

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	30/01/2020
Planning Development Manager authorisation:	AN	30/01/2020
Admin checks / despatch completed	CC	31/01/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	SB	31/01/2020

**Application:** 19/00266/LUPROP **Town / Parish:** Clacton Non Parished

**Applicant:** S Hillard - Lonwale Developments Ltd & Let's Move In Ltd

**Address:** 3 Rosemary Road Clacton On Sea Essex

**Development:** Proposed Change of Use from 2 no. Class A1 Retail units to a Mixed use comprising 2 no. Class A1 Retail units (ground floor) and 3 no. C3 flats above (2 flats at first floor and 1 flat at second floor).

### 1. Town / Parish Council

Not applicable.

### 2. Consultation Responses

Not applicable.

### 3. Planning History

05/01953/FUL	Rear extension incorporating disabled W.C and external ductwork for kitchen extractor.	Approved	21.12.2005
05/01954/FUL	Rear extension incorporating disabled W.C and external ductwork for kitchen extractor, external 2 storey tower for food hoist to rear and change of use of 1st floor to A3.	Approved	21.12.2005
06/00236/ADV	Fascia sign, projecting sign and side panel.		07.04.2006
18/00808/FUL	Change of use from A1 retail to provide 3 x one bed flats on ground floor.	Refused	23.01.2019

### 4. Relevant Policies / Government Guidance

Not applicable.

### Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF.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.

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

### Site Description and Context

The application relates to number 3 Rosemary Road located at the eastern periphery of the town centre, close to the junction with Carnarvon Road. The site comprises a large detached building from the early 19th century with a bell gable and attractive detailing on the front facade. The building has been extended to the rear and has a small courtyard.

The application site is bounded to the immediate east by the Grosvenor four storey block of flats, to the south a block of 5 garages and to the west on the corner of Rosemary Crescent a 3 storey 2 bed house of contemporary design approved under application 07/01698/FUL. There is a small retail unit to the west and residential accommodation and a restaurant to the north.

The site lies within the Clacton on Sea Settlement Development Boundary, Clacton Sea Front Conservation Area, Town Centre Boundary and an Urban Regeneration Area.

### Description of Proposal

The nature and description of the application has evolved over the past 10 months as a full understanding of what the applicant was trying to achieve become apparent.

The application therefore seeks a Lawful Use Development Certificate for a proposed use comprising a change of use from 2 no. Class A1 Retail units to a mixed use comprising 2 no. Class A1 Retail units (ground floor) and 3 no. C3 flats above (2 flats at first floor and 1 flat at second floor).

### Planning Application and Site History

The premises is in a poor state externally, having been vacant for a number years with a boarded up frontage and windows for a long period. The building was previously occupied as Class A3 restaurant. At the time this application was submitted, the building was clearly a vacant, unusable restaurant space.

The planning agent submitted the application under the impression that the permitted development rights for changes of use, internal alterations and the creation of flats above could be carried out as a phased lawful use development certificate utilising various permitted development rights at different stages. However, this is incorrect.

The permitted development rights set out within Class G states that development consisting of a change of use of a building from Class A1 to a mixed use for any purpose within Class A1 of that Schedule and as up to 2 flats is permitted. The permitted development rights allowed by Class G are not engaged until such time as the unit is open and operating lawfully as A1. A lawful use certificate for the change of use from A3 to a mixed use development of 2 A1 units and 3 flats is not permitted by legislation. Just as the permitted development rights for dwellings are not engaged until the property is occupied, the permitted development rights available to an A1 use cannot be considered until such time as the A1 use becomes lawful.

Therefore, in this instance, the application could not be determined until such time as the Council were satisfied that a change of use from Class A3 to Class A1 had occurred under the provisions of Town and Country Planning (Use Classes) Order 1987 (as amended) and that the unit had been split under the provisions of Section 55 of the Town and Country Planning Act.

Numerous emails and additional information has been provided by the application and agent. The evidence and photographs gathered during the most recent site visits undertaken by the planning officer, enforcement officer and compliance officer (21<sup>st</sup> January and 28<sup>th</sup> January 2020) satisfactorily demonstrate that the ground floor is operating as 2 retail units.

#### Assessment

As stated above, the proposal falls to be considered under Schedule 2, Article 3, Part 3, Class G(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This states;

#### **G. Development consisting of a change of use of a building—**

**(a) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A1 (shops) of that Schedule and as up to 2 flats;**

In this instance, as the ground floor comprises 2 retail units, this allows up to 4 flats above (2 for each unit).

Having regard to the evidence submitted and that obtained by officers of the Council during recent site visits, a certificate of lawful development for the proposed use can be granted subject to the following standard conditions set out within the legislation.

#### **6. Recommendation**

Certificate of Lawful Use for a Proposed Use - Granted

#### **7. Conditions**

G.1 Development permitted by Class G is subject to the following conditions—

(a) some or all of the parts of the building used as a betting office or pay day loan shop or for any purposes within Class A1 or Class A2, as the case may be, of the Schedule to the Use Classes Order is situated on a floor below the lowest part of the building used as a flat;

(b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat;

(c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence)—

(i) by a single person or by people living together as a family, or

(ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

#### **8. Informatives**

Not applicable.