a use effectively as a dwelling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended. There the period which needs to be established is a continuous use of four (4) years or more in use as a dwelling. There is no evidence that the use has been concealed from the Council and so the extended time limits to take enforcement action under the 1990 Act or case law would not be applicable.

In this case the Council has no credible evidence of its own to challenge the case now made which is supported by a number of supporting invoices and bills. A small garden area fits naturally with the premises and it would be reasonable to include this within the certificate.

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, 116 A Jaywick Lane, Clacton has been used as an independent dwelling unit (Use Class C3) for a period of 4 years, that this use has not been superseded by another material change of use and nor has it been abandoned.

**6. Recommendation**

Lawful Use Certificate Granted

**7. Conditions / Reasons for Refusal**

- 1 The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, 116A Jaywick Lane, Clacton as shown edged red on the plan annexed to this Certificate, has been used as an independent dwelling unit (Use Class C3) for a period of 4 years, that this use has not been supervened by another material change of use and nor has it been abandoned.

**8. Informatives**

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision?		NO