

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	BB	09/01/2024
Planning Manager / Team Leader authorisation:	AN	09/01/24
Planning Technician final checks and despatch:	JJ	10/01/2024

Application: 23/01586/LUEX **Town / Parish:** Clacton Non Parished

Applicant: Mrs Bridget Perpetua Cameron

Address: 59 Battisford Drive Clacton On Sea Essex

Development: Application for an Existing Lawful Development Certificate for a porch and garage conversion.

1. Town / Parish Council

Clacton-on-Sea is non-parished

2. Consultation Responses

Not Applicable

3. Planning History

12/60317/HOUEN Q	Garage conversion and erection of conservatory	18.07.2012
14/30104/PREAPP	Walkway closed.	05.03.2014
23/01586/LUEX	Application for an Existing Lawful Development Certificate for a porch and garage conversion.	Current

4. Relevant Policies / Government Guidance

The Town & Country Planning Act 1990 (as amended)
The Planning and Compensation Act 1991 (as amended)
The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
The National Planning Practice Guidance

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), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

5. Officer Appraisal (including Site Description and Proposal)

Site Description

This application relates to 59 Battisford Drive Clacton On Sea, a detached single storey dwelling. The property is located within the settlement development boundary for Clacton-on-Sea

Description of Proposal

The application seeks a Lawful Development Certificate for an existing development, in this case a garage conversion and a porch.

Main Issues

The Planning Practice Guidance explains that the statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act 1990, and that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

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:

- 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.
- 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.
- 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:

- Whether the application relates to:
 - a use
 - a building operation
 - a condition not complied with
- The date that the use started
- Any use class the applicant considers to be applicable
- The reasons the applicant thinks he is entitled to a Lawful Development Certificate
- Any other relevant information
- A plan identifying the land

- A certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person

The Submission

- Question 5 of the application form submitted on 08th November 2023 confirms that the applicant's interest in the land is as the owner.
- Question 7 of the application form submitted on 08th November 2023 confirms that the application relates to an existing building operation.
- Question 8 of the application form submitted on 08th November 2023 confirms that the building works were carried out in 2014. These works were a garage conversion to form additional living space.
- Question 9 of the application form submitted on 08th November 2023 confirms that the reason the applicant thinks they are entitled to a Lawful Development Certificate is because the building works were substantially completed more than four years before the date of the application.
- An ordnance survey, received 08th November 2023 identifies the land.

The application is not accompanied by any other relevant information. Nor is it accompanied by any information pertaining to the porch and its construction.

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. This could include:

- proof that any use (or breach of condition) has been carried out continuously for a period of 10 years (four years in the case of a dwelling) and where no enforcement notice is in force.

The evidence submitted is an ordnance survey with the subject site outlined in RED and a Certificate of Completion produced by Tendring District Council's Building Control.

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.

The submitted Certificate of Completion demonstrates the garage conversion was completed on 08th August 2014. No evidence has been provided which details when the porch was originally constructed. However, having reviewed aerial photographs the porch appears to have been in situ on 24th September 2017.

As part of the application process, a TLC history search was conducted. The original planning permission (TEN/1123/87) prohibited the alteration of the garage and the erection of an extension without planning permission first being sought, through the implementation of the following conditions.

Conditions 8: Notwithstanding the provision of Article 3 of the Town and Country Planning General Permitted Development Order 1977 as amended, no garages, extensions or separate buildings shall be erected without express planning permission.

Condition 10: Notwithstanding the provision of Article 3 of the Town and Country Planning General Permitted Development Order 1977 as amended, there shall be no alternative use of any integral garages without planning permission having first been granted on an application made in that behalf.

Whilst, the information provided demonstrates the garage conversion and porch have been in place for over 4 years, the building works are in fact a breach of condition and evidence would

need to be submitted that demonstrates the building works have been in situ for a period of 10 years.

Based on the information submitted, there is insufficient evidence which is sufficiently clear, and unambiguous to demonstrate that, on the balance of probabilities, the garage conversion and porch have been in situ for a period of 10 years. Therefore, in this instance planning permission is required.

6. Recommendation

Lawful development 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, the garage conversion and the erection of a porch at 59 Battisford Drive Clacton On Sea CO16 7LB have been in place for a period of 10 years in breach of conditions on TEN/1123/87.

8. Informatives

Not Applicable

9. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

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