

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	JR	17.06.2022
Planning Development Manager authorisation:	JJ	23/06/2022
Admin checks / despatch completed	DB	24.06.2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	ER	24/06/2022

**Application:** 21/01576/FUL **Town / Parish:** Clacton Non Parished

**Applicant:** Mr Mark Vorhand - Ultrahaven Ltd

**Address:** 53-55 Pier Avenue Clacton On Sea Essex

**Development:** Proposed change of use of first, second and third floors to form 5 No. one bed flats

### **1. Town / Parish Council**

Clacton Non Parished

### **2. Consultation Responses (summary)**

ECC Highways Dept  
15.11.2021

The ground floor of the property serves two retail units that are being retained while the first, second and third floors are vacant. The existing parking restrictions in the town centre limit the risk of inappropriate parking. The site is in a town centre location where there is good transport links and local amenities, the Highway Authority would not deem the application of current Parking Standards necessary in this instance. Therefore from a highway and transportation perspective the impact of the proposal is acceptable to subject to the mitigation and conditions regarding cycle parking, storage of building materials and travel packs.

UU Open Spaces  
25.11.2021

There is currently a deficit of 41.08 hectares of play in the Clacton/Holland area. No contribution is being requested on this occasion due to the one bed nature of the units.

### **3. Planning History**

98/01688/FUL	Shop front	Approved	04.02.1999
98/01689/ADV	Illuminated fascia and projecting signs	Approved	04.02.1999
05/02269/ADV	One shop sign and one projecting sign	Approved	17.02.2006
91/00309/FUL	Shopfront.	Approved	08.05.1991
19/00884/COUNOT	Change of use from A1 to C3.	Determination Refused	27.09.2019
20/00741/COUNOT	Change of use of second, third and part first floor from A1 to C3.	Determination Approved	30.07.2020

### **4. Relevant Policies / Government Guidance**

NPPF National Planning Policy Framework July 2021  
National Planning Practice Guidance

## Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 Plan (adopted January 2021)

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP4 Meeting Housing Needs
- SP7 Place Shaping Principles

## Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)

- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- LP1 Housing Supply
- LP2 Housing Choice
- LP3 Housing Density and Standards
- LP4 Housing Layout
- HP5 Open Space, Sports & Recreation Facilities
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- PPL10 Renewable Energy Generation
- CP1 Sustainable Transport and Accessibility
- PP5 Town Centre Uses
- PP14 Priority Areas for Regeneration

### Supplementary Planning Guidance:

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)  
Essex County Council Development Management Policies 2011  
Essex County Council Parking Standards Design and Good Practice Guide 2009  
Tendring Provision of Open Recreational Open Space for New Development SPD 2008 (Open Space and Play SPD)

### **Status of the Local Plan**

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply

of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

## **5. Officer Appraisal**

### Site Description

The application site is located on the south western side of Pier Avenue, Clacton-on-Sea and comprises of a four storey building, with two occupied retail units at ground floor. The other floors of the building are currently vacant and the building externally is rather dilapidated. The site is within the defined settlement development boundary of Clacton-on-Sea and within the Town centre which is identified as one of the Council's priority areas for regeneration.

The surrounding area is made up of three/four storey buildings of varying designs and styles with commercial units at ground floor and residential accommodation above. To the rear of the site is an access road serving the rear of the site and the neighbouring buildings and beyond this is a public car park fronting Jackson Road.

The site is not within a conservation area or in close proximity to any listed buildings. The site is within flood zone 1 which has a low risk of flooding.

### Proposal

The application seeks planning permission to convert the first, second and third floors to residential accommodation to provide five one bedroom self-contained flats and associated cycle parking and refuse storage. New windows and an entrance door is proposed to the rear elevation along with new decking and railings to form pathway to new entrance door. No alteration or extensions are proposed.

The proposed materials are hardi-plank cladding and uPVC windows and doors.

The proposal would provide:

First Floor: 2 x 1 No. 1 bed 1 person flat – approx. 30sqm each  
Second Floor: 2 x 1 No. 1 bed 1 person flat – approx. 31sqm each  
Third Floor: 1 x 1 No. 1 bed 1 person flat – approx. 28sqm

*Officer Note: The application as submitted included an rear extension at third floor in provide a sixth flat, however due to officer concerns raised over the size and overall living conditions for future occupiers particularly with regard to the Technical Space Standards (2015) this element of the proposal has been removed and amended plans have been received. The application is therefore considered on the basis of the amended plans.*

### Principle of development

Policy SPL2 seeks to encourage sustainable patterns of growth and carefully control urban sprawl, each settlement listed in Policy SPL1 (with the exception of the Tendring Colchester Borders Garden Community) is defined within a 'Settlement Development Boundary' as shown on the relevant Policies Map and Local Map. The application site is located within the settlement development boundary of Clacton-on-Sea which is classified as a Strategic Urban settlement having a larger populations and a wide range of existing infrastructure and facilities, making it the most sustainable location for growth.

Policy SPL2 states that within the Settlement Development Boundaries, there will be a general presumption in favour of new development subject to detailed consideration against other relevant Local Plan policies and any approved Neighbourhood Plans.

Policy PP5 states that within Town Centre boundaries proposals for development or change of use for 'main town centre uses' as well as residential development will be permitted where they comply with other relevant policies in this Local Plan and support the vitality and viability of the town centre.

Additionally Policy PP14 identifies Clacton Town Centre as a priority area for regeneration and seeks to focus investment in social, economic and physical infrastructure and initiatives to improve vitality, environmental quality, social inclusion, economic prospects, education, health, community safety, accessibility and green infrastructure along with preserving and/or enhancing the heritage assets of these areas.

Therefore it is considered that there is strong policy support for the principle of the proposed development in this location, within the defined settlement development boundary and would support the Council's regeneration objective for Clacton Town Centre, by bringing this building back into a viable use, subject to the detailed considerations relevant to this proposal as set out below.

### Character and Appearance

The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. (Para 126 NPPF).

Policy SP7 states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 seeks to provide new development which is well designed and maintains or enhances local character and distinctiveness.

The external alterations to the existing building are small in scale, involving the replacement of a door with a window to the rear at first floor and laying out the rear yard, to provide access, bin storage and a cycle shelter. Bringing the first, second and third floors back in to a viable use is considered to be a positive aspect of the proposal, in regard to the resulting improved external appearance of the building within this central town centre location.

Therefore the proposal is acceptable and policy compliant in these regards.

### Living Conditions of future occupiers

The proposed five flats are slightly under the gross internal area (GIA) required by the Technical Space standards (2015) which is some 37sqm for a 1 person 1 bed flat. The bedroom sizes are compliant and all habitable rooms are served by external windows and are considered to receive adequate natural light.

### Permitted development fall-back position – Material Consideration

It is established in case law that permitted development rights can legitimately represent a fall-back position when considering alternative proposals for development of the same site.

The relevant legal principles relating to the fall-back position were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fall-back test:

"First whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is "yes" a comparison must be made between the proposed development and the fall-back use."

Application reference 20/00741/COUNOT granted Prior Approval for the conversion of part of the first floor, second floor and third floor into 4 new one bedroom flats. The decision was issued on 30th July 2020 and therefore the Prior Approval consent remains live. The decision pre dates the update to the Prior Approval regime (April 2021), which now requires all Prior Approval applications changing to dwellinghouses to adhere to the Technical Space Standards and to have due consideration to the provision of natural light to all habitable rooms.

Apart for the additional flat at first floor, there is very little difference between the development proposed at first, second and third floor and that approved under the Prior Approval application and it is considered highly likely that this Prior Approval change of use would be undertaken, should this application fail.

The Prior Approval consent is considered to form a material consideration in respect of the application and denotes what is considered to be a viable fall-back position as outlined above.

Therefore, given this fall-back position it is unreasonable to refuse the application based on one additional flat at first floor which is a comparable size to those approved under the Prior Approval scheme and is compliant with the Technical Space Standards in terms of bedroom sizes and natural light to the habitable rooms.

### Impact on Residential Amenity

The NPPF, Paragraph 130 maintains that policies and decisions should result in new development that creates places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policy SPL3 seeks new development that is designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents, provision is made for adequate private amenity space, waste storage and recycling facilities and the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

No adverse residential amenity impacts are considered to arise from the conversion of the first, second and third floors of the building. The additional window and door are to the rear and are at ground floor level only. A Building regulations application would be required for the conversion works and this would take into account soundproofing requirements for the five flats. The layout of the proposed flats are such that all habitable rooms are served by adequate daylight and outlook.

There is a small rear yard area which is enclosed by a rear gate to the access way leading out to Jackson Road which is considered to be of an adequate size to provide some amenity space. Refuse and cycle storage are also provided for, as indicated on the submitted plans. Given the central location of the building and the close proximity to the coast and open green space, the amenity space provision is considered to be acceptable

### Highways and Parking

Paragraph 110 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. Policy SP7 seeks new development to include parking facilities that are well integrated as part of the overall design. Policy SPL3 seeks the provision for adequate vehicle and cycle parking and Policy CP1 seeks to encourage more sustainable modes of transport, such as walking, cycling and public transport. The Essex County Council Parking Standards 2009 set out the parking requirements for new development.

The Council's adopted Parking Standards states that a one bedroom property should be provided with one parking space. Each space should measure 5.5m x 2.9m. There is no provision within the site to provide any off street parking. However the site is considered to be within a sustainable location, with extremely good transport links by bus and train, along with a wide range of amenities within walking and/or cycling distance of the site. Therefore a reduction in car parking provision in a location such as this is not considered to be of a concern. Furthermore the Highway Authority has been consulted on this application and subject to conditions and mitigation regarding provision

of cycle parking, Residential Travel Information Pack provision, storage of building materials off the highway, there is no objection to the proposal.

#### Financial Contribution - Recreational Disturbance (RAMS)

Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.

This new residential development lies within the Zone of Influence. The site is not within or directly adjacent to one of the European designated sites, but is approximately 5275 metres from Essex Estuaries SAC and Colne Estuary (Mid Essex Coast Phase 2) SPA and Ramsar. The Council's Habitats Regulation Assessment has concluded that, with the proposed mitigation, the project would not have an Adverse Effect on the Integrity of the sites included within the Essex Coast RAMS and therefore the proposal is in accordance with the Essex Coast RAMS SPD.

The contribution is secured by the unilateral undertaking completed in relation to this application. Therefore there is certainty that the development would not adversely affect the integrity of European Designated Sites in accordance with PPL4 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

#### Consultation responses

No representations have been received following a public consultation which included a site notice posted at the site and neighbouring consultation letters sent out to the adjacent properties.

#### Conclusion

In the absence of material harm resulting from the proposed works, the application is recommended for Approval.

### **6. Recommendation**

Approval – Full

### **7. Conditions**

1. The works hereby permitted shall begin before the expiration of three years from the date of this consent.

Reason - To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plan(s):

Drawing No: 21015/004 Rev B      Proposed Elevations and Floor Plans  
Drawing No: 21015/005 Rev A      Site Layout Plan

Reason - For the avoidance of doubt and in the interests of proper planning.

3. Prior to the first occupation of the flats hereby approved, cycle parking shall be provided in accordance with the EPOA Parking Standards, As indicated on the approved Drawing No: 21015/005 Rev A. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity

- 4 Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety

- 5 Prior to occupation of the proposed flats hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport.

## **8. Informatives**

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

### Highways Informatives:

In main urban areas with frequent and extensive public transport, cycling and walking links, the EPOA Parking Standards recommend that a reduced parking standard provision may be applied to residential developments. A reduced parking standard provision level can be applied to this proposal as it is located very close to regular public transport services and public car parking facilities.

Steps should be taken to ensure that the Developer provides enough turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to:

SMO1 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

<b>Are there any letters to be sent to applicant / agent with the decision? If so please specify:</b>		NO
<b>Are there any third parties to be informed of the decision? If so, please specify:</b>		NO