

TENDRING DISTRICT COUNCIL



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

**Response from Tendring District Council to the appellant's statement of case
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

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APPENDICES

1. Officer report setting out reasons for enforcement action

1. Introduction

- 1.1. The Council has considered the statement of case prepared by Q Square on behalf of Wyldfield Homes Ltd in respect of its appeal against the enforcement notice on land between 42-46 Old Road and 107-111 Pier Avenue. The Council's comments on that document and initial responses to some of the points raised within it are set out in this statement.

2. Response to accusation of unhelpful and unreasonable behavior

- 2.1 In paragraph 1.13, the appellant cites difficulty in bringing forward a statement of case without sight of the Council's Officer Report seeking authorisation to serve the enforcement notice. It suggests that the Council has been unhelpful and unreasonable for not providing a copy of that report, thus resulting in the statement of case being produced with limited understanding of the Council's reasons for taking action.
- 2.2 In response, the Council refutes any suggestion that it has been unclear in its reasons for issuing the enforcement notice. The Officer Report in question, which is accordingly attached as **Appendix 1** to this statement, describes the numerous discussions involving the Council, Home Office, appellants and other parties where various concerns were raised, over the course of many months, about the proposed (and now unauthorised) use of the appeal site. It is inconceivable that the appellant did not understand the basis on which enforcement action was taken, and the appellant's assertions to the contrary are adventitious.
- 2.3 The Council has asked repeatedly for information and evidence to support the appellant's assertion that the current activity at the site falls within Use Class C2. The Council understands that the appellant has received legal advice from Leading Counsel to this effect, which it intimated it would share but has not done so, notwithstanding the Council requesting the same, in particular for consideration ahead of any decision to take further action. That advice has not been shared, nor has it been provided with the appellant's statement of case and the Council remains unclear as to why the appellant is under the impression the site is operating within Use Class C2, when it is the Council's view that it is clear that it is operating as a sui generis hostel.
- 2.4 The Council therefore rejects any suggestion that it has been unhelpful and/or unreasonable. On the contrary, it has invited the appellants and the Home Office on numerous occasions to provide information that might persuade the Council to take a different view and has also invited the appellants to consider the submission of a planning application and/or certificate of lawful use application. Latterly, the appellant has made it clear that it will not do so.

3. Response to ground a) case

- 3.1 The appellant's case in respect of their ground a) appeal is that, if necessary, planning permission should be granted for the current use. It focusses on the application of Policy LP10 of the Council's adopted Local Plan, the lack of alternative accommodation, issues of crime and a number of other material considerations.

Application of Policy LP10

- 3.2 In paragraph 4.8, the appellant explains that it has undertaken some internal improvements to the quality and appearance of a number of buildings since acquiring, acknowledging that a number of rooms and outbuildings are still in need of work.
- 3.3 The appellant in 4.9 refers to the 'Care homes for older people – National Minimum Standards Care Home Regulations' and how these apply to all care homes providing accommodation and nursing or personal care for older people. It then goes on in 4.10 to explain that the floor area of rooms at the appeal site do not meet the minimum requirement, access between buildings is poor and that the internal layout of the building does not easily lend itself to simple internal works to provide up to date and fit for purpose accommodation.
- 3.4 For these reasons, the appellant suggests that the site is not considered able to provide a viable care home in the future and that on expiry of the current operation, it would be unlikely that a care home operator would occupy the site without substantial works to the existing building – potentially involving demolition and new-build. The appellant states, in 4.10, that evidence will be provided to support this statement – which the Council looks forward to seeing.
- 3.5 In the absence of such evidence at the present time, the Council must uphold its position, in respect of ground a), that the development has not complied with Policy LP10 in the adopted Local Plan. This evidence, whether provided through the appeal or through a retrospective planning application, will be key to either the Inspector or Council's consideration of this case. Without it, there is no substance whatsoever to the appellant's assertions.
- 3.6 Whilst the Council appreciates that the appellant is making a case under ground a) as a fallback in the event that it is unsuccessful in its ground b) and c) appeals, these statements are clearly an acknowledgement that the premises are substandard, for a number of reasons, for operation as a care home – only serving to reinforce the Council's concerns and observations about the conditions under which the current occupants are living and, allegedly, being cared for.

Lack of alternative accommodation

- 3.7 The appellant refers, in 4.12, to the evidence base on housing need contained within the 2015 Strategic Housing Market Assessment (SHMA) as being out of date – despite being accepted by the Planning Inspector dealing with the examination of Section 2 of the Local Plan (in 2021) in confirming the soundness of its policies, including Policy LP10. Notwithstanding that point, the appellant argues that the government is encouraging the delivery of accessible and adaptable housing to enable people to live more independently and for the aging population to remain in their homes – a move away from care homes. The appellant does not deign to cite any evidence to that effect. In any event, this point in itself does not negate the need to comply with the requirements of Policy LP10 in the consideration of changes of use away from a care home – the justification for change of use must be site specific.

Issues of crime

- 3.8 On the issue of crime, the appellants request more information from the Council to justify its concerns about crime and the vulnerability of individuals – this information has now been provided in the hate crime statistics appended to its statement of case. It is disingenuous of the appellant to suggest that this information might come as a surprise; these issues have been raised repeatedly with the Home Office and with the appellants in previous discussions.
- 3.9 Notwithstanding this evidence, the appellant argues that having been in operation for in excess of six months without incident, the Council's rationale for taking action can only be based on fear rather than evidence. The Council is naturally relieved that no incidents have occurred, mindful however that the site has only been partially occupied. But for the reasons set out in its statement of case, the continued unauthorised use and the potential for the number of occupants to increase does give rise to a legitimate concern; to the extent that the appellant suggests that crime must actually occur for a material consideration to arise that is, with respect, obviously nonsense. The hate crime statistics and the vulnerability of individuals are material considerations and both national and local planning policy refer to the need to consider vulnerability and to promote community safety and social inclusion.
- 3.10 The Council clearly hopes, whatever the outcome of this appeal, that there continue to be no incidents, but informed by the statistics on hate crime, it is clear that the risk posed to vulnerable people is higher in this location than other parts of the Tendring District.

Other material considerations

- 3.11 The appellant argues that, if the Inspector finds conflict with the Development Plan, then there are other material considerations, set out in 4.19, that would weigh in

favour of a grant of planning permission and that will be supported by further evidence through exchange of proofs.

- 3.12 The first is the significant and urgent need for good quality accommodation for asylum seekers – even more so for accommodation for asylum seekers needing care. Given the appellant's own admission in paragraph 4.10 about the inadequacy of the building for care use and the viability issues involved in bringing about the necessary improvements, it is difficult to see how the appellant can expect the Inspector to give serious weight to this argument in considering a departure from policy.
- 3.13 The second is the lack of accommodation for asylum seekers and the hardship that would fall upon those individuals if the operation were not allowed to continue. As set out in the Council's case, there are significant concerns about the vulnerability of the occupiers of the appeal site given the historic evidence around hate crime in this particular part of the District which have been disregarded by the appellant and which weigh against any argument around the hardship that might be endured if the unauthorised use as a hostel were to cease.
- 3.14 The third is the re-use of an otherwise vacant and underutilised site. Whilst there is an acknowledged benefit in vacant buildings and premises being used, it must be for a lawful use and – as stated above, the Council awaits the appellant's evidence demonstrating that the premises is unviable for use as a care home under its current C2 Use Class.
- 3.15 The fourth consideration is the appellant's assertion that the fallback position for the site is an unrestricted care home and that the impacts of the current operation are broadly consistent and comparable to those of a residential care home. For the reasons set out in the Council's case in response to the appellant's ground c) appeal, the Council disagrees.
- 3.16 In paragraph 4.21, the appellant suggest that refusal of the appeal would be a disproportionate interference with the occupants' human rights and further a breach of the public sector equality duty. Whilst that will be a judgement for the Inspector, the Council disagrees with this assertion and has considered human rights legislation and the public sector equality duty in considering enforcement action, as set out in the report attached at **Appendix 1**.

4. Response to ground b) case

- 4.1 Under ground b) of its appeal, the appellant argues that the current activity at the appeal site falls within Use Class C2 and can therefore continue lawfully without the need for planning permission for change of use.
- 4.2 In 4.29 of the appellant's statement of case it claims that the site continues to accommodate those in need of care and the mere fact that occupants are asylum seekers does not bring about a change of use. The Council fears however that the

appellant has missed the point that the Council has been trying to make. The Council does not dispute that the current occupants who are asylum seekers are in *need* of care – but there is a distinct difference between premises where care is provided to its occupants on site (which would be C2) and a building that provides a roof over the head of individuals who are need of care but does not provide the necessary care on site. It is the latter that, in the Council's view, applies to the activities at the appeal site.

- 4.3 Paragraph 4.31 refers to a 'care package' provided to each resident designed for their individual needs. It would be useful for the applicant to provide more information about the precise nature of this care package – which the Council, unless or until persuaded otherwise, does not believe to constitute dedicated care on the premises.
- 4.4 In 4.33, the appellant suggests that an examination of the use of the site and the personal circumstances of those residing on the site, shows the use of the land remains as a residential institution. The Council takes the contrary view for the reasons set out in its case. In 4.34, the appellant promises more evidence to be provided through proofs of evidence to demonstrate how the site is used as a residential care home. The Council looks forward to considering this evidence.

5. Response to ground c) case

- 5.1 Under ground c) of their appeal, the appellant argues in 4.42 that the Council's assessment on whether a material change of use has occurred or not is based simply on the character of the residents. For the reasons set out in the Council's case and reiterated above, this is clearly not the case. The Council is not convinced that the premises is operating under Use Class C2 as there is no demonstrable care being provided to the occupiers on site – irrespective of the character or background of the individuals themselves. The Council awaits further evidence from the appellants to persuade it otherwise – but until such time, it remains the Council's position that the premises is operating as a hostel, a sui-generis use.

6. Response to ground f) case

- 6.1 The Council has nothing further to add in respect of the ground f) case that is not already covered in its statement of case.

7. Response to ground g) case

- 7.1 The Council has nothing further to add in respect of the ground g) case that is not already covered in its statement of case – but welcomes further evidence from the appellants regarding the need for asylum accommodation for consideration.

8. Conclusion

- 8.1 The Council maintains its position that the current use of the appeal site is unauthorised and is operating as a sui-generis hostel without the benefit of planning permission. The appellant's statement of case does not change the Council's view – however the Council continues to invite and welcome further information and evidence from the appellants to support their assertions to the contrary.