

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	29 th July 2020
Planning Development Manager authorisation:	SCE	04.08.2020
Admin checks / despatch completed	CC	07/08/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CD	07/08/2020

Application: 20/00691/LUEX **Town / Parish:** Weeley Parish Council

Applicant: Schofie - Consensus Support Services Ltd

Address: White Heather Clacton Road Weeley

Development: Lawful Certificate for existing use as Class C3 (b) with up to six people living together as a single household and receiving care.

1. Town / Parish Council

Mrs Nicola Baker
21.07.2020

Weeley Parish Council does not object to this application. However, there is a discrepancy regarding the numbers of residents to be accommodated, with both five and six referenced in the application.

2. Consultation Responses

None received

3. Planning History

02/00524/FUL	Extension to existing bungalow to form additional bedrooms	Approved	22.04.2002
05/00122/FUL	Extension to living room	Approved	17.03.2005
20/00691/LUEX	Lawful Certificate for existing use as Class C3 (b) with up to six people living together as a single household and receiving care.	Current	

4. Relevant Policies / Government Guidance

The Planning and Compensation Act 1991; Section 171 (b)

The Town & Country Planning Act 1990; Section 191 (1) (a)

5. Officer Appraisal

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:
 - o a use
 - o a building operation
 - o 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

Submission

- Question 4 of the application form submitted on 2nd June 2020 confirms that the application relates to an existing use.
- Question 7 of the application form submitted on 2nd June 2020 confirms that the use begun in February 2007.
- Question 5 of the application form submitted on 2nd June 2020 confirms that the use class the applicant considers to be applicable is C3 (b) [which covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems]
- Question 6 of the application form submitted on 2nd June 2020 confirms that the application is accompanied by a Planning Statement setting out the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- The application is accompanied by other relevant information in the form of a Planning Statement and Statutory Declarations, both received on 2nd June 2020.
- Un-numbered site plan, received 2nd June 2020 identifies the land
- Question 10 of the application form submitted on 2nd June 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

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

Identity	Type of Evidence	Date
Nigel Bennett Schofield	Statutory Declaration	28 th May 2020
Tendring District Council	Planning Permission	21 st January 2005
Nigel Bennett Schofield	Client Identity and Funding	25 th May 2007
Commission for Social Care	Certificate of Registration	16 th June 2008
Care Quality Commission	Certificate of Registration	1 st October 2010

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 premises and its associated curtilage known as White Heather, Clacton Road, Weeley, CO16 9DN, a care home with five bedroom en-suites which provides a residential service for people with learning disabilities, autism and complex needs. Use Class C3(b) covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems. The LPA are satisfied that the application has correctly been described as Use Class C3(b).

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, White Heather, Clacton Road, Weeley, CO16 9DN has been used as a residential institution where [up to] six people live together as a single household and receive care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems as Use Class C3(b) for a period of 10 years, that this use has not been superseded by another material change of use and nor has it been abandoned.

6. Recommendation

Lawful Use Certificate Granted

7. Conditions / Reasons for Refusal

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, White Heather, Clacton Road, Weeley, CO16 9DN has been used as a residential institution where [up to] six people live together as a single household and receive care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems as Use Class C3(b) for a period of 10 years; and that this use has not been supervened by another material change of use and nor has it been abandoned.

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