



TENDRING DISTRICT COUNCIL

Planning Services

Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex CO16 9AJ

AGENT: Mr Peter Le Grys - Stanfords
The Livestock Market
Wyncolls Road
Colchester
CO4 9HU

APPLICANT: Tendring Developments Ltd
C/o Agent

CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(AS AMENDED BY SECTION 10 OF THE PLANNING AND COMPENSATION ACT 1991)**

APPLICATION NO: 19/01728/LUPROP **DATE REGISTERED:** 13th November 2019

Tendring District Council hereby REFUSE the application for a Certificate of Lawful Proposed Use in respect of the use described in the First Schedule in respect of the land specified in the Second Schedule for the following reason(s):

1 The argument put in the planning statement is that the condition is "ultra vires", unreasonable and incapable of being enforced" if the condition were ultra vires that would mean it had been imposed without lawful authority and hence would be potentially invalid. Legal advice confirms that only a court decision or an appeal is capable of deciding the issue of invalidity of a condition.

The application alleges that the condition cannot be implemented. While the application points to some practical difficulties as a matter of fact the condition is capable of being achieved albeit with cooperation from others.

Occupation of any of the dwellings constructed without condition 5 having first been complied with is a breach of condition hence not lawful and this section 192 application must therefore fail.

DATED: 7th February 2020

SIGNED:

Catherine Bicknell
Head of Planning

FIRST SCHEDULE

Occupation of proposed development of 14 dwellings without the ability for compliance with Condition 5 imposed upon planning permission 18/00662/FUL in respect of the provision of 2m footpaths connecting to the existing footways.

SECOND SCHEDULE

Elm Farm Little Clacton Road Clacton On Sea Essex

Notes

- Your attention is drawn to the fact that if you are aggrieved by this determination you have a right of appeal against it to the Planning Inspectorate under Section 195 of the Town and Country Planning Act 1990. Notice of the appeal should be made on a **Lawful Use or Development Appeal Form** which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant has the right of appeal.**