

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	10 th Aug
Planning Development Manager authorisation:	AN	10/08/2020
Admin checks / despatch completed	DB	10.08.2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CD	10.08.2020

Application: 20/00583/LUEX **Town / Parish:** Harwich Town Council

Applicant: Smit - Darconna Ltd

Address: 16 Maria Street Harwich Essex

Development: Application for existing lawful use of lower level of entire property as a separate address (16A).

1. Town / Parish Council

Ms Lucy Ballard
Town Clerk
Harwich Town Council
03.07.2020

Comments made below are not the comments from Harwich Town Council's Planning Committee but are comments of individual councillors.

Cllr S Richardson commented that the addition of a further household in this road would create parking in a road already over-crowded.

2. Consultation Responses

None received

3. Planning History

20/00583/LUEX	Application for existing lawful use of lower level of entire property as a separate address (16A).	Current
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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:
 - 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

Submission

- Question 4 of the application form submitted on 7th May 2020 confirms that the application relates to an existing use.
- Question 7 of the application form submitted on 7th May 2020 confirms that the use begun in April 1988.
- Question 4 of the application form submitted on 7th May 2020 confirms that the use class the applicant considers to be applicable is C3.
- Question 6 of the application form submitted on 7th May 2020 confirms that the reason the applicant thinks he is entitled to a Lawful Development Certificate is because the property was purchased via probate. The property was purchased with an Unregistered Title. The previous owner had therefore owned and lived there for many years. The property configuration existed of two separate spaces each with their own dedicated front door access onto Maria Street.
- The application is not accompanied by other relevant information.
- Un-numbered site plan, received 15th June 2020 identifies the land
- Question 10 of the application form submitted on 7th May 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 evidence submitted is simply three photos (of the front door, of the front elevation and of the front garden).

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.

This Certificate relates to 16 Maria Street. The application form describes the part of the building subject of the LDC as 'the lower level of entire property'. No plans have been submitted that identify the extent of the lower level. Further; the ordnance survey extract outlines the extent of the entire building with no mechanism in place for the Planning Authority to ascertain that the lawful development certificate pertains to the lower levels only.

By virtue of section 191(5)(b), a LDC must include a description of the use, operations or other matter(s) 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 16 Maria Street; use Class C3 covers a dwelling house (whether or not as a sole or main residence) by a single person or by people living together as a family. The LPA are satisfied that the application has correctly been described as Use Class C3.

Insufficient evidence has been submitted with the application which is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, 16a Maria Street Harwich has been used as a dwelling house Class C3 for a period of 10 years.

6. Recommendation

Lawful Use Refused

7. Reasons for Refusal

Insufficient evidence has been submitted with the application. It is not therefore sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, 16 Maria Street, Harwich, CO12 3HT has been used as a residential dwelling house Use Class C3 for a period of 10 years.

No plans have been submitted that identify the extent of the lower level. Further; the ordnance survey extract outlines the extent of the entire building with no mechanism in place for the Planning Authority to ascertain that the lawful development certificate pertains to the lower levels only.

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