

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	7 th Nov 2019
Planning Development Manager authorisation:	TF	07/11/19
Admin checks / despatch completed	CC	7/11/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	ER	7/11/19

Application: 19/01379/LUEX **Town / Parish:** Clacton Non Parished

Applicant: Mr N Byrne

Address: 24 Pallister Road Clacton On Sea Essex

Development: Residential flat above shop.

1. Town / Parish Council

None received

2. Consultation Responses

None received

3. Planning History

19/01379/LUEX Residential flat above shop. Current

4. 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 12th September 2019 confirms that the application relates to a use.

Question 10 of the application form submitted on 12th September 2019 confirms that the use begun in 2010.

Question 7 of the application form submitted on 12th September 2019 confirms that the application relates to an existing C3 (Residential) use

Question 9 of the application form submitted on 12th September 2019 confirms that the grounds for the Lawful Development Certificate are that the use began more than 4 years before the date of the application

Ordnance Survey Extract PLA002 identifies the land to which the application relates.

Notwithstanding this; it is critical to note that the premises has two entrances (the other being 9 Beach Road, Clacton On Sea, Essex, CO15 1UG) and of significant importance to this case is that they are tantamount to the same property.

Question 5 of the application form submitted on 12th September 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:-

- A reproduction of an Edwardian photo of the shop; at first floor there is clear evidence of net curtains and window-boxes – features which would be synonymous with a residential flat above the shop.
- Utility Bills, Bank Statements, Insurance Policy details

Identity	Type of Evidence	Date
Tendring District Council	Council Tax Bill	8 th December 2009
National Grid	New Service to Existing Premises	1 st September 2010
National Westminster Bank Plc	Current Account	21 Nov 2011 to 21 Dec 2011
Tendring District Council	Council Tax Liability	24 th January 2012
HM Revenue & Customs	National Insurance Contributions & Employer Office	2 nd November 2012
Property Insurance Centre	Insurance Premium	28/1/2013
British Gas	Gas Bill	4 May 2013 to 14 Nov 2013
HM Revenue & Customs	PAYE Statement	4 December 2013
HM Revenue & Customs	P60	5 April 2014
National Westminster Bank Plc	Business Current Account Statement	5 April 2014 to 6 May 2014
National Westminster Bank Plc	Business Current Account Statement	7 May 2014 to 6 June 2014
National Westminster Bank Plc	Business Current Account Statement	7 June 2014 to 4 July 2014
National Westminster Bank Plc	Business Current Account Statement	5 July 2014 to 6 Aug 2014
National Westminster Bank Plc	Business Current Account Statement	7 Aug 2014 to 5 Sep 2014
Anglian Community Enterprise	NHS medical appointment	19 August 2014
National Westminster Bank Plc	Business Current Account Statement	6 Sep 2014 to 6 Oct 2014
National Westminster Bank Plc	Business Current Account Statement	7 Oct 2014 to 6 Nov 2014
National Westminster Bank Plc	Business Current Account Statement	7 Nov 2014 to 5 Dec 2014
AmTrust Europe	Insurance Claim	21 November 2014
Argos	Store Card Statement	27 November 2014
National Westminster Bank Plc	Business Current Account Statement	6 Dec 2014 to 6 Jan 2015
Driver & Vehicle Licensing Agency	Vehicle Tax Reminder	31 st December 2014

Tendring District Council	Electoral Register Information	22 nd January 2015
National Westminster Bank Plc	Business Current Account Statement	7 Jan 2015 to 6 Feb 2015
National Westminster Bank Plc	Business Current Account Statement	7 Feb 2015 to 6 Mar 2015
National Westminster Bank Plc	Business Current Account Statement	7 Mar 2015 to 2 Apr 2015
National Westminster Bank Plc	Business Current Account Statement	3 Apr 2015 to 6 May 2015
Npower	General correspondence	3 rd June 2015
Npower	Electricity Statement	11 July 2015
Silverbeck Rymer	Terms of Business	17 July 2015
Driver & Vehicle Licensing Agency	Tachograph Expiration reminder	12 August 2016
BRIT	Insurance Premium	10 November 2016
Property Insurance Centre	Insurance Premium	14/11/2016
Close Brothers Premium Finance	Insurance Premium	15 November 2016
National Westminster Bank Plc	General correspondence	23 December 2016
HM Revenues & Customs	Self Assessment Statement	29 th December 2016
Barclays Bank Plc	Statement	02 Mar 2016 – 01 Mar 2017
Barclays Bank Plc	Statement	01 Mar 2017
Barclays Bank Plc	Statement	02 Mar – 01 Dec 2017
MBNA	Credit Card Statement	27 June 2017 to 26 June 2018
Close Brothers Premium Finance	Insurance Premium	20 December 2017
Barclays Bank Plc	Statement	02 Dec – 01 Mar 2018
National Employment Savings Trust	Annual Statement	16 May 2018
Directgov	Council tax band Details	21/07/2019
Tendring District Council	Council Tax Liability	9 th September 2019

- A set of plans showing the internal layout

The Local Planning Authority also has access to information which is summarised as:-

- As stated above, the ground floor of the property is known as two different addresses (24 Pallister Road and 9 Beach Road). The ground floor has always been retail, the residential flat above the shop appears to have been unused as a residence from the 1960's onwards, where the space was used as office/storage space ancillary to the retail use below.
- In November 2001 a planning application was submitted for 9 Beach Road for a 'Change of use; first and second floor accommodation from office and storage (at present void) to offices'. The covering letter from the shop owner contains reference to both addresses and confirms that they would like to utilise the rooms. Site photos taken for the planning application show evidence of domestic soft-furnishings such as net curtains, patterned wallpaper and window-blinds. Site notes confirm that there is evidence of previous residential use. The floor plans submitted are identical in form to those submitted for this Lawful Development. This application was granted planning permission in December 2001. This proves as a matter of fact and degree that the two addresses are one of the same.
- In 2010 an anonymous complaint was received alleging that a breach of planning control was taking place inasmuch as the premises having been sub-divided to create hairdressers and a residential unit.
- On 5th January 2015 a Waste Management case was created to report the failed collection of domestic rubbish.

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.

Circular 10/97 'Enforcing Planning Control - legislative provisions and procedural requirements' states that if a certificate is for a use of land - unless the use falls within one of the "use classes" specified in the Use Classes Order (UCO) current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers, lawfulness on the use it is important for it to state the limits of the use at a particular date. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which

a less precise certificate might well preclude). A LDC must therefore be precisely drafted in all respects.

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.

This Certificate relates to the floors above No. 24 Pallister Road, Clacton On Sea. Use Class C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other). The premises comprises two floors above the retail unit. Although not all the rooms are labelled on Drawing Number PLA001 – it contains a bathroom, kitchen, space for a lounge and bedrooms. The LPA are satisfied that the application has correctly been described as Use Class C3.

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, No. 24 Pallister Road, Clacton On Sea has been used as a residential flat (Use Class C3a) 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.

5. Recommendation

Lawful Use Certificate Granted

6. Conditions / Reasons for Refusal

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, the floors above the ground floor retail unit at No. 24 Pallister Road, Clacton on Sea have been used as a residential flat (Use Class C3a) 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.

7. 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