

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	30 <sup>th</sup> March 2020
Planning Development Manager authorisation:	TF	01/04/2020
Admin checks / despatch completed	CC	01/04/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	LN	01/04/2020

**Application:** 20/00165/LUEX **Town / Parish:** Clacton Non Parished

**Applicant:** Mr Kevin and Mrs Julie Edgcumbe

**Address:** 2 Earls Hall Drive Clacton On Sea Essex

**Development:** Proposed lawful development certificate for occupation of the site in breach of condition 1 of planning permission reference CLA/183/54 for a continuous period of time in excess of ten years.

### 1. Town / Parish Council

Not applicable

### 2. Consultation Responses

None received

### 3. Planning History

08/00461/FUL	Two storey side extension and single storey rear extension.	Approved	01.05.2008
20/00165/LUEX	Proposed lawful development certificate for occupation of the site in breach of condition 1 of planning permission reference CLA/183/54 for a continuous period of time in excess of ten years.	Current	

### 4. Relevant Policies / Government Guidance

Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements - Annex 8: lawfulness and the Lawful Development Certificate (LDC).

### 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:

- o 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

- o 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
- o 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:

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

Question 5 of the application form submitted on 5th February 2020 confirms that the application relates to an existing use, building work or activity in breach of a condition.

Question 7 of the application form submitted on 5th February 2020 confirms that the use began in November 2008.

Question 7 of the application form submitted on 5th February 2020 confirms that the application relates to an existing C3 - Dwellinghouses.

Question 6 of the application form submitted on 5th February 2020 confirms that the grounds for the Lawful Development Certificate are that the use, building works or activity in breach of condition began more than 10 years before the date of this application.

A Land Registry plan, title number EX813325, identifies the land to which the application relates.

Question 10 of the application form submitted on 5th February 2020 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:

- o proof that any use has been carried on continuously for a period of 10 years

In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

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

Identity	Type of Evidence	Date
HM Land Registry	Official Copy of Register Title	22 <sup>nd</sup> November 2007
Tendring District Council	Householder Planning	1 <sup>st</sup> May 2008
Tendring District Council	Council Tax Liability	4 <sup>th</sup> April 2008
NIC EIC	Certificate of Compliance	12 <sup>th</sup> November 2008
Barclays Bank Plc	Credit Card Protection Policy	13 <sup>th</sup> November 2008
Barclays Bank Plc	Bank Statement(s)	8 <sup>th</sup> October 2008 to 6 <sup>th</sup> January 2009
Telephone Preference Service	TPS confirmation	3 <sup>rd</sup> December 2008
British Telecomm	Bill Payment confirmation	9 <sup>th</sup> December 2008
Barclays Bank Plc	Bank Statement(s)	7 <sup>th</sup> January 2009 to 7 <sup>th</sup> April 2009
Barclays Bank Plc	Bank Statement(s)	8 <sup>th</sup> April 2009 to 7 <sup>th</sup> July 2009
National Health Service	Employment confirmation	10 <sup>th</sup> December 2019
Kevin Michael Edgcumbe	Sworn Affidavit	31 <sup>st</sup> January 2020
Julie Victoria Edgcumbe	Sworn Affidavit	31 <sup>st</sup> January 2020

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.

This Certificate relates to the occupation of the site in breach of condition 1 of planning permission reference CLA/183/54 for a continuous period of time in excess of ten years.

Planning permission was granted for a "pair of agricultural houses" on 3rd September 1954 under application reference CLA/183/54. Condition 1 of the permission requires that "the dwelling to be occupied by persons whose employment or latest employment is or was employment in agriculture as defined by Section 119(1) of the Town and Country Planning Act, 1947, or the dependants of such persons as aforesaid".

The relevant period of time relates to the ten years preceding the time of this application. On this basis the relevant ten-year period is from February 2010 to February 2020. The Site has been occupied by the Applicants in breach of the condition since November 2008.

In regards to the breach of Condition 1 of planning approval CLA/183/54 (requiring that the dwelling to be occupied by persons whose employment or latest employment is or was employment in agriculture); on the balance of probabilities the evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that the dwelling has been occupied for 10 years or more in breach of this condition and is now lawful in terms of planning.

## **6. Recommendation**

Lawful Use Certificate Granted

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

- 1 In regards to the breach of Condition 1 of planning approval CLA/183/54 (requiring that the dwelling to be occupied by persons whose employment or latest employment is or was employment in agriculture); on the balance of probabilities the evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that the dwelling has been

occupied for 10 years or more in breach of this condition and is now lawful in terms of planning.

**8. Informatives**

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