

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	12 <sup>th</sup> Nov 2019
Planning Development Manager authorisation:	TF	13/11/19
Admin checks / despatch completed	CC	13.11.19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	XAE	13/11/19.

**Application:** 19/01365/LUPROP **Town / Parish:** Clacton Non Parished

**Applicant:** Sandra Dance

**Address:** 44 Park Square West Jaywick Clacton On Sea

**Development:** Proposed part change of use from residential to care home.

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

No comments received

### **2. Consultation Responses**

No comments received

### **3. Planning History**

19/30141/PREAPP Proposed part change of use from residential to care home. Withdrawn 19.09.2019

19/01365/LUPROP Proposed part change of use from residential to care home.

### **4. Relevant Policies / Government Guidance**

Town and Country Planning Act 1990; Section 55 (i)

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

Town and Country Planning Act 1990; Section 55 (1) - Meaning of "development" and "new development".

In this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

#### **Material change of use**

The so called "second leg" of the definition of what activities require planning permission, as set out at sec.55 of the 1990 Act, states that "the making of any material change in the use of any buildings or other land" is development.

National Planning Practice Guidance states that "A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case."

The categories of work that do not amount to 'development' are set out in section 55(2) of the Town and Country Planning Act 1990. These include, but are not limited to the following:

- interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
- building operations which do not materially affect the external appearance of a building. The term 'materially affect' has no statutory definition, but is linked to the significance of the change which is made to a building's external appearance.
- a change in the primary use of land or buildings, where the before and after use falls within the same use class.

The basic tests of materiality derive from early court decisions, notably *East Barnet UDC v British Transport Commission* (1962) where it was held that not every change will be a material one as "material" means "material for planning purposes", and *Palsar v Grinling* (1948) where it was stated that for a material change of use to have occurred the new activity must be substantially different from that which preceded it.

The Lawful Development Certificates relates to a detached, three-bedroom property that was bought for the applicant's son whom has learning disabilities.

A Certificate is sought that confirms no material change of use has taken place as a result of offering short term respite care for a maximum of five clients with moderate learning difficulties or physical impairment and two carers for weekends only. The following information has been submitted in support of the proposal:-

- The weekend comprises Friday evening to Sunday morning
- Clients range in age between 20-30
- Clients who arrive Friday go home Saturday by 5pm
- Clients who arrive on Saturday go home Sunday by 10am
- Clients who stay both Friday and Saturday go home by 10am
- A minibus would collect the clients and transport them to the house
- The two staff would undertake waking shifts
- Occasions when everyone is out on organised trips
- Two clients are wheelchair users; most clients are mobile and communicative
- For the remainder of the week the property would continue to be occupied by the son and his carer(s)

The total number of hours would be 41 out of a potential 168; this equates to a ratio of approximately one quarter of the week. More often than not the dwelling would accommodate only 2 or 3 clients. In regards to the ratio of time that the property will be a deemed as a C3 dwellinghouse in comparison to the time spent and number of clients accommodated would not be tantamount to a material change of use.

## **6. Recommendation**

Permitted development

## **7. Conditions / Reasons for Refusal**

- 1 Section 55 of the Town and Country Planning Act 1990 defines operational development as "...the making of any material change in the use of any buildings or other land".

More often than not the dwelling would accommodate only 2 or 3 clients. In regards to the ratio of time that the property will be deemed as a C3 dwellinghouse in comparison to the time spent and number of clients accommodated would not be tantamount to a material change of use and an express grant of planning permission is not therefore required.

**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