

TENDRING DISTRICT COUNCIL



**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 171A (1)**

APPEAL STATEMENT on behalf of Tendring District Council concerning:

Land at 42-46 Old Road, Clacton on Sea, Essex CO15 1HH and

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

Appeal by: Wyldfield Homes Limited

against the issue of 1 Enforcement Notice:

Without planning permission, the material change of use of the Land from use as a residential care home (Use Class C2) to use as a hostel (Use Class Sui Generis).

Planning Inspectorate Reference: APP/P1560/C/23/3314670

Tendring District Council Reference: 23/00001/ENFORC

CONTENTS

1. Introduction
2. Site Description & Planning History
3. Planning Policies
4. Grounds of Appeal
5. Conclusion

APPENDICES

1. Google Earth Aerial Image of the appeal site dated March 2022.
2. Planning History.
3. Hate Crime statistics.
4. Tendring District Local Plan 2013-2033 and Beyond: Section 2
Policies

1. Introduction

- 1.1. This statement of case relates to the appeal against an Enforcement Notice dated 16th December 2022 - Planning Inspectorate appeal reference APP/P1560/C/23/3314670.
- 1.2. The Enforcement Notice was served as a result of what the Council considers unlawful development by way of *'without planning permission, the material change of use of the Land from use as a residential care home (Use Class C2) to use as a hostel (Use Class Sui Generis).'*
- 1.3. Had this appeal not been brought, the Enforcement Notice would have been effective from 17th January 2023. It requires: *'Cease the use of the Land as a hostel (sui generis use) and remove any equipment brought onto the Land for such purposes.'* The time for compliance is two (2) months from the date the Notice comes into effect, following determination (or withdrawal) of this appeal.
- 1.4. This statement sets out the relevant planning policies, both national and in the adopted Local Plan, in respect of unlawful development and details why the Council has taken the formal enforcement action against the development. In this statement the Town and Country Planning Act 1990 is referred to as the 1990 Act.

2. Site Description & Planning History

- 2.1. The appeal site consists of land and five main buildings spread between 42-46 Old Road, Clacton on Sea (to the west), and 107-111 Pier Avenue, Clacton on Sea (to the east). The frontage buildings are two storey and internal buildings are single storey.
- 2.2. The attached satellite image (**Appendix 1**) shows the location and layout of the appeal site in relation to the surrounding area. The site extends between Old Road and Pier Avenue and falls within the town centre of Clacton on Sea, as defined on the Policies Maps forming part of the Council's adopted Local Plan. This part of the town centre lies to the north of the town's primary shopping area. Terraced and semi-detached residential housing borders the site to the north west along Old Road and to the south along Rosemary Road West; and in Pier Avenue the site sits alongside Pier Avenue Baptist Church to the north and a GP surgery, a pharmacy and Trinity Methodist Church to the south east.
- 2.3. The appeal site has a long-established class C2 of the Town & Country Planning (Use Classes) Order 1987 (as amended) ("the 1987 Order") use as a care facility, with a number of relevant planning permissions granted for such use since 2004 (**Appendix 2**).

- 2.4. The appeal site is located within the Pier Ward of Clacton on Sea which has the highest hate crime statistics in the District of Tendring (**Appendix 3**).

3. Planning Policies

- 3.1. The National Planning Policy Framework (NPPF), published on 27th March 2012 and most recently updated on 20th July 2021, sets out the government's planning policies and how these are expected to be applied, with the objective of achieving sustainable development. Local planning authorities are required to take the policies in the NPPF into account in the preparation of their Local Plans and as a material consideration in the control of development and the determination of planning applications.

National policy

- 3.2. The NPPF contains a number of provisions and policy considerations that are relevant to the appeal site. Some provisions within the NPPF are particularly relevant in the context of the potential vulnerability of the current and potential occupiers of the site and the known issues around hate crime in this area of Clacton.
- 3.3. Paragraph 8 b) in the NPPF sets out the social objective of sustainable development – *“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”*.
- 3.4. Paragraphs 11 and 12 of the NPPF sets how out plans and decisions should be in accordance with an up-to-date development plan. In this regard, Tendring's Local Plan, adopted in full as recently as January 2022, is up to date and its policies should be given full weight in planning decisions. This includes policies relevant to the site subject to this Notice.
- 3.5. Paragraph 62 within Section 5 of the NPPF, in respect of delivering a sufficient supply of homes, states 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)”*.
- 3.6. Section 8 of the NPPF: Promoting healthy and safe communities is regarded as relevant as a whole. It includes, in particular, paragraph 97 which provides that *“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.”* It goes on to advocate the use of

the most up-to-date information from the police and other agencies about the nature of potential threats and their implications; and taking appropriate and proportionate steps to reduce vulnerability, increase resilience and ensure public safety and security.

- 3.7. Paragraph 130 of the NPPF, part f) provides that 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.*”

Local policy

- 3.8. Tendring District Council adopted Section 2 of the ‘Tendring District Local Plan 2013-2033 and Beyond’ on 25th January 2022 having had its policies examined and found sound by a government-appointed Planning Inspector. This is attached at **Appendix 4**. A number of the policies in the Local Plan are directly relevant to the appeal site and its unlawful use.
- 3.9. In particular, the development which has taken place on the appeal site is contrary to Policy LP10 ‘Care, Independent Assisted Living’.
- 3.10. It requires that “*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.*”
- 3.11. The appeal site falls within Clacton Town Centre, the district’s only ‘Major Town Centre’ in the highest tier of the hierarchy of centres listed in Policy PP2. That policy promotes defined centres as being the focus for ‘town centre uses’ which include retail, leisure, commercial, office, tourism and cultural, community and residential development. It states that “*The Council will promote a mix of appropriate town centre uses within these defined centres with ‘active street frontages’ at ground floor level. Proposals must be properly related in their scale and nature having regard to the above hierarchy.*”
- 3.12. Policy PP14 identifies Clacton Town Centre and Seafront as a ‘Priority Area for Regeneration’ and states: “*These areas will be a focus for investment in social, economic and physical infrastructure and initiatives to improve vitality, environmental quality, social inclusion, economic prospects, education, health, community safety, accessibility and green infrastructure.*”

4. Grounds of Appeal

Ground a): Planning permission should be granted.

- 4.1. The appellant contends, under ground a) of their appeal, that planning permission should be granted for the change of use of the existing residential care home (C2 Use) to a hostel (sui generis), asserting that they will demonstrate conformity of the development with local and national planning policies (including Policy LP10 in the adopted Local Plan) by providing evidence that the site is no longer economically viable as a residential care home. No such evidence has yet been provided. It is expected to be provided as part of the appellant's Statement of Case.
- 4.2. The appellant states that there is no planning justification for resisting the development on the basis of issues with crime in the area and the resultant impact of the occupiers of the land. The Council disagrees with this suggestion. Vulnerability and public and community safety are relevant to the consideration of planning matters and are enshrined both within national and local planning policy as highlighted above. Statistics show that Pier Ward, in which the development is situated, has the highest hate crime rate within the whole of the Tendring District. It also has a high serious crime rate.
- 4.3. The Council together with Essex County Council have raised serious concerns that, given this statistical background, the use of this site in Pier Ward for the temporary housing of asylum seekers could by the nature of their background, circumstances and ethnicity heighten the risk of conflict, prejudice and resentment with local residents and community, as has been the case in other similar asylum seeker hostels nationally including the disturbances at Knowsley on Merseyside and Manvers in Rotherham.
- 4.4. The Council and its partners fear that the use of the site as a hostel is putting already vulnerable people in a more vulnerable and traumatized situation, placing them at significant risk of harm. At the time of writing, the site was understood to be accommodating 28 occupants but that, if necessary, it could have the potential to accommodate in excess of 100. The Council notes the appellant's suggestion that such harm could be mitigated by the imposition of reasonable planning conditions and will await further details of these before commenting further.
- 4.5. The appellant highlights the need for good quality accommodation for asylum seekers, particularly those needing care, which the Council agrees with. However, the Council is not currently convinced that the site provides facilities that have been adequately prepared for such use and indeed whether it is even fit for purpose for any form of residential accommodation, given the initial lack of fire safety and building regulation compliance. For instance, Council Officers have witnessed, on inspection, blocked doorways, defective fire doors, lack of ensuite provision, rooms without windows and fire escape routes requiring occupants to pass through other buildings.

- 4.6. Without appropriate evidence to show the currently permitted care home is no longer financial viable (as required by Local Plan Policy LP10), together with detailed representations to demonstrate how the buildings and land are fit for purpose for the hostel use, the Council cannot currently agree with the appellant's assertion that planning permission should be granted.
- 4.7. Should the Planning Inspector, having fully considered all representations, be minded to grant planning permission for the change of use, the Council suggests a number of planning conditions are included as reasonable to control the development. These are set out in **Appendix 5** to this statement.

Ground b): The alleged breach of planning control has not occurred.

- 4.8. The appellant contends, under ground b), that no breach of planning control has occurred on the basis that no change of use has taken place. The appellant states that the use has remained as a residential care home (Use Class C2) as the provision of care and support for the occupiers is both required and provided, within the scope of the relevant planning permissions. However, no evidence or detailed representations of what care is required and provided has been offered to the Council to demonstrate compliance with the Use Class C2.
- 4.9. The Council acting as local planning authority ("the LPA") has 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.
- 4.10. Use Classes C1, C2 and C2A cover the following activities:
- 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, and
 - 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.
- 4.11. Class C2 use (the lawful use of the appeal site) 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”.

4.12. “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”*

4.13. 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. The appellant will need to adduce evidence that the occupiers of the accommodation are in need of care, and evidence to show that the accommodation is used to in fact provide them with care. If either of those is missing, the use will not fall within C2, and this ground must fail.

4.14. The Council considers that the currently unauthorised use of the site does not fall within any of Use Classes C1, C2 or C2A described above. Instead, the Council considers the currently unauthorised use to be “Sui generis”, noting such use includes “hostels (providing no significant element of care)”.

4.15. As the Council witnessed on site visits and as described by staff on site at these visits, there is no provision of care, nor has any care work been described. Occupiers of the site have rooms with standard beds and an ensuite. A security desk is available, but staff are not engaged in care work to assist occupiers with washing, eating or other needs. Food is understood to be packaged off site and delivered. It is furthermore understood that the current operation is not accredited by or registered with the Care Quality Commission (CQC) and that the operators have not, to date, sought accreditation.

4.16. Further to the lack of care provision witnessed or described on site, the Home Office had previously confirmed with the Council in August 2022 (prior to the commencement of use) that:

- The Home Office has entered into lease contract for a period for 12 months rolling agreement for the site, and
- The accommodation providers are not contracted as care providers and are not contracted to provide medical support to the occupiers.

4.17. There is no serious suggestion that the use is C1 Hotel, and no planning history to support this. Care Home use has been established through various planning applications approved (**Appendix 2**). That said, it is noted that communications from the Home Office have incorrectly referred to this site as a Hotel.

- 4.18. Given the above, the Council's view is that the current unauthorised use as a hostel for asylum seekers does not comply with the site's lawful Use Class C2 as the requirement and provision of 'care' has not been demonstrated or evidenced.

Ground c): That there has not been a breach of planning control.

- 4.19. The appellant contends, under ground c), that there has not been a breach of planning control. This is based on their assertion that no material change of use has occurred as a result of the occupation by asylum seekers in a hostel in comparison to what is allowed under an unrestricted Care Home use.
- 4.20. As detailed in the above sections in response to Ground b), the Council stands by its decision and view that the use of the site by asylum seekers in a hostel does not accord with, nor is it otherwise "directly comparable" with, Use Class C2 regarding use as a Care Home on the basis that there is no onsite provision of care, nor have any care needs been detailed, nor has any care work been described.
- 4.21. Without detailed evidence to the contrary, the Council remains of the view that the current unauthorised use amounts to a breach of planning control as it is materially different to the permitted and recognised use, within Use Class C2, due in particular to the lack of onsite care provision described above.

Ground f): The steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections.

- 4.22. The steps required to comply with the Notice include:
- Cease the use of the Land as a hostel (sui generis use) and remove any equipment brought onto the Land for such purposes.
- 4.23. The appellant under ground f) argues that it is unclear and imprecise to require equipment brought onto the Land to facilitate a residential use to be removed from the Land when the lawful use is residential in nature. There is no suggestion that the requirement to cease the unlawful use per se is excessive.
- 4.24. To be clear, the requirements of the Notice in terms of removal of any equipment relates to any such equipment that has been put in place to facilitate the unauthorised use as a hostel (sui generis use). The Council considered it appropriate to include the element related to any equipment associated with the use as it would be under-enforcing to simply include cessation of the unauthorised use. It is standard practice in an Enforcement Notice against an unauthorised change of use to include a requirement to remove any equipment or development associated with it, and that can be used to facilitate the unauthorised use.
- 4.25. Notwithstanding the above, the Council can confirm that the requirement to remove equipment does not relate to any equipment brought onto the land that could

otherwise be used for the permitted C2 use as a Care Home. That should be clear from the words “for such purposes”.

Ground g): The time given to comply with the Notice is too short.

- 4.26. The time for compliance stated in the Notice is two (2) months from the date the Notice takes effect.
- 4.27. The appellant claims, under ground g), that the Council has not taken into account the circumstances of the individuals housed within the site and that opportunities to relocate them are very limited. The appellant therefore suggests a more appropriate compliance period would be 18 months.
- 4.28. The Council confirms that it did take into account the circumstances of the individuals on site, together with those of the service provider/site owner, when deciding an appropriate compliance period. The Council based the time for compliance on information provided by the appellant in response to the Planning Contravention Notice (PCN) served on them prior to the preparation and service of the Enforcement Notice. A specific question (4.C iii)) within the PCN was ‘*What is the length of stay of each person that occupies the buildings?*’ – to which the answer provided by the appellant was ‘1 month’.
- 4.29. Given the Notice was served 28 days before coming into effect, thereby essentially giving the appellant almost 3 months notice, the Council was satisfied that this time period was reasonable and sufficient. Ceasing the unauthorised use will occur by stopping new occupiers being moved into the site, and by moving the existing occupiers on within what is in any event the timeframe during which they are expected to occupy the site.
- 4.30. It is therefore the Council’s view that the appellant should reasonably be able to work with the Home Office to relocate the current and any future occupiers/asylum seekers to other asylum hostels in the vicinity or wider locations.

5. Conclusion

- 5.1. The appellant has appealed against the Council’s Enforcement Notice dated 16th December 2022 with reference to grounds a), b), c), f) and g). It is the Council’s position that the appeal site is being used, unlawfully, as a hostel (*sui generis*) for the housing of asylum seekers without the benefit of planning permission – when the current lawful use is in Use Class C2.
- 5.2. In respect of ground a) and the appellant’s assertion that the unauthorised use should be granted planning permission, it is the Council’s position that the development is contrary to Policy LP10 in Section 2 of the Tendring District Local Plan 2013-2033 and Beyond, as adopted in January 2022. That policy requires that losses of all, or part of, an existing care home can only be permitted where it has been demonstrated, with evidence, that the site or premises are no longer

economically viable. To date, no such evidence has been provided to the Council and there has been no discussion with the Council as to the approach that would be used to provide that evidenced justification – as required by Policy LP10.

- 5.3. In respect of ground b) and the suggestion that there has been no breach of planning control and no change of use away from the existing lawful C2 Care Home use, the Council takes a very different view. 'Care', as defined in the 1987 Use Classes Order is not, on current evidence, being provided at the site and, as such, it is the Council's position that the premises is being operated as a hostel (sui generis) and not for care under the lawful Use Class C2 – thus requiring planning permission.
- 5.4. In respect of ground c) and the assertion that there has been no material change from the lawful C2 use, it is the Council's position – as set out above – that there has been an unauthorised and material change of use to a hostel (sui generis).
- 5.5. In respect of ground f) and the appellant's assertion that the steps required to comply with the Enforcement Notice are excessive, it is the Council's position that the steps required reflect standard practice and are appropriate.
- 5.6. Under ground g), the appellant argues that the time to comply with the Enforcement Notice (2 months) is too short. However, based on the information provided by the operator in response to the Planning Contravention Notice (PCN), it was envisaged that occupants would only spend one month on site before being accommodated elsewhere. On this information, a period of two months to comply with the notice and cease the unauthorised use is considered justified and reasonable.
- 5.7. Since the Home Office was first contacted the Council in June 2022 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 the appeal site, the Council has repeatedly requested that the Home Office and associated parties (including the appellant) provide information to justify their assertion that the proposed, and now current unauthorised use is lawful.
- 5.8. However, despite numerous meetings and requests to all relevant and associated parties since, the specific details required and requested by the Council relating to the use were not provided prior to the use as an asylum hostel commencing at the beginning of November 2022.
- 5.9. Without the required information being provided and the use commencing, the Council therefore deemed it expedient and in the general public interest to serve a Temporary Stop Notice (TSN) on 9th November 2022 to cease the unauthorised use.
- 5.10. The Council hoped that the service of the TSN would lead to the cessation of the unauthorised use and elicit the detailed information required to assess the appropriateness and planning compliance of the use of the site as a hostel for

asylum seekers. An initial response from the appellant was that they would provide the required detailed representations by 16th December 2022. These detailed representations from the appellant were not received by the date given, and indeed are still yet to be received by the Council.

- 5.11. In summary, the appellant and associated parties have been repeatedly asked by the Council and they have repeatedly asserted to the Council that the use of the site as an asylum seeker hostel is not a change of use. However, whilst the Council has provided detailed representations as to why the Council believes the use is a material change, the appellant has still not provided the detail required to evidence the use is indeed C2 class. The Council expects the appellant to provide this information as part of its statement of case in order to justify their assertions.
- 5.12. Furthermore, at no point to date has the appellant made any suggestion or offer to submit a formal application seeking approval for a change of use from that of a residential care home (Use Class C2) to use as a hostel (Use Class Sui Generis).
- 5.13. On the basis of the above and given the genuine concerns of the Council regarding the possible impacts of the use by vulnerable users in an area of high crime and hate crime, the Council deemed it expedient to follow up the TSN with an Enforcement Notice.
- 5.14. For reasons detailed above, the Council therefore respectfully requests that the Planning Inspector dismisses the appeal and upholds the Enforcement Notice.

APPENDICES (see separate files)

1. Google Earth Aerial Image of the appeal site dated March 2022.
2. Planning History.
3. Hate Crime statistics.
4. Tendring District Local Plan 2013-2033 and Beyond: Section 2 Policies
5. Suggested planning conditions.