

**DELEGATED DECISION OFFICER REPORT**

| <b>AUTHORISATION</b>  | <b>INITIALS</b> | <b>DATE</b>               |
|---|-----------------|---------------------------|
| File completed and officer recommendation:                  | AC              | 26 <sup>th</sup> Aug 2020 |
| Planning Development Manager authorisation:                 | AN              | 27/08/2020                |
| Admin checks / despatch completed                           | CC              | 27.08.2020                |
| Technician Final Checks/ Scanned / LC Notified / UU Emails: | BB              | 27/08/2020                |

**Application:** 20/00905/LUEX **Town / Parish:** Clacton Non Parished

**Applicant:** Mrs Lisa Scott

**Address:** 36 Wellesley Road Clacton On Sea Essex

**Development:** Application for certificate of existing lawful use as one dwelling house after being converted from two flats.

**1. Town / Parish Council**

Not applicable

**2. Consultation Responses**

No comments received

**3. Planning History**

|               |  |          |            |
|---------------|--|----------|------------|
| 11/00953/FUL  | Single storey side extension to form an annexe.  | Approved | 15.09.2011 |
| 20/00905/LUEX | Application for certificate of existing lawful use as one dwelling house after being converted from two flats. | Current  |            |

**4. Relevant Policies / Government Guidance**

The Planning and Compensation Act 1991; Section 171 (b)  
The Town & Country Planning Act 1990; Section(s) 55 (3) and 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

Question 7 of the application form submitted on 8<sup>th</sup> July 2020 confirms that the application relates to a use.

Question 10 of the application form submitted on 8<sup>th</sup> July 2020 confirms that the use began in May 2009.

Question 7 of the application form submitted on 8<sup>th</sup> July 2020 confirms that the application relates to an existing C3 use.

Question 9 of the application form submitted on 8<sup>th</sup> July 2020 directs the reader to additional information attached after Question 10 that the grounds for the Lawful Development Certificate are that the use began more than 10 years before the date of the application.

Drawing number FDL/WSLY/00 identifies the land to which the application relates.

Question 5 of the application form submitted on 8<sup>th</sup> July 2020 confirms that the applicant's interest in the land is as the owner.

Of particular importance is that Question 9 on the application form also includes an option for 'Other' and gives example of claims that the change of use or building work was not development.

#### Amalgamation of Planning Units

If two or more uses on adjacent sites are amalgamated into one, the resultant combined activity may be so different to that which formerly took place on the land that a material change is likely to be judged to have occurred. However, if the uses to be combined are very similar, particularly if they fall within the same Use Class, the mere act of union is very unlikely to cause a material change of use. A proposed amalgamation of flats in a property to form a single dwelling house was the subject of an appeal in 1997. Here an inspector noted that although Section 55 (3) (a) of the Town & Country Planning Act makes the creation of two or more dwelling houses a material change of use - a change in the opposite direction would not always be material.

From your brief description of the works in Appendix A, these works included, but were not limited to, removal of internal walls. The works were the subject of a Building Regulations Completion Certificate. These works would not have amounted to a material change of use.

Notwithstanding this; 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 4 years

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

| Identity          | Type of Evidence            | Date     |
|-------------------|-----------------------------|----------|
| Shore Engineering | Final Certificate, ref 4873 | May 2009 |

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 dwelling known as 36 Wellesley Road, Clacton Sea. Class C3 which permits those living together as a single household as defined by the Housing Act 2004 (what could be construed as a family). The LPA are satisfied that the application has correctly been described as Use Class C3.

The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, 36 Wellesley Road Clacton on Sea has been used as a single household for a period of 4 years, that this use has not been superseded by another material change of use and nor has it been abandoned.

Further; the amalgamation of two planning units in to one does not amount to a material change of use and is not therefore considered to amount to operational development for which planning permission would have been required.

## 6. Recommendation

Lawful Use Certificate Granted

## 7. Conditions / Reasons for Refusal

- 1 The evidence submitted with the application is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, 36 Wellesley Road, Clacton On Sea, CO15 3PW has been used as a single residential dwelling Use Class C3 for a period of 4 years; and that this use has not been superseded by another material change of use and nor has it been abandoned.
  
- 2 In accordance with The Town and Country Planning Act 1990, Section 55 the change of use of 36 Wellesley Road, Clacton On Sea, CO15 3PW in May 2009 from two flats back to one single dwellinghouse did not amount to a material change of use and for this reason the works do not amount to operational development for which an express grant of planning permission would have been required.

**8. Informatives**

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