

APPENDIX 1

TENDRING DISTRICT COUNCIL ENFORCEMENT REPORT 107-111 PIER AVENUE, CLACTON ON SEA, ESSEX, CO15 1NJ

1. Background

- 1.1 In June 2022 the Home Office informed Tendring District Council, via East of England Local Government Association ("EALGA") and Essex County Council that it was their intention to house up to 74 asylum seekers at 107-111 Pier Avenue, Clacton on Sea, Essex, CO15 1NJ. The email referred to below stated *"To ensure we have sufficient capacity to comply with our statutory duties to accommodate people seeking asylum who are at risk of destitution, we must continue to utilise contingency accommodation."*
- 1.2 The Council acting as local planning authority ("the LPA") reviewed the use of the site and the planning history and found that it does appear to have a long established class C2 of the Town & Country Planning (Use Classes) Order 1987 (as amended) ("the 1987 Order") use as a care facility and is of a size which could accommodate the level of persons proposed.
- 1.3 Class C2 use is defined in Schedule 1 of the 1987 Order as follows:
- "Use for the provision of residential accommodation and care to people in need of care (other than a use within a class C3 (dwelling house). Use as a hospital or nursing home. Use as a residential school, college and training centre"*
- 1.4 "Care" is defined in article 2 of the 1987 Order as follows:
- "means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment"*
- 1.5 However, in order to fall within class C2, the occupiers must be both in need of care and in receipt of care as part of that use. If the proposed use does not fall within C2 and instead falls within a different use class or is sui generis hostel use, then a planning application would be required for a change of use.
- 1.6 The LPA wrote to the Home Office on 24 June 2022 requesting detailed information as to how it is proposed to use the premises as residential accommodation for asylum seekers, in particular how the proposed use would fall within class C2 (**Appendix A**). The LPA requested a full description of all of the individuals to be accommodated at the premises and how they meet the need for continuous care; the level of disability and/or vulnerability which justifies the level of care required when occupying a C2 use; and details of how the care will be provided at the premises and by who, including whether the staff will be residential or non-residential and the period of time that will be covered by those staff providing care on site. Whilst writing the LPA also requested details of the Home Office's arrangements with regards to the tenure of the premises.
- 1.7 On 16 August 2022 the Resettlement, Asylum Support and Integration at the Home Office replied to the LPA's letter (**Appendix B**). In its reply, the Home Office confirmed that it has entered into a lease contract for a period for 12 months rolling agreement at the Site. They stated that the proposed use would not result in any changes to external or internal arrangements and would continue for C2 (care home). Further, that as the use would remain as C2 there would be no material change of use requiring planning permission. In terms of the

level of service user needs, the Home Office confirmed that they did not know the precise needs of the service users occupying the property, save for easy access accommodation, and they also confirmed that their accommodation providers are not contracted as care providers and not contracted to provide medical support to the occupiers.

- 1.8 Following receipt of the Home Office's 16 August letter, the LPA arranged a conference with Counsel to discuss whether the concerns regarding the proposed use of the premises being within the authorised use had been addressed. It was the LPA's view that these concerns had not been satisfactorily responded to but sought external legal advice for a second opinion. For the avoidance of doubt, the LPA does not hereby (or otherwise) waive privilege in relation to the advice that it received.
- 1.9 The LPA were not satisfied that this defined or clarified what the occupants' needs would be or how such needs fall within the current C2 use class. Meetings continued with various partners which are detailed within a separate section. Subsequently, on 5 October 2022 the LPA wrote to the Home Office again (**Appendix C**) seeking clarification on the use of the premises and evidence that the proposed use will fall within class C2. The LPA also asked the Home Office to confirm when the proposed use was to commence.
- 1.10 On 20 October 2022 the Resettlement, Asylum Support and Integration at the Home Office again replied (**Appendix D**) stating that in their view the site for individuals with adapted living requirements meets the needs of current planning requirements and therefore there is no need to change its use. They again stated they would not know the needs of the occupants until they are routed and would be assessed on a case by case basis. Again, it was stated that it was likely to be for individuals who need adapted living for example wet rooms, level floors and wide doorways, which is something they may not get at their other sites such as hotels. They did not provide a response to the LPA's questions on when the proposed use was to commence.
- 1.11 Despite attempts to seek clarification on the care needs of occupiers and details of how that care is to be provided, this has not been forthcoming. The Home Office have said that the occupiers will have (unknown) needs and care will not be provided save that they will have rooms that meet their needs. In the LPA's view the use described does not fall within class C2 but is instead more akin to a sui generis hostel use requiring planning permission. With the use commencing, it is the LPA's view that there will be a breach of planning control under s171A of the Town & Country Planning Act 1990.

2. Consultation with the Council and Partners

- 2.1 On 15 June 2022 the Home Office wrote to Mr Gavin Jones, Chief Executive of Essex County Council, by email advising that the Clacton Care Homes, CO15 1NJ had been identified as a site to be used to house asylum seekers and that further contact would be made with officers and other relevant stakeholders immediately to discuss operational arrangements (**Appendix D(i)**). Following this email meetings were arranged by "EELGA".
- 2.2 Planning Services were first invited to the partner meetings on 27th June 2022, following concerns regarding the lawful planning use of the property.
- 2.3 27.06.22 - Notes of new contingency site in Tendring meeting – attached as **Appendix E** – Graham Nourse, (former) Assistant Director for Planning attended:

- LH – questioned whether an equality impact assessment has been carried out, as Home Office would be obliged to do that

ACTION 4: GI to check if equality impact assessment for this site has been conducted and share with the group

- LH – a letter from GN has been sent to Home Office regarding C2 use of this site and a similar letter will go to CRH
- HM – clarity needed as to whether the site would be used as a care home or in some other capacity as planning permission may be required; NJ – the intended use is initial contingency accommodation

ACTION 5: CRH/Home Office to check intended legal use of the property and explain to the group

2.4 04.07.22 - Notes of new contingency site in Tendring meeting - attached as **Appendix F** - Graham Nourse, (former) Assistant Director for Planning attended

- ID - Use of terminology seems interchangeable, a response is needed as to what the use of this facility is going to be; a care home, a hotel or another use as the existing planning permission is limited and may need to be changed.
- LW – The facility won't be used as a hotel, Home Office are drafting a response and it should be ready by the end of the week.

Action 1: Home Office to provide written response to partners by the end of the week (8 July)

Email from ECC to partners dated 07.07.22

Responding to concerns around the proposed use and C2 permission, also highlighted lack of information of care support required. The email is attached as **Appendix F(i)**.

2.5 11.07.22 - Notes of new contingency site in Tendring meeting – attached as **Appendix G** - Lisa Hastings and Graham Nourse, (former) Assistant Director for Planning attended:

Actions carried forward from 27.06.22

ACTION 3: AW to work with GPs to discuss patient registrations if the site goes ahead

ACTION 4: GI to check if equality impact assessment for this site has been conducted and share with the group

ACTION 5: CRH/Home Office to check intended legal use of the property and explain to the group

Actions carried forward from 4.07.22

Action 1: Home Office to provide written response to partners by the end of the week (8 July)

Action 2: LW to clarify for the group if care support is needed and if so, what kind and whether it's mental health or physical health or both

Action 3: LW to check threshold levels in terms of care needs for this site

Action 5: NJ to provide clarification on CRH equality impact assessment and food hygiene certification

Action 6: LW to provide Home Office's equality impact assessment

SF: The written submission from Essex partners to the Home Office covered 3 key areas:

- High serious crime and hate crime rates in the Pier Ward
- Local services already struggling with increased demand
- Need for clarity on the intended use of the facility, whether it's an appropriate site for asylum seekers and whether an alternative could be identified across greater Essex

Action 1: AS to share hate crime figures for the local area with the group – see below

1. LH: There was a judgement in a recent case which stresses the importance of EIA for asylum seekers accommodation. The use of accommodation was found unlawful as additional vulnerabilities were not considered to a sufficient extent. Therefore impacts need to be considered before mobilising the site.

2.6 Message from LH sent to the group following the meeting:

This is a copy of the judgement I was referring to. Mrs Justice Lieven has handed down judgment on 24th June 2022, in the case of *R (Hough) v Secretary of State for the Home Department* [2022] EWHC 1635 (Admin), a judicial review of the Town and Country Planning (Napier Barracks) Special Development Order 2021 relating to the use of Napier Barracks for providing facilities for the accommodation of asylum seekers. The Judge dismissed the first seven of eight grounds of challenge, but held that there had been a breach of the public sector equality duty in s149 of the Equality Act 2010 concerning community relations, which, in short, had been considered in too general terms. It is therefore imperative that the EqIA on the use of this particular accommodation is undertaken prior to its use taking into account the community relations on the use, which includes impact on services (paragraph 107).

Judgement is attached as **Appendix H**

2.7 30.08.22:

Latest hate crime figures for Tendring for the 12 month period up to July 2022 collected by Essex Police were forwarded by Anastasia Simpson, Assistant Director, Partnerships at Tendring District Council – **Appendix I**. The figures show that there were a total of 78 recorded hate type crimes for Pier Ward, which is the highest of any Ward in Tendring, Golf Green Ward being second with 28 recorded hate type crimes. Out of the 78 recorded hate type crimes in Pier Ward, there were 13 for disability and 44 for race, again higher than any other Ward. Overall across Tendring there were 162 race hate victims out of 353 total victims.

2.8 Notes of new contingency site in Tendring meeting 30 August 2022 - attached as **Appendix J** – Graham Nourse, (former) Assistant Director for Planning attended:

- *ID (TDC) raised an unresolved issue of the planning consent for the building and whether it is care or not. SF (ECC) we do not have a profile of the type of needs the people going into the site will have. There are a whole range of needs with people with disabilities, mental health needs, learning disability, autism and a plethora of other trauma related issues. According to the definitions of vulnerability under the Care Act, we will need to put in care and support which will mean you need a CQC regulated service.*

- *SF (ECC): We have been saying for the last two or three months that this is not an appropriate site. It does not meet any of the requirements that we think is fit for purpose, and it is going to put vulnerable people in a more vulnerable and traumatised situation. We need to look at alternative locations.*
- *NJ (CRH): we have taken your advice into consideration and have applied that to the experience we have had with other sites, and we feel this is a suitable site.*
- *SF (ECC): You might be able to say that from your perspective, but from our perspective as a public sector with statutory duty for children, adults, environment, etc. we are advising you that this is not going to work and will put people at significant risk. If our advice gets ignored, we are going to have to escalate this and take it further.*
- *CH (HO) confirmed the accommodation provider is required to make sure of statutory and regulatory compliance for every proposed site, and in this instance, despite your concerns, CRH says that the site meets the requirements. I think one problem here is that you do not know anything about the demographics of the types of people who might be accommodated there or a summary of their needs. I think this is a void and to deal with it, the accommodation provider should outline to the colleagues at the council the scope by which we would seek to use this particular site and how that is in scope with the planning that is in place.*
- **Action 1:** *NJ to provide an outline of the site's scope of use.*

Notification received from EELGA on 23.09.22 that the Home Office had requested a meeting on the following Monday on the Clacton care home proposed previously as contingency asylum accommodation.

2.9 26.09.22:

Latest hate crime figures for Tendring for the 12 month period up to August 2022 collected by Essex Police were forwarded by Anastasia Simpson, Assistant Director, Partnerships at Tendring District Council – **Appendix K**. For Pier Ward 75 hate type crimes were recorded, again the highest Ward in the district of Tendring, the second highest being Golf Green Ward with 25. Of the 75 hate type crimes, 15 were in respect of disability and 40 in respect of race. Overall across Tendring there were 151 race hate victims out of 328 total victims.

2.10 Notes of new contingency site in Tendring meeting 26 September 2022 - attached as Appendix L – Graham Nourse, Assistant Director for Planning attended

The TDC confirmed it had received the Home Office letter, but there were still concerns and a response would be prepared. The HO and accommodation provider confirmed the site was not live. ECC confirmed partners did not feel the site was suitable for reasons previously articulated. Hate crime statistics were circulated.

- *MW: We need to know the needs of the people who are going to be placed there. I would also like to know if you would go ahead with the site regardless of our opinion.*
- *NJ: The cohort of people who will be placed in the hotel have not yet been identified, and we do not know what kind of support they will need but they will not be people with complex needs. Transport will be available 24/7. The site will be manned 24/7 and we have auditors that go in to make sure everything is up to standard. There will be weekly welfare checks. Food will be provided. Usually, we do not see any ASB issues, and the local community offer support to service users.*

- *TR: You will have access to our online portal which will give you live information about who is at the hotel and who has left. We do not intend to place any children at this site.*

- 2.11 The letter from the Home Office to Planning is attached as **Appendix B** and referred to above. The Leader of the Council also received a letter from the Home Office dated 16 August 2022, attached as **Appendix L(i)**. The Leader responded to **Appendix L(i)** with a further letter dated 24 August 2022, which is attached as **Appendix L(ii)**. This correspondence was forwarded to partners via email on 25 August 2022 and replied to by ECC, **Appendix L(iii)**.
- 2.12 Planning Services wrote back to the Home Office on 5 October 2022; letter attached as **Appendix C**, as referred to above.
- 2.13 TDC wrote to EALGA (email 01.11.22 – **Appendix M**) requesting a meeting to be set up with partners as we had received some information via the voluntary sector that asylum seekers were on site.
- 2.14 Email from Maggie Pacini, Consultant in Public Health, Essex County Council on 01.11.22:
“Can we clarify the arrangements. If the facility is contracted for sole use, and for minimum contract duration – and residents are staying longer than the 24-48 hours - then surely it should more properly be considered as contingency bot spot purchase. I believe that spot purchase comes with a different (lesser) wrap around support offer.
- 2.15 Email reply from Ready Homes 01.11.22 stating:
“I can confirm that this is sole use and therefore we are able to provide the same wrap around support that we do in our regularly contracted hotels. At present we are unaware how long the residents will be there and that would be a question for the Home Office.”

Emails – **Appendix N**

- 2.16 7.11.22 – Notes of new contingency site in Tendring meeting – Gary Guiver, Director for Planning and Lisa Hastings attended, attached as **Appendix O**

Arranged by EALGA Stating:

- *“CRH are now using the care home in Clacton on a spot purchase basis and there are 12 people last time I asked. I’m setting this meeting up so that Home Office and CRH can provide further details to Essex and Tendring partners”.*
- *LH (TDC): The authorised planning use of this property is C2, but it is not being used under that class which makes it unlawful.*
- *NJ: We believe we are using the site lawfully.*
- *TC: The local CVS team made a visit to the site and they found issues with the fire doors which needs to be referred to the fire service. I am in the process of contacting the fire service.*
- *AnS: CVS also said people needed clothes. Are you providing clothes and toiletries?*
- *NJ: We provide toiletries, but not clothing.*

- *JP-G: Our building control team visited the building with us today and we found that virtually every fire door in the building had issues. This is now a matter of health and safety, and we are liable as a district authority. Bringing the building up to scratch will need extensive work.*
- *LH: We wrote to CRH and HO regarding the use of this accommodation. We had a response from the Immigration Minister who referred to this site as hotel accommodation and not C2. We are now looking at our options for taking legal action against HO. Based on what JP-G has said, there is significant risk of harm to the residents at this site. We have a duty of care and we need to immediately ask for an assessment by the fire brigade.*
- *GS: The action is for JP-G to write to HO as requested by CS.*
- *FB: Can you please clarify if this is a hotel or a care home?*
- *NJ: This is not a hotel. It is being used to care for service users. It fits the definition of C2.*
- *SF: I suggest you get a CQC accreditation.*
- *NJ: We do not believe we need CQC to come in on this site. We feel we are compliant with the planning use.*
- *AnS: I would like to reiterate that we have previously talked and written to HO about community cohesion, hate crime figures, mental health issues and suicide rates in the area as challenges making this site unsuitable.*

2.17 The letter from the Immigration Minister dated 02.11.22 referred to in the meeting is attached as **Appendix O(i)**

2.18 TDC's Leader replied to the Rt. Hon Robert Jenrick MP's letter on 04.11.22, attached as **Appendix O (ii)** and stated, amongst other comments regarding the suitability of the location:

"Your letter received this week, now confirms that the proposed use of the Pier Avenue property for the accommodation of asylum seekers with people on hand to offer general support, advice and monitoring, does not fall under the purpose of Use Class C2 and for which that use lawfully provides. Therefore to proceed with such an activity at the premises in Clacton would constitute a clear breach in planning law for which the local authority has the power to expedite enforcement action. We are also led to believe that this use has commenced and given the very clear concerns the Council has about the impacts of this proposal on the locality, it is minded now to exercise those powers."

2.19 14.11.22 - Clacton asylum spot booked site meeting key notes – **Appendix P**

This meeting acknowledged the TSNs notices served on the relevant parties by reference to litigation and no further discussion would be had in the joint meeting.

2.20 Latest hate crime figures for Tendring for the 12 month period up to November 2022 collected by Essex Police were forwarded by Anastasia Simpson, Assistant Director, Partnerships at

Tendring District Council – **Appendix P(a)**. These figures show that Pier Ward continues to have the highest hate type crime figures in the district of Tendring.

3. **Enforcement Policy – Harm and Planning Assessment**

3.1 The current lawful use of the entire site is a Care Home and defined as C2 use.

- C1 Hotels - Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels)
- C2 Residential institutions - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres
- C2A Secure Residential Institution - Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks

3.2 The unauthorised use is not regarded as C1, C2 or C2A described above. Instead, the use is “Sui generis” and it is noted this includes “hostels (providing no significant element of care)” that could be considered to describe the current unauthorised use of this entire site.

3.3 As witnessed on site visits carried out on 4 October 2022 and 7 November 2022 (summarised below under the section titled ‘Site Visits’), and described by staff on site at these visits, there is no provision of care, nor has any care work been described. Occupiers have rooms with standard beds and an ensuite. A security desk is available, but staff would not be engaged in care work to assist occupiers with washing, eating or other needs. Food is packaged off site and delivered.

3.4 The use is not C1 Hotel as there is no planning history to support this and the Care Home use has been established through various extension applications approved. It is noted that communications from the Home Office referred to this site as a Hotel. This is a site in need of significant conversion and updating from the last Care home use to a Sui generis use and those works have been taking place throughout the time the Council officers have visited.

3.5 **Harm Assessment**

3.6 Enforcement Case for this site (22/00259/CHGUS1) was subject to the completion of a harm assessment carried out 8th November 2022. This accords to the adopted Tendring Local Planning Enforcement Policy (**Appendix P(i)**) and is copied below.

1	Urgency - Is the breach:	Ongoing (1)	2	There is a likelihood of further occupation across the site
		Getting worse(2)		
		Stable (0)		
2	Highway safety issues:	Yes (2)	0	Access and parking not involved in development and are existing
		No (0)		
3	Danger to public pedestrian/animal safety:	Yes (2)	2	Concerns of fire safety to both occupiers and adjacent uses, including residents and uses of public gathering.
		No (0)		
4	Does it cause a statutory or	Yes (2)	0	No

	serious environmental issue	No (0)		
5	Complainant:	Named (2) Anonymous/malicious(0)	2	It is the Council but external partners, especially ECC, have raised concerns about the suitability of the site for the use, as highlighted in the meetings with partners section above.
6	Timescale i.e., (period left before enforcement action can no longer be taken and lawful use rights exist)	Less than 3 months old (0) Less than 6 Months (2) More than 1 year (1) Not applicable (0)	0	
7	Contrary to Local Plan policy:	Yes (2) No (0)	2	Loss of care home and contrary to local plan without viability assessment to consider.
8	Extent of harm:	Widespread(2) Local(1) None (0)	1	Use likely to impact neighbours and community cohesion. There might be wider impact on social infrastructure, such as public health and social care, to be considered.
9	Is harm irreversible?	Yes(2) No (0)	2	Only if use ceased and that is an option
10	Intensity of activity	High(2) Low (1) Negligible (0)	1	At this time the use is low level, but has potential to increase with more occupation
11	Breach of planning condition	Yes(1) No (0)	0	No breach
12	Impact on amenity	Long term (2) Short term(1) Negligible (0)	2	Resulting permanent change of use would have a short and long term impact.
13	Previous enforcement action/planning history	Yes(1) No (0)	0	None recorded
14	Safety hazards (specify)	Yes(1) No (0)	1	Building/s not suitable and safe for occupation. Potential social conflict in area given nature of unauthorised use.

15	Undesirable precedent (please provide details)	Yes(1)	1	Use of care homes for use without application and without due consideration of local plan.
		No(0)		

3.7 The score being 16 points and a red priority case would be a score of 15 or above. It is noted that some aspects of this assessment are in relation to safety concerns of the building, but these may be able to be resolved through fire and building regulation compliance.

3.8 Further to the above the assessment considered:

Consideration of the cost to the business:

3.9 The effect of serving an Enforcement Notice would likely result in a cost to the owner and/or occupier of the site for the current unauthorised use as sui generis including a hostel and this may include (but not limited to) purchase of the site from previous care home providers for the new use, renovation works for all rooms, including some external works and security staff. It is understood that some of these costs are met by the contract between the Home Office and their accommodation provider, Clearspring Ready Homes Ltd.

3.10 However, the Home Office have stated to the LPA within communication:

3.11 16.08.22 – Home Office commented in **Appendix B**:

“We have sought clarification and a property impact report from our contracted accommodation provider around on the issue of planning use. We are satisfied and understand the property benefits from planning permission and the proposal of use would not result in any changes to external or internal arrangements. The character of the properties will remain as it is presently and the continued use of the property for C2 (care home) does not constitute a material development or change of use and as such no planning permission is required. It is therefore considered that placements of asylum seekers at the Clacton-on-Sea site does not fall outside the C2 permissions.”

3.12 20.10.22 – Home Office commented in **Appendix D**:

“In response to your concerns with regards to the C2 planning permission; we are satisfied that the use of the site for individuals with adapted living requirements meets the needs of current planning requirements and therefore there is no need to change its use.”

3.13 Further cost may result in the need to find accommodation elsewhere for current unauthorised occupiers of the site, however the expected turnaround duration of the occupiers has been expressed to be short term, in particular the Home Office commented in its letter of 16 August 2022 'Furthermore, we will use best endeavours to limit the length of stay at the site and seek to disperse service users to appropriate dispersal properties once such properties are made available'. At the partner meeting on 7 November 2022 (**Appendix O** – paragraphs 1&2) reference was made to spot booking purposes and short duration.

Human Rights:

3.14 In taking decisions, the LPA must have regard to, and ensure compliance with, the provisions of the Human Rights Act 1998 (as amended). Article 1 of the First Protocol, Articles 8 and 14 are relevant when considering decisions in relation to planning enforcement, as is relevant to this case. The LPA may interfere with a particular right with justification, where is it

necessary and proportionate to do so with consideration of competing interests. There is a clear public interest in pursuing a legitimate aim, by enforcing planning law and planning regulation in a proportionate way. In deciding, whether enforcement action is taken, LPAs should, where relevant, have regard to the potential impact on public safety, the health or morals, housing needs and welfare of those affected by the proposed action, and those who are affected by the breach of planning control.

- 3.15 In taking the decision to issue an Enforcement Notice, the LPA must have regard not only to the implications for Human Rights in expediting the proposed action but also the implications of not pursuing action – informed by the information available at the time of the decision. In taking the decision to expedite action, the LPA has regard to the nature of the breach of planning control, the circumstances by which the occupants were alleged to have been found in need of accommodation, the vulnerability of the current and intended occupants, the condition of the accommodation that was being provided and the potential for the number of occupants subjected to those conditions to increase through continued operation.
- 3.16 In respect of the nature of the breach, the LPA's argument is that the use does not fall under the building's lawful use of C2 and would require planning permission to continue. Key to consideration of any planning application for the change of use away from C2 would be the loss of care home accommodation to meet the needs of persons for which the provision of on-site care is required. Given the demographics of the Tendring area, the Council includes within its planning policies the requirement for any change of use away from a care home to be justified with evidence that the use has become unviable, this is set out in Policy LP10, pages 79 to 82 of the 'Tendring District Local Plan 2013-2033 and Beyond, Section 2' (**Appendix P(ii)**). To date no application for change of use has been submitted to the LPA and no evidence demonstrating that the current lawful use is unviable has been made available for consideration. Thus, the LPA is faced with the loss of a care home without adequate justification.
- 3.17 The circumstances by which the occupants require accommodation is not in question given the separate conditions faced by asylum seekers and the national obligations and imperative to accommodate them – having regard to the difficulties experienced, nationally, in finding suitable accommodation for a large and growing number of individuals.
- 3.18 Article 8: Respect for your private and family life, home and correspondence
Article 14: Protection from discrimination in respect of these rights and freedoms
- 3.19 The vulnerability of the individuals is of relevance and concern, given the potential disabilities referred to in partner meetings, although no specific information has been provided on those already occupying the premises, and it is noted that any person's occupation of the site is transitory, so that it may be impossible to have a fixed idea of who is in occupation over time. The condition of the buildings to accommodate occupiers with a range of disabilities is a matter of concern, particularly following the physical inspection of the premises on 7th November 2022. Reliance has been made in partner meetings of the accessibility of the premises however, compliance of the accommodation with building and fire regulations were of such a concern that the risk to life and limb were particularly pertinent given the potential for fire to spread quickly throughout the buildings, the means by which fire could be contained and occupants could be quickly evacuated, and the potential restricted movement by those occupying the premises. At this time a Temporary Stop Notice (TSN) was served on 9th November 2022 (referred to below in this report), it is understood the Fire Service visited the property on 8th November 2022, at the Council's request, initially access was denied and a subsequent appointment was made for 11th November 2022.

3.20 Following that visit, and the issue of the TSN, the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority stated in a letter dated 15th November 2022 addressed to Daniel Dixon-Bush, Norfolk House, 107 Pier Avenue, Clacton-On-Sea, CO15 1NJ that it is of the opinion that the site is not in full compliance with the Regulatory Reform (Fire Safety) Order 2005. A report is attached to the letter setting out those parts of the legislation with which there is non-compliance and the deficiencies which are required to be addressed (**Appendix P(iii)**). Emergency fire escape routes and exits were identified as a failing and it was noted in the report that:

'Although fire-doors will require urgent attention due to the sleeping accommodation, it should be noted that mitigation is provided by early warning (L1 system), 24 hour staffing, fire marshalling and regular patrols around the buildings. Furthermore there is a clear management strategy in place. Notwithstanding this, these issues should be prioritised as soon as possible.'

3.21 It was also identified in the report that the emergency lighting is inadequately maintained as the inspection revealed that the emergency lighting is not currently maintained on an annual basis. A recommendation was made to put this in place. A follow up inspection will take place in 12 months given the mitigating factors identified in the report. The unauthorised change of use continued.

3.22 From the outset of the partner meetings, in consultation on the use of the premises for asylum accommodation, the Council has highlighted the unsuitability of the area, not only because the proposed use did not purport to comply with the lawful planning permission but importantly, the Hate Crime statistics for the Pier Ward, in which the property sits, are the highest in the District of Tendring. Notes of meetings refer to unsuitability of the property for hate crime statistics and concerns by TDC & Partners including ECC – Ian Davidson on 04.07.22 (Appendix F - paragraph 12), Simon Froud (ECC) and Anastasia Simpson (TDC) on 11.07.22 (Appendix G - paragraphs 2, 21 & 22) Simon Froud (ECC) on 30.08.22 (Appendix J - paragraph 14), Simon Froud (ECC) on 26.09.22 (Appendix E - paragraphs 3 & 4), Anastasia Simpson on 07.11.22 (Appendix O - paragraph 14). The Council is concerned that due to the high Hate Crime statistics in the very small area surrounding the property, the placement of destitute and vulnerable asylum seekers requiring support and protection would face discrimination through community unrest and public safety. Essex Police and Essex County Council have supported and shared these concerns, with the latter offering to assist with finding alternative suitable accommodation.

3.23 Whilst it was established that a relatively small number of individuals were occupying the premises at the time of site inspection on 7th November 2022, it is however understood that the number could increase to more than 100 if necessary – presenting the possibility that the risk of public safety highlighted by the LPA could increase substantially if the use were allowed to continue without intervention.

3.24 The implications for Human Rights arising from enforcement action and the expectation of compliance, are the immediate need for alternative accommodation for the individuals already occupying the premises. Making this site no longer available as a care home reduces available housing for a different group of potential occupiers for which the LPA planning policy aims to protect and secure.

3.25 It is important to acknowledge that the Council, acting as the LPA raised concerns regarding the proposed use of the property akin to a hostel use, as against its lawful planning use as a C2, at a time when we were reassured the property was unoccupied and the owners and occupiers organised the placement of individuals whilst these concerns remained

unanswered. During various meetings with partner agencies in the period proceeding, the Home Office representatives, Accommodation Providers on behalf of the Home Office and the managing agents of the property in question confirmed that care is not provided to the proposed and now existing occupants.

- 3.26 Article 8 rights do not provide a right to housing and can be interfered with where the authority can show that action is lawful, necessary and proportionate in order to protect public safety, health or morals and the rights and freedoms of other people. An Enforcement Notice could require the need for alternative accommodation to be found, within the Home Office's Accommodation Provider's property portfolio and that is considered highly likely to be available given the number of hotels available to them (and are being used) as well as specific accommodation centres that are authorised for such use. The chance of alternative accommodation not being available is very low. There is also a risk that alternative accommodation provision is poorer than the current site.
- 3.27 Allowing occupiers to remain in accommodation in an area with a high rate of hate crime statistics and while unauthorised use matters are resolved is a significant risk to public safety and in the public interest of the area, on balance was given more weight towards action being necessary and proportionate.

Public Sector Equality Act 2010, Section 149 & Equality Impact Assessment

- 3.28 The public sector equality duty provides that a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.29 The relevant protected characteristics are—
- age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- 3.30 In this matter the authority has not been provided with any specific information on any affected parties protected characteristics, including current or potential occupiers of the site nor owners/management of the site. However, it is understood the site will be used for short term stay of persons over 18 years of age and will include persons who identify with any (including more than one) of the protected characteristics. The decision to cease the unauthorised use in term of this duty is given due regard and may disadvantage person/s with one or more of the protected characteristics, for example in terms of access to alternative accommodation, in the decision to protect their safety.
- 3.31 In addition, as stated above, Hate Crime statistics have been discussed and shared with the Home Office, Accommodation Providers and the managing agents showing that within the Pier Ward, in which this property is situated has the highest rate of crime affecting a number

of protected characteristics in the district of Tendring. It is therefore, a concern that vulnerable persons with these characteristics are being placed in accommodation, with authorised C2 use without care and support being provided.

- 3.32 Throughout the meetings with partner agencies, prior to deciding to take enforcement action, the Home Office and Accommodation Providers acting on their behalf have been requested to provide an Equality Impact Assessment of the decision to use the property for placing asylum seekers. There is a legal requirement for the surrounding circumstances, to be taken into account also supported by the High Court judgement of Mrs Justice Lieven dated 24th June 2022, in the case of R (Hough) v Secretary of State for the Home Department [2022] EWHC 1635 (Admin). However, despite reminders nothing has been forthcoming.

Informal Consideration of Planning Policy as may apply:

- 3.33 The change of use of this site would directly conflict with Policy LP10 (**Appendix P(ii)**)(copied and highlighted below)

Policy LP 10 - CARE, INDEPENDENT ASSISTED LIVING

To meet the care needs of our future generations and generate growth in the care, independent and assisted living sector in line with the Economic Development Strategy, the Council will support the construction of high quality care homes and extra-care housing in sustainable locations. The Council will also work with the NHS, Essex County Council, care providers, educational establishments and businesses to promote technological advancements in the provision of care, improvements in training and qualifications for care professionals and support growth in the 'supply chain' industries related to care and assisted living.

The Council will support the provision of care homes and extra care housing within settlement development boundaries and, in particular, within the mix of accommodation for the residential and mixed-use developments across the District.

The Council will also consider, on their merits, proposals for the development of new (including change of use to) care homes (Use Class C2) on land outside of settlement development boundaries where they will still support a sustainable pattern of growth in the District. Such developments must either:

- a. be located on a site safely accessible on foot within 800 metres of the edge of the settlement development boundary of one of the District's 'strategic urban settlements', 'smaller urban settlements' or 'strategic rural service centres'; or*
- b. be located on a site safely accessible on foot within 400 metres of the edge of the settlement development boundary of one of the District's 'rural service centres'.*

All new care homes and extra care housing must pay particular attention to landscape character if located outside of settlement development boundaries and offer a high quality, safe, secure and attractive environment for their residents and provide sufficient external space to accommodate the normal recreation and other needs of residents, visitors or employees. Proposals shall have no significant material adverse impact on the landscape, residential amenity, highway safety, or the form and character of nearby settlements and shall be otherwise appropriate in scale and design for their location, having regard to other policies in this Local Plan.

Proposals for the development of new (including change of use to) secure residential institutions (Use Class C2A) will be considered on their own merits against other policy requirements of this Local Plan.

Development that would result in the loss of all, or part, of an existing care home will not be permitted unless the applicants can demonstrate, with evidence, that the site or premises are no longer economically viable. The approach used to demonstrate that the requirements of this policy have been met may vary from site to site and so must be agreed between the Council and the applicant in advance of any planning application being submitted. Where planning permission is granted, use rights under the provision of the latest Use Classes Order may be withdrawn where there is evidence to suggest that another use within the same or different Use Class would be inappropriate

This Policy contributes towards achieving Objective 1 of this Local Plan.

- 3.34 The Local Plan only adopted in January 2022 is given full weight and this policy contains an absolute objective not to permit any loss of care homes unless the site is proven to be no longer economically viable. The provision of this policy is in place to prevent the unjustified loss of required social infrastructure to serve the local community. Policy LP2 echoes support needed in Tendring for the provision of care in our community.
- 3.35 Beyond the Local Plan the latest NPPF sets out a number provisions that would be relevant to this site, but mindful of the potential vulnerability of the occupiers and known issues of crime in this area, the social aspects of sustainable development should be highlighted. This includes (but limited to) Para 97 that provides “Planning policies and decisions should promote public safety and take into account wider security and defence requirements by: a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate.”

4. Investigations

- 4.1 Having identified the enforcement priority of this matter through the risk assessment undertaken by the LPA, the following investigations have been undertaken.

Description of the site:

- 4.2 The site consists of several buildings between Pier Ave and Old Road. The frontage buildings are two storey and internal buildings are single storey. Sales Particulars were located on the internet produced by Sanderson Weatherall dated November 2021 and attached as **Appendix P(iv)**.



Site visits:

- 4.3 A number of site visits have been carried out by planning officers of the Council.
- 4.4 **On 4th October 2022** the Council visited the site. It was not in use, but only the two main buildings along Pier Ave explored. Rooms were being prepared for occupation.

Attendance:

Tim R Clarke – Assistant Director, Housing & Environment
 John Pateman-Gee – Planning Manager
 Damian Williams - Corporate Director, Operations and Delivery,

Chris Smetherham-James (Environmental Health, Private Sector Housing Team)
 Andrew Woodhouse (Environmental Health, Food Safety
 Helen MacIsaac (ECC – Adult Social Care Service Manager)

John Pateman-Gee Account

- 4.6 A tour was given of the two main buildings along Pier Ave. Standard beds, wardrobes and en-suites were in each room. Most rooms had a reasonable window, one only a small roof light. One room had a new en-suite that created a wall against the glass of the window and didn't appear to be adequate. It was pointed out that despite fire routes shown throughout the tour that said go to the front of the building in the event of a fire, this in some cases would require people to come out and then back into a building. Gates to the side of the buildings were locked for security reasons and not intended to be used by occupiers, only staff.
- 4.7 The guide was clear that all occupiers would be able to look after themselves without any assistance from staff.
- 4.8 **On 7 November 2022** the Council visited the site and found that the use had commenced. The site had eight rooms occupied at the building Pier Rise. A number of rooms (3 witnessed,

but total unknown) were occupied for building staff as overnight accommodation in the rear bungalows. Works were taking place across the site to prepare rooms and corridors for use.

Attendance:

Tim R Clarke – Assistant Director

John Pateman-Gee – Planning Manager

David Gibbs – Building Inspector (accompanied by Jamie Burgess, apprentice, observing only)

Matthew Ramsden – Enforcement officer

Parts of the rear bungalow development to the rear of the site and parts of Pier Rise (main building). The occupied bedrooms at first floor were not entered.

4.9 Mr Gibbs Account (Summary) (See note attached at **Appendix Q**):

4.10 He carried out a visual inspection using the following building regs considerations, Part B Fire – Building Regs, Part P Electrical Safety –Building Regs, Regulation 38 means of escape from the building.

4.11 He observed that PIR- lighting did not exist/work to any fire exits to any corridor, some standard lighting not even working, and no current electrical certificate in place.

4.12 Some areas have works ongoing and areas are being shut off, but not to a safe standard.

- At least one window has been fitted at 2nd level - no building control application has been received, so we cannot confirm the construction details. Without a full inspection it cannot be confirmed if further works have taken place needing building regulation approval.
- A doorway has been blocked up and a panel and window fitted- no building control application has been received, so we cannot confirm the construction details.
- With regards to escape windows from corridors and bedrooms, it was noted that most do not meet the requirement opening of 450mm, and even some do not open at all.
- Smoke detectors not seen at top and bottom of staircases and not available to ground floor corridors.
- Fire stopping to electrical cupboard does not appear to be carried out.
- Fire doors in corridors- the 2 leafs of the doors have over 5mm gap between them, this will not stop smoke or flame passing through the gaps.
- It was seen and noted that the Flat entrance front entrance doors would not meet the current fire regulation of providing 1/2hr resistance.
- With regards to all the door frames and fixing into walls- it was noted that as this is an old building, the fixing and door frames to the existing walls would most likely not meet current standards. Some doors have been turned around and reused but are not up to fire safety standard.
- Many doors have air grilles and so will allow smoke.
- Labelling on some of the flat doors was wrong and the fire escape doors didn't have a push bar exit to exit quickly. It is noted that fire escape routes are poorly positioned and in English only (mindful of potential occupiers).

4.13 Mr Gibbs recommended that the buildings are not safe to use in its current state as it does not meet current Building Regulations or British Standards and should not be used for accommodation. Any occupiers need to be re-housed urgently (including builders on site living there). A full and detailed survey is needed on electrics, a full fire risk assessment and Regulation 38 drawing – this is to be issued, along with fire escape details to all blocks.

4.14 John Pateman-Gee Account (See note attached at **Appendix R**):

- 4.15 Mr Pateman-Gee has visited this site previously and this was his second visit. He confirms that he witnessed the same matters of building regulations and fire safety as detailed by Mr Gibbs. In addition to the above he confirms some gaps in doorways were up to 2 to 3 cm wide. It is also noted that while there are lifts, these will be unavailable in the event of a fire and the escape strategy for the first-floor occupied rooms was unclear. Officers were told that Evac chairs are stored in a downstairs cupboard.
- 4.16 To escape a fire, occupiers of Pier Rise need to go downstairs and through a few rooms to exit the building to the front space, despite a side door that would get them outside quicker. This is not encouraged as the operation of the site is to keep the side gates locked to residents. The escape plan of the bungalows to the rear is not clear, but indications around the site appear to suggest that all will be encouraged through the main building to reach the front space given all other locked gates. For some this will mean going in and out of buildings that could be on fire. Overall, the fire escape plan is not clear and was not understood by the staff available (a point examined on both Mr Pateman-Gee's visits).
- 4.17 Occupation of 8 rooms was confirmed, but the actual number of persons in residence was not confirmed. Builder staff were also occupying the bungalows, he counted four rooms in use that officers were shown.
- 4.18 At the back No 44 Old Road is also being converted, but the group did not visit inside. However, a pile of masonry and rubble to evidence building works has been stored on the frontage to Old Road along with boxes labelled NHS.
- 4.19 Throughout the visit Mr Pateman-Gee noted that no adaptations for less mobile or other needs had been installed in any room visited nor was available in any corridor or staircase both occupied and unoccupied areas. Rooms do have en-suite provisions, but nothing exceptional for adapted needs and appeared to be like anything you may expect in a normal low star hotel.
- 4.20 It was noted that there is a lot of security cameras on site, but the security station only has one monitor. A new security gate was confirmed as proposed to No 44 Old Road to restrict access for future occupiers but was unrestricted at the time of the visit.
- 4.21 Centre to the complex is an odd building block that may have been an office and shower block of some kind. There appears to be no current plans for this but it may serve as a future kitchen. There are no kitchens available on site at this time.

5. Interests in the Land:

1) Owner of the Site

Enquiries made with Land Registry has revealed that the Site is registered under four titles, as follows:

- EX653380 (111 Pier Avenue);
- EX780559 (107 Pier Avenue);
- EX452711 (44/46 Old Road); and
- EX716760 (42 Old Road)

The Official Copies (**Appendix S**) show that the current registered owner of all four titles is:

(a) Clacton Family Trust Limited

Registered office: Prospect House, Rouen Road, Norwich, NR1 1RE

A company search of Clacton Family Trust Limited has revealed that the nature of the business was '*Residential care activities for the elderly and disabled*'. The company is currently in liquidation.

The Official Copies were backdated as there are pending applications against each title, which means that transfers of the land have taken place, but they are waiting registration with Land Registry.

(b) Further enquiries with Land Registry revealed that the transferee of these titles is (see Appendix S):

Wyldfield Homes Limited (co. reg. 14202111)

Registered office: 591 London Road, Cheam, Sutton, SM3 9AG

Wyldfield Homes Limited is the beneficial legal owner of the Site until its interest has been registered with Land Registry (which is pending) when it will become the registered legal owner.

A company search has revealed that Wyldfield Homes Limited was incorporated on 28 June 2022, and the nature of its business is stated as '*68100 - Buying and selling of own real estate; 68209 - Other letting and operating of own or leased real estate*'.

There are two directors of the company:

(1) Anwer Patel; and

(2) Dema Wonga both of 6 Roding Lane South, Ilford, Essex, IG4 5NX.

2) Leasehold interest in the Site

The Home Office in their letter dated 16 August 2022 (**Appendix B**) have informed the LPA that they have entered into a lease contract for a period of 12 months on a rolling agreement for the Site but as a copy of the lease. was not provided the identity of the lessor/other party to the lease contract is not known.

The Council are aware that Clearsprings Ready Homes Limited are the Home Office's contracted accommodation provider (**Appendix B**). The level of service users with specific needs or risk in which the Home Office's accommodation provider is required to meet is set out in Schedule 2, Annex G of the Asylum Accommodation Support Contract (AASC) contract (**Appendix B**). The accommodation providers are not contracted as care providers and not contracted to provide medical support but do have a requirement to support asylum seekers with certain needs as set out in Annex G such as easy access accommodation with accessible bathrooms.

A company search has revealed that Clearsprings Ready Homes Limited (co. reg. 07921508) was incorporated on 24 January 2012, and the nature of its business is stated

as '68209 - *Other letting and operating of own or leased real estate*'. The directors of the company are Steven Frank Lakey, Randle James Slatter and James Courtenay Vyvyan-Robinson. Their registered office is situated at 26 Brook Road, Rayleigh, SS6 7XJ

3) Others with an interest in the Site

The business rates/council tax records for the Site were updated on 5 November 2022. These show that Norfolk House 107-111 Pier Avenue is now registered to:

SD Commercial (UK) Limited (co. reg. 09342234)

Registered Office: 6 Roding Lane South, Ilford, Essex, IG4 5NX

With a contact address of 10 Roding Lane South, Redbridge, Essex, IG4 5NX, which is an estate agent.

A company search has revealed that SD Commercial (UK) Limited was incorporated on 5 December 2014, and the nature of its business is stated as '*68209 - Other letting and operating of own or leased real estate*'. This company shares the same director as Wyldfield Homes Limited, Anwer Patel of the same address, and Mohamed Azeem Salemhamed is also a director again of the same address. A further company is registered as having significant control with a 75% share:

SDEA Limited (co. reg. 09321866)

Registered office: 6 Roding Lane South, Ilford, Essex, IG4 5NX

A company search has revealed that SDEA Limited was incorporated on 21 November 2014, and the nature of its business is stated as '*68310 - Real estate agencies*'. There are four directors

- (1) Anwer Patel;
- (2) Asma Patel;
- (3) Mohamed Azeem Salemhamed; and
- (4) Sabname Salemhamed all of 6 Roding Lane South, Ilford, Essex, IG4 5NX.

Anwer Patel is also named as a person having significant control of the company.

4) Occupier – managers of the Site

Officers of the Council have been dealing with Sandra Davidson Estate Agents Limited who it is understood are managing the Site:

Sandra Davidson Estate Agents Limited (co. reg. 04715529)

Registered office: 6 Roding Lane South, Ilford, Essex, IG4 5NX

A company search has revealed that Sandra Davidson Estate Agents Limited was incorporated on 28 March 2003, and the nature of its business is stated as '*68310 - Real estate agencies*'. There are two directors

- (1) Anwer Patel; and
- (2) Mohamed Azeem Salemhamed both of 6 Roding Lane South, Ilford, Essex, IG4 5NX.

A further company is registered as having significant control with more than 50% but less than a 75% share:

SDEA Limited (co. reg. 09321866)

Registered office: 6 Roding Lane South, Ilford, Essex, IG4 5NX

5.1 **DIRECT CORRESPONDENCE ON INTERESTS OF LAND:**

5.2 As it had not been confirmed that the proposed use had commenced, and at this point a breach was suspected given the lack of information from the Home Office about the proposed use falling within C2, the LPA wrote to the liquidators of Clacton Family Trust Limited on 5 October 2022 to request confirmation of who the Site has been transferred to (**Appendix T**). The liquidators replied by email on 13 October 2022 to confirm that the property was sold to Wyldfield Homes Limited, 6 Roding Lane South, Ilford, Essex, IG4 5NX (**Appendix U**).

5.3 The LPA also wrote to Clearsprings Ready Homes Limited on 5 October 2022 requesting details of their interest in the land, however no reply has been received to this letter to date (**Appendix Ui**).

5.4 On 13 October 2022 the LPA wrote to Wyldfield Homes Limited seeking confirmation that it is the owner of the land; details of any lease arrangements entered into with the Home Office, Clearsprings Ready Homes Limited or other persons; and informing them of the potential breach of planning control (**Appendix Uii**). An acknowledgment of receipt of that letter was received by email on 7 November 2022 from FPP Associates, agent for the owner (**Appendix V(i)**). However, a full response to the Council's letter was never provided.

5.5 **INFORMATION ON PLANNING CONTRAVENTION NOTICES ("PCNS"):**

5.6 On 10 November 2022 the Council issued and served a Planning Contravention Notice on:

Wyldfield Homes Limited (Co.Regn.No. 14202111) 591 London Road, Cheam, Sutton, England, SM3 9AG

Sandra Davidson Estate Agents Limited (Co. Regn. 04715529) 6 Roding Lane South, Ilford, Essex IG4 5NX

SD Commercial (UK) Limited (Co.Regn.No. 09342234) , 6 Roding Lane South, Ilford, Essex, IG4 5NX

SDEA Limited (Co.Regn.No. 09321866), 6 Roding Lane South, Ilford, Essex, IG4 5NX

CLEARSPRINGS READY HOMES Limited (Co.Regn.No. 07921508), 26 Brook Road, Rayleigh, Essex, SS6 7XJ

The Liquidators of the Clacton Family Trust, Townsend House, Crown Road, Norwich, NR1 3DT

Rt Hon Suella Braverman Home Secretary, 2 Marsham Street, London, SW1P 4DF

The Occupiers 107-111 Pier Avenue, Clacton on Sea, Essex, CO15 1NJ

(Appendix Vii)

- 5.7 The only responses received were from Clearsprings Ready Homes Limited (**Appendix W**) and Azeem Saleem Mohamed Operations SD Commercial UK Limited, the latter provided by their adviser Richard Quelch of Q Square who acts for the owner of the land Wyldfield Homes Limited (**Appendix W(ii)**), who did not itself respond.
- 5.8 In its response, S D Commercial UK Ltd confirmed that Wyldfield Homes Limited is the freehold owner of the land, and that S D Commercial UK Ltd have a lease agreement for the site. They stated that the land is currently in C2 use with 14 occupants at the time with a maximum potential occupancy of 104, on a 1 month stay for each occupant. In respect of facilities provided on site for occupants, this was stated to be full board with welfare & DDA provisions, with only communal areas and dining areas to be shared. The degree of on-site care being provided to occupants was described as care and assistance to the residents within the given usage, provided by Welfare officers and SIA officers working on site 24 hours a day, 7 days a week. In its response S D Commercial UK Limited also said that it would not be submitting a planning application but instead intended to provide the Council with a legal opinion confirming that the existing operation of the site is lawful. This has not been provided.
- 5.9 Clearsprings Ready Homes Limited in its response, stated that they do not have a legal interest in the land, did not answer any other questions and simply referred to the PCN response of SD Commercial UK Ltd for the answer to all questions, reflecting to the best of their knowledge, the current use of the land.
- 5.10 No further explanation or evidence of the occupants' specific care needs or the care being provided on site was included in the PCN response.
- 5.11 **FURTHER CORRESPONDENCE WITH RICHARD QUELCH OF Q SQUARE, AGENT FOR WYLDFIELD HOMES LIMITED**
- 5.12 On 16 November 2022 the Council received an email from Richard Quelch of Q Square acting on behalf of the owner of the site in response to the service by the Council of a Temporary Stop Notice (TSN) (referred to in the section below, ENFORCEMENT POWERS) (**Appendix W(ii)**).
- 5.13 In that email Richard Quelch informed the Council that they had taken initial advice from King's Counsel and consider that there has not been a change of use on the site as the existing operation remains within a C2 use. He also stated that it was his intention to provide the Council with a legal opinion which further clarifies the reasons for this. No such opinion has been received.
- 5.14 He then set out 3 questions for the Council to address in respect of the TSN, as follows:
1. Please can you advise how Human Rights and Equality Act legislation has been taken into account in the issuing of this Temporary Stop Notice?
 2. Please can the Council advise with regards to any harm caused to surrounding amenity? Up until the time of writing please can you advise of any formal complaints relating to impacts on amenity?
 3. Please can the Council advise on the reasons as to why it considers that a material change of use has taken place?

- 5.15 He then advised the Council that he would provide a response by Friday 16th December 2022 to allow sufficient time to consider the Council's to the questions posed, and to provide a legal opinion.
- 5.16 On 25 November 2022 Matt Deal, Head of Planning Enforcement, emailed Richard Quelch requesting a reply to the PCN served on his client (the owner of the site) (**Appendix W(iii)**). A reply was received on 29 November 2022 (**Appendix W(iv)**). In addition to stating that a response to the PCN would be provided, he stated again that a legal opinion had been obtained and that the current operation of the site was lawful, but was waiting for the Council's response to the three questions posed, and referred to compensation liability for loss as a result of the TSN.
- 5.17 On 29 November 2022 John Pateman-Gee, Planning Manager, emailed Richard Quelch in respect of his email of 29 November 2022, asking for confirmation if the use had ceased and the TSN had been complied with, and the position regarding the breach of building regulations and fire regulations observed during the site visit in November 2022 (**Appendix W(v)**).
- 5.18 On 2 December 2022 Richard Quelch replied providing a response to the PCN served on SD Commercial (UK) Limited (see **Appendix W(vi)**), but notably not from Wlydfield Homes Limited the owner of the site and his client. In that email he confirmed that the site was still occupied but no further occupants had been accepted resulting in financial loss. With regards to the Building Control application and breaches of Fire Regulations, Mr Quelch confirmed that the site was FRA compliant and had operational systems in place including ongoing service agreements, all of which he states are in accordance with current Fire Regulations and protocols. He also said this had been verified by Essex County Fire and Rescue who have inspected the property. Finally, he confirmed that the contractors are presently liaising with their consultants regarding any building control applications. However, as set out above under the section on Human Rights, the inspection by the Fire Service on 11 November 2022 did identify breaches of fire regulations and a notice had been served requiring rectification of those breaches.
- 5.19 On 5 December 2022 John Pateman-Gee replied to Richard Quelch, acknowledging his email and advising that the Council had it separately confirmed that a recent fire inspection took place and these matters will have a clear bearing on next steps and that a response to the questions raised earlier would be provided (**Appendix X**).
- 5.20 On 9 December 2022 the Council wrote to Mr Quelch providing a response to his email of 16 November 2022 and in particular the questions raised in that email (**Appendix Y**).

6. ENFORCEMENT POWERS UNDER THE TOWN & COUNTY PLANNING ACT 1990 AND OPTIONS AVAILABLE:

Enforcement notice - Deciding whether to issue an enforcement notice

- 6.1 The power to issue an enforcement notice is discretionary (section 172 of the Town and Country Planning Act 1990).
- 6.2 An enforcement notice should only be issued where the LPA is satisfied that it appears to them that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.

Further guidance on when enforcement action should be taken.

6.3 Paragraph: 018 Reference ID: 17b-018-20140306

6.4 Revision date: 06 03 2014

Temporary Stop Notice (TSN)

6.5 The Council issued a TSN under s171E(1) of the 1990 Act on 9 November 2022 (**Appendix Z**) and is unable to serve another one. At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served, but it gives the LPA time to decide if other enforcement action is required.

What are the penalties for contravention of a temporary stop notice?

It is an offence to contravene a temporary stop notice, and a LPA should always consider prosecution as soon they have evidence of an offence (section 171G of the Town and Country Planning Act 1990).

A person guilty of an offence is liable on conviction to an unlimited fine.

6.6 It is possible for a person who has an interest in the land to make a claim for compensation against the LPA for loss or damage directly attributable to the prohibition effected by the TSN. However, this is limited to (s171H):

- a. the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to the planning permission have been complied with;*
- b. it is permitted development (including under a local or neighbourhood development order);*
- c. the local planning authority issue a lawful development certificate confirming that the development was lawful;*
- d. the local planning authority withdraws the temporary stop notice for some reason, other than because it has granted planning permission for the activity specified in the temporary stop notice after the issue of the temporary stop notice.*

6.7 Following a meeting with TDC officers on 7th December 2022, planning officers decided not to proceed with investigating whether a criminal offence had been committed and this option for further enforcement action was discounted. The main reasons were that the Council received confirmation of a recent fire inspection by Essex Fire Service that although there were identified breaches the immediate risk to the health and safety of occupants from fire was mitigated, and therefore there was a need to focus on the ongoing use of the premises. A higher weight was given to ceasing the unlawful use, which prosecution will not achieve. It is important to highlight that an investigation under PACE was not commenced.

Stop Notice (SN) and Enforcement Notice (EN):

6.8 The LPA can issue an EN under s172 of the 1990 Act, where the LPA is satisfied that it appears to them that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material

considerations. Details of the procedure to serve an EN are not covered within the report, as officers are familiar with the procedure and right of appeal etc.

6.9 At the same time as serving an EN the LPA can serve with it (or after) a SN under s183 of the 1990 Act.

6.10 S183(1) provides:

(1) Where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

6.11 Subsection (2) provides:

...“relevant activity” means any activity specified in the enforcement notice as an activity which the local planning authority require to cease and any activity carried out as part of that activity or associated with that activity.

6.12 Note that a SN must be served before the EN takes effect, and again a SN cannot prohibit the use of a building as a dwellinghouse.

6.13 Subsections (6) and (7) provide:

(6) A stop notice may be served by the local planning authority on any person who appears to them to have an interest in the land or to be engaged in any activity prohibited by the notice.

(7) The local planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on persons served with the stop notice.

6.14 The SN must specify the date it will take effect and this cannot be less than 3 days (and no later than 28 days) from when it is served, unless the local planning authority consider that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice (s184(3)). Examples given in the government guidance for Enforcement include harm to an AONB or conservation area as a special reason.

6.15 A SN will cease to have effect if the EN to which it relates to is withdrawn, quashed, varied so the SN is no longer applicable, or the period for compliance with the EN has expired. The SN itself can also be withdrawn (see above).

6.16 Where a SN has been served the LPA may also display a site notice on the land (s184(6)).

6.17 Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances and subject to various limitations (s186).

6.18 The PPG Enforcement guidance provides:

How does a local planning authority decide whether to serve a stop notice?

The power to serve a stop notice is discretionary. Before serving such a notice a local planning authority must be satisfied that it is expedient that any relevant activity should cease before the expiry of the period for compliance specified in an enforcement notice.

The relevant local planning authority should ensure that an assessment of the likely consequences of serving the notice is available to the Committee or officer who will authorise service of it. The assessment should examine among other things the foreseeable cost and benefits likely to result from the stop notice.

The local planning authority should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Before deciding to serve a stop notice, the local planning authority's representative should discuss, whenever practicable, with the person carrying on the activity, whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

What about human rights?

The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped immediately and before the end of the period allowed for compliance with the related enforcement notice.

- 6.19 A Stop Notice was discounted as Planning Officers considered that it was not possible for the LPA to establish safeguarding to the amenity or public safety was necessary, following the feedback from Essex Fire Service. In addition, the use of the premises was not regarded as irreversible harm to the environment in the surrounding area.

Injunction:

- 6.20 The LPA can apply to the High Court for an injunction under s187B where it considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, whether or not they have exercised or are proposing to exercise any of their other powers under the 1990 Act. The court has the power to grant an injunction as it thinks appropriate to restrain the breach.
- 6.21 PPG Enforcement Guidance provides:

How does a local authority decide whether seeking an injunction to restrain a breach of planning control is appropriate?

.....

In deciding whether it is necessary or expedient to seek an injunction, local planning authorities may find it helpful to consider whether:

- *they have taken account of what appear to be relevant considerations, including the personal circumstances of those concerned;*
- *there is clear evidence that a breach of planning control has already occurred, or is likely to occur;*
- *injunctive relief is a proportionate remedy in the circumstances of the particular case;*
- *in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the Court's order on the person or persons to whom it will apply;*
- *a local planning authority can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, proceedings for an injunction are the most serious enforcement action that a local planning authority can take because if a person fails to comply with an injunction they can be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made. In these circumstances a local planning authority should generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over long period and/or other enforcement options have been, or would be, ineffective. The Court is likely to expect the local planning authority to explain its reasons on this issue.*

- 6.22 The Injunction option was discounted following consideration of the judgement of the Hon. Mr Justice Holgate in the High Court case of (1) Ipswich BC v. Fairview Hotels and others and (2) East Riding Yorkshire Council v. LGH Hotels & others [2022] EWHC 2868 KB was taken into account. The case concerned the use of hotels in Ipswich and East Riding for the purposes of providing accommodation for asylum seekers through Home Office contracts with third parties, therefore despite the difference between hotels/hostels and care homes, there are strong similarities with the premises in Clacton. Particular attention was given to paragraphs 84-90 of the judgement on enforcement action and the principles of injunctions in 91-97, referring to the case of South Buck District Council v. Porter [2003] 2 AC 558 on the use of s.187B.
- 6.23 In paragraph 139, Mr Justice Holgate states that “the use of the hotel forms only a part of a much larger programme for accommodating at short notice a large number of people. The injunction would interfere with the implementation of that programme”. Therefore, use of injunctive proceedings were discounted as an option for enforcement action and an Enforcement Notice was preferred due to the ability for the use of the property to be determined by a Planning Inspectorate following an appeal, where a decision can be made as to whether there has been a breach of planning control or planning permission be granted.

7. CONSULTATION WITH MONITORING OFFICER & DECISION

- 7.1 Meeting took place on 7th December at 10am between the following officers:

Gary Guiver, Lisa Hastings, John Pateman-Gee, Matt Deal, Linda Trembath and Joanne Fisher. Proper and due consideration was given to all of the factors, which have been documented as above.

- 7.2 Gary Guiver had consulted the Chairman of the Planning Committee, Councillor John White, on the proposed intention and was supportive of the approach Officers were considering.
- 7.3 At the conclusion of the meeting, it was decided by Gary Guiver, Director of Planning in consultation with Lisa Hastings, Assistant Director for Governance and Monitoring Officer that:

- The Council considers that the replies received in response to the PCNs served on 10 November 2022 did not provide sufficient evidence that the Land is being used as a Residential Care Home under Use Class C2 of the Town and County Planning (Use Classes) Order 1987 (as amended).
- Richard Quelch of Q Square acting on behalf of SD Commercial UK Limited in its PCN response and in later correspondence with the Council, stated that it would provide the Council with a copy of a legal opinion from a KC that the use of the Land falls within Class C2, however this has not been forthcoming.
- There has been a breach of planning control on the Land namely at 42-46 Old Road, Clacton-on-Sea, Essex CO15 1HH and 107-111 Pier Avenue, Clacton on Sea, Essex CO15 1NJ.
- The breach of planning control is that without planning permission, there has been a material change of use of the land and buildings at the above premises from the authorised use as a Residential Care Home under Use Class C2 of the Town and County Planning (Use Classes) Order 1987 (as amended) to an unauthorised use as a Hostel (Use Class which is a Sui Generis).
- In order to safeguard the amenity of the area and in accordance with Section 2 of the Tendring District Council Local Plan 2013-2033, to comply with the Council's adopted Local Plan Policy LP10 relating to the retention of Care Homes without appropriate and demonstratable justification that the site or premises are no longer economically viable as a Care Home.
- The Home Office, their representatives, Clearspring Ready Homes Ltd and the managers of the site had failed to demonstrate that the premises was being used as a Residential Care Home, despite previous assurances being given, and all the facts both within correspondence, within meetings and on site clearly pointed to Hostel Use.
- It was necessary, proportionate, reasonable in all the circumstances and expedient to issue an Enforcement Notice under Section 172 of the 1990 Act, so that the unauthorised activity should cease and be prohibited from continuing.
- John Pateman Gee as Planning Manager, be authorised to serve the Notice, together with Matt Deal, the Planning Enforcement Team Leader.
- THE REASONS FOR ISSUING THE NOTICE.
 - It appears to the Council that the above breach of planning control has occurred within the last ten years.
 - The current use of the Land as a hostel does not benefit from planning permission, and results in the unjustified loss of residential care home facilities and harm to the local amenity of the area.
 - The change of use is contrary to Policy LP10 within Section 2 of the Tendring District Local Plan 2013-2033 and Beyond ("the Local Plan") which says "Development that would result in the loss of all, or part, of an existing care home will not be permitted unless the applicants can demonstrate, with evidence, that the site or premises are no longer economically viable."
 - To date, no evidence has been provided to the Council to demonstrate compliance with Local Plan Policy LP10.
 - Furthermore, Policy LP10 also provides that "the approach used to demonstrate that the requirements of this policy have been met may vary from site to site and so must

be agreed between the Council and the applicant in advance of any planning application being submitted”.

- To date no agreement has been sought as to the level and nature of evidence required with a planning application that would enable the Council to come to an informed determination.
- Beyond the Local Plan the latest NPPF sets out a number of provisions that would be relevant to this site, but mindful of the potential vulnerability of the occupiers and known issues of crime in this area, the social aspects of sustainable development should be highlighted.
- This includes (but not limited to):
- Paragraph 8 b) that sets out a social objective – “to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being”;
- Paragraphs 11 and 12 of the NPPF that sets how out plans and decisions should be in accordance with an up to date development plan and in this matter Tendring’s Local Plan 2022 is up to date and awarded full weight. Furthermore, the local plan contains relevant policy in respect of the site subject to this notice and there are no indications that the adopted plan should not be otherwise followed;
- Paragraph 62 sets out plan and decision considerations and that “the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes)”;
- Section 8 of the NPPF: Promoting healthy and safe communities is regarded as relevant as a whole and includes paragraph 97 of the NPPF that provides “Planning policies and decisions should promote public safety and take into account wider security and defence requirements by: a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate.”,
- and Paragraph 130, including f) that provides planning should “create 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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”
- The Council therefore considers that the change of use of the Land is contrary to the policies detailed above and in the absence of any demonstrable evidence that the loss of the care home use is justified, planning permission should not be granted.

7.4 A copy of the Draft Enforcement Notice was supplied to the Director of Planning and Monitoring Officer, for final approval before it was served on 19th December 2022.

Gary Guiver
Director of Planning

APPENDICES

Appendix A	Letter dated 24 June 2022 from the Council (TDC Planning) to the Home Office
Appendix B	Letter dated 16 August 2022 from the Resettlement, Asylum Support and Integration at the Home Office to the Council (TDC Planning)
Appendix C	Letter dated 5 October 2022 from the Council (TDC Planning) to the Home Office
Appendix D	Letter dated 20 October 2022 from the Resettlement, Asylum Support and Integration at the Home Office to the Council (TDC Planning)
Appendix D(i)	Email dated 15.06.22 from the Home Office to Mr Gavin Jones, Chief Executive of Essex County Council
Appendix E	Notes of meeting on 27.06.22 - New contingency site in Tendring
Appendix F	Notes of meeting 04.07.22 - New contingency site in Tendring
Appendix F(i)	Email dated 07.07.22 from ECC to EELGA
Appendix G	Notes of meeting on 11.07.22 - New contingency site in Tendring
Appendix H	R (Hough) v Secretary of State for the Home Department [2022] EWHC 1635 (Admin)
Appendix I	30.08.22 - Hate crime figures for Tendring
Appendix J	Notes of meeting on 30.08.22 - New contingency site in Tendring
Appendix K	26.09.22 - Hate crime figures for Tendring
Appendix L	Notes of meeting 26.09.22 - New contingency site in Tendring
Appendix L (i)	Letter dated 16.08.22 from Resettlement, Asylum Support and Integration at the Home Officer to the Council (the Leader, Cllr Neil Stock)
Appendix L(ii)	Letter date 24.0.8.22 from the Council (the Leader, Cllr Neil Stock) to the Home Office
Appendix L(iii)	Email dated 25.08.22 from the Council (Lisa Hastings, Deputy Chief Executive) to EELGA partners and stakeholders
Appendix M	Email dated 01.11.22 from the Council to East of England Local Government Association (EALGA)
Appendix N	Emails dated 01.11.22 between Clearsprings Ready Homes Ltd and Maggie Pacini, Consultant in Public Health, Essex County Council
Appendix O	Notes of meeting on 7.11.22 – New contingency site in Tendring
Appendix O(i)	Letter dated 02.11.22 from the Immigration Minister the Rt. Hon Robert Jenrick MP to the Council
Appendix O(ii)	Letter dated 04.11.22 from the Council to the Immigration Minister the Rt. Hon Robert Jenrick MP

Appendix P	Notes of meeting dated 14.11.22 - Clacton asylum spot booked site meeting
Appendix P (ai)	14.11.22 - Hate crime figures for Tendring
Appendix P(i)	TDC adopted Local Planning Enforcement Policy (September 2022)
Appendix P(ii)	Policy LP10 of Tendring District Local Plan 2013-2033 and Beyond, Section 2 (pages 79 to 82)
Appendix P(iii)	Letter dated 15 November 2022 from Essex County Fire and Rescue Service to Daniel Dixon-Bush (107 Pier Avenue) enclosing fire assessment report and recommendations
Appendix P(iv)	Sales Particulars for the Site produced by Sanderson Weatherall dated November 2021
Appendix Q	Site visit note from David Gibbs 7 th November 2022
Appendix R	Site visit note from John Pateman-Gee 7 th November 2022
Appendix S	Office Copies for the following titles registered at H M Land Registry: EX653380 (111 Pier Avenue); EX780559 (107 Pier Avenue); EX452711 (44/46 Old Road); and EX716760 (42 Old Road) OS1 Search results for titles
Appendix T	Letter dated 5.10.22 from the Council (TDC Planning) to the liquidators of Clacton Family Trust Limited
Appendix U	Email dated 13.10.22 from the liquidators of Clacton Family Trust Limited to the Council (TDC Planning)
Appendix U(i)	Letter dated 5.10.22 from the Council (TDC Planning) to Clearsprings Ready Homes Limited
Appendix V	Letter dated 13.10.22 from the Council (TDC Planning) to Wyldfield Homes Limited
Appendix V(i)	Email dated 7.11.22 from FPP Associates agent for Wyldfield Homes Limited
Appendix V (ii)	Planning Contravention Notices issued on 10.11.22 (PCNs)
Appendix W	Response to PCN from Clearsprings Ready Homes Limited
Appendix W(i)	Response to PCN from SD Commercial UK Limited
Appendix W(ii)	Email dated 16.11.22 from Richard Quelch, Q Square to TDC Planning
Appendix W(iii)	Email dated 25.11.22 from TDC Planning Enforcement to Richard Quelch, Q Square
Appendix W(iv)	Email dated 29.11.22 from Richard Quelch, Q Square to TDC Planning Enforcement
Appendix W(v)	Email dated 29.11.22 from TDC Planning to Richard Quelch, Q Square
Appendix W(vi)	Email dated 2.12.22 from Richard Quelch, Q Square to TDC Planning (enclosing PCN response – see Appendix V(ii))

Appendix X	Email dated 5.12.22 from TDC Planning to Richard Quelch, Q Square
Y	Letter dated 7.12.22 from TDC Planning to Richard Quelch, Q Square
Z	Temporary Stop Notice issued on 9 November 2022