

Q Square

42-46 Old Road and 107-111 Pier Avenue, Clacton

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Prepared By: Matthew Leigh on behalf of Q Square Group Ltd

Date: February 2024

1. Introduction

- 1.1 This Statement is provided on behalf of Wyldfield Homes Limited in support of their position that 42-46 Old Road and 107-111 Pier Avenue, Clacton, (the 'Site') is being operated as a care home (Class C2) and that there is no breach of planning control occurring. The information has been requested by Tendering Council and is without prejudice to the ongoing planning appeal.
- 1.2 As discussed further below Tendering District Council (the 'Council') served an enforcement notice (EN) against the alleged material change of use from a residential care home (Use Class C2) to a hostel (Use Class Sui Generis) on the 19th December 2022. An appeal has been logged against the EN on Grounds (a), (b), (f) and (g).
- 1.3 The Council has asked the Appellant for an opportunity to reconsider its notice and the Appellant has agreed to provide the Council with some information it has sought prior to the exchange of proofs. This is in order to enable the Council to review its position. As stated above this is entirely without prejudice to any evidence or submissions the Appellant may make at the ongoing appeal.
- 1.4 The structure of this document is divided into the following sections:
- Section 2** describes the relevant planning background;
 - Section 3** details the planning legislation;
 - Section 4** outlines the use of the site;
 - Section 5** summarises and concludes the report.

2. Background Including Planning History

- 2.1 The Site is made up of a number of buildings spread across 42-46 Old Road and 107-111 Pier Avenue which operates lawfully as a 55 room residential care home (C2 use). Previous Officer Reports for planning applications on the Site have accepted that the Land has been in use as a care home for some time.
- 2.2 The Site operates lawfully as a Care Home (Class C2) and the principle of which has been accepted over a number of planning application. To our knowledge, there are no restrictive conditions, e.g. an age restriction, imposed upon the use of the buildings and the Council have, at no time, inferred that there are.
- 2.3 Tending District Council served an EN against the alleged material change of use from a residential care home (Use Class C2) to a hostel (Use Class Sui Generis) on the 19th December 2022. A copy of the EN is attached as Appendix 1 for ease.
- 2.4 Section 3 of the Notice states that the alleged breach of planning control is;
- a) 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).
- 2.5 In Section 4 of the Notice, the Council sets out the reasons for issuing the Notice. A summary of the reasons for issuing the notice is that in the Council's opinion the current operation results in the loss of an existing care home and it has not been demonstrated that it is no longer economically viable. Furthermore, conflict with the NPPF is asserted, primarily, in the form of the loss of the care home but also the potential vulnerability of the occupiers.
- 2.6 The Notice asserts that the matters the subject of the Notice are contrary to Policy LP10 of the Tending District Local Plan 2013-2033 and Beyond and the National Planning Policy Framework'. The relevance and application of these Policies will be discussed in detail in the forthcoming Statement of Case.
- 2.7 The Notice requires;
- i. Cease the use of the Land as a hostel (sui generis use) and remove any equipment brought on to the Land for such purposes.
- 2.8 The effective date of the Notice was 17th January 2023 unless an appeal was made beforehand. An appeal was filed

against the Notice on 19 December 2022 and covers Grounds (a), (b), (c), (f) and (g) of section 174 to the Town and Country Planning Act 1990 (as amended) ('the Act').

2.9 A two day Public Inquiry, to consider the appeal, is current scheduled for the 7 – 8 May 2024.

3. Use Class C2

- 3.1 The Enforcement Notice requires the cessation of the use of the land as a hostel (sui generis); based on the LPA's allegation that the current use of the Site is no longer a care home (Use Class C2).
- 3.2 The argument that a material change of use from a residential care home (Use Class C2) to a hostel (Sui Generis) has occurred as a matter of fact is disputed
- 3.3 The Use classes Order defines a C2 Uses (Residential Institutions) as:
- "Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).*
- Use as a hospital or nursing home.*
- Use as a residential school, college or training centre."*
- 3.4 Care is also defined in the original order as *"Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or past or present mental disorder"*.
- 3.5 C2 uses are relatively broad in nature. Furthermore, the level of care required for the use to fall within C2 is a relatively low level. However, the distinguishing feature of C2 establishments is the provision of personal care for those who need it. The availability of care rather than an absolute requirement to receive a pre-determined package is evidenced to be sufficient to be a C2 Use.
- 3.6 There are no planning restrictions, either through the imposition of a condition or a S.106 agreement, that would limit the use of the site within the broad allowance of the C2 Use.

4. Operational Use of the Site

- 4.1 It would appear that the Council's original assessment of whether a material change of use has occurred or not seems to simply be based on the character of the residents. However, there is a need to consider the character of the use occurring and this needs to be considered against the lawful use to determine whether any material change of use has occurred.
- 4.2 Notwithstanding that the Site is now occupied by those seeking asylum, the character of the use remains within a C2 Use. The Site is providing accommodation and care to asylum seekers within the scope of the relevant planning permissions.
- 4.3 An assessment of the use of the site against key aspects of the C2 Use is set out under the following headings:
1. Current Occupation;
 2. Facilities, Support and Services; and
 3. Accommodation Need.

Current Occupation

- 4.4 The occupiers are specifically allocated accommodation at the Site due to their specific personal circumstances and need for additional care, i.e. disabled, wheelchair bound or in need of other special care arrangements.
- 4.5 The current use remains a C2 use.
- 4.6 As the Council will be aware the Home Office allocates the housing for Asylum Seekers. As confirmed in a letter to Councillor Neil Stock OBE from the Home Office, dated the 16 August 2022, the residents at the site are specifically residing at this Site due to their specific needs, which is set out in Annex G of Schedule 2 of the Contract, and the residents' needs are not defined as complex care.
- 4.7 The residents of the Site all have specific needs and normal housing stock does not meet their requirements and therefore, are within the definition of G.1.2 set out in Annex G of Schedule 2 of the Contract. This states:
- "G.1.2 unable to take care of themselves or unable to protect themselves against significant harm or exploitation".*
- 4.8 Therefore, the use is for people with specific needs, such as mobility issues where the normal residential accommodation does not offer suitable accommodation. The Site is not a specific care

provider and not contracted to provide medical support for people with complex needs such as needing bathing, lifting, or acute treatments. However, a requirement is for support service to be provided to users with certain needs, this can include those with wheelchairs, mental health or mobility issues as set out in Annex G.

- 4.9 It should be noted that the Home Office wrote to Graham Nourse at Tendering Council on the 16 August 2022 confirming that they considered that the use of the site would remain as a care home due to the specific needs of the residents. This would be consistent with the position above.

Facilities, Support and Services

- 4.10 The site currently provides general support and facilities that is consistent with a C2 use. This is both in relation to facilities and staff support.
- 4.11 When a resident arrives at the site they are assessed by an Occupation Therapist. This forms the basis for the care plan for the resident and ensures that any adaptations to the room, that are necessary, can be highlighted at a very early stage. If it is considered that the individual does not need a care package they are moved to a different premises.
- 4.12 The Site employs a number of individuals that cover a variety of roles and tasks. This includes:
- Housing/welfare officers (x2 each on day and night shift): These officers provide a range of support and assistance to the residents on a day to day basis. This includes weekly welfare checks for each resident to ensure support with GP registration on arrival, support with booking the various health care appointments including GP, booking transport for health appointments, monitor of general health, completion of all necessary documentation as required, management and reminders regarding of medication and appointments. They are also required to liaise with stakeholders and external parties on behalf of the residents;
 - Housing Manager: Ensures that staff are following procedure and carrying out their duties as required.
 - Housekeeping staff: Cleans all the bedrooms, supports with laundry and ensures the cleanliness of the accommodation.
 - Kitchen assistants (x2): Responsible for serving food.
 - Security officers (x3 on each shift day and night): Responsible for the general security of the accommodation, mans the entrances to the accommodation.
 - Maintenance (x1): Responsible for repairs of any work in the accommodation

- 4.13 Alongside the above, support, care and assistance is provided to the residents from third parties and external agencies. This includes:
- Between one and three carers visit the site daily to provide specialist care and assistance, outside of the remit of the onsite staff, to the residents.
 - A District Nurse visits the site daily.
 - A Social Worker visits the site weekly.
 - External agencies manage and deliver recreation activities both on site and away from the site. Some of these activities are specially designed to assist with mental health.
- 4.14 As can be seen from the above, there is a range of roles employed at the facilities that cover a varied mix of activities.
- 4.15 Due to their specific needs the residents are required to be cared for. They cannot live independently without some form of supervision and assistance due to their respective health issues and disabilities. This is consistent with an offer of a C2 Use. This need is specifically met by the Housing/welfare officers.
- 4.16 Significantly, the premises has specific facilities provided that cater for the potential needs and demands of the residents. The rooms have level threshold wetrooms, which cater for disabled residents and include a shower seat and handrails. The site generally has wider doors/corridors to accommodate wheelchair access.
- 4.17 Communal facilities such as television lounges/breakout rooms and a dining room are also provided for the residents to use as and when they would wish.
- 4.18 Furthermore, three meals are freshly prepared daily for all residents as many residents are unable to cook and cater for themselves. Catering meets all the specific dietary requirements and restrictions of the residents. Snacks and refreshments also provided throughout the day and night, as required. Housekeeping is also provided to clean the rooms and change linen. As well as a laundry service, for all residents, where the items are collected from their rooms, washed, and returned unless the resident specifically ask to do their own.
- 4.19 As can be seen from the above the support and facilities provided are consistent with a C2 use. The facilities, and the level of support provided clearly demonstrates that the use of the site is as a care home.

Accommodation Need

- 4.20 As discussed above, the residents have specific needs that result in a requirement for support and care consistent with a C2 use. This has been laid out in some detail in Appendix 2. The information

provided has been limited due to it relating to an individual's personal need and General Data Protection Regulation (GDPR) requirements and also, that a level of detail greater than that is not considered necessary.

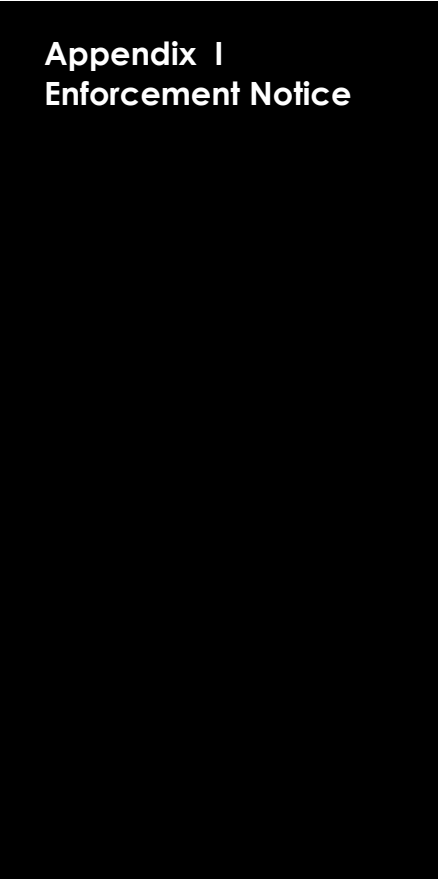
- 4.21 Further to the care and support provided by employees at the site, additional care and support is offered by third parties both on and off site. This care is provided by a range of providers including a number of hospitals, GPs, a number of specialist NHS Service and a number of private care agencies including Ace 24 Care Agency and Passion Tree Care Agency.

5 Conclusion

- 5.1 This Statement is submitted in respect of the use of 42-46 Old Road and 107-111 Pier Avenue, Clacton. . It is disputed that the alleged change of use has occurred as a matter of fact. The current use of the Site remains as a care home.
- 5.2 The use of the Site is fully compliant with this historic acceptance of what is C2 Use. Furthermore, the premises includes a number of different staff roles that work shift patterns and provide a variety of supporting services, including meals, which is also consistent with a C2 use.
- 5.3 As can be seen by Appendix 2 the residents of the property require support and care to be able to live within the property or are living there as relatives to support other residents.
- 5.4 Overall, having regard to the factual position, it is considered that the use of the premises clearly falls within the C2 Use Class.

Q. SQUARE

Appendix I Enforcement Notice



TENDRING DISTRICT COUNCIL



ENFORCEMENT INFORMATION SHEET

1. YOU HAVE A RIGHT OF APPEAL AGAINST THE ENFORCEMENT NOTICE.
2. NOTICE OF APPEAL MUST BE MADE IN WRITING TO AND RECEIVED BY THE SECRETARY OF STATE BEFORE THE DATE THE NOTICE COMES INTO EFFECT AS SPECIFIED ON THE NOTICE.
3. NOTICE OF APPEALS MAY BE MADE BY ELECTRONIC COMMUNICATIONS.
4. THE GROUNDS ON WHICH AN APPEAL MAY BE MADE ARE SET OUT IN S172 (4) BELOW.
5. YOU MUST SUBMIT TO THE SECRETARY OF STATE, EITHER WHEN GIVING NOTICE OF APPEAL OR WITHIN 14 DAYS FROM WHEN THE SECRETARY OF STATE GIVES A NOTICE REQUIRING IT, A STATEMENT IN WRITING SPECIFYING THE GROUNDS OF APPEAL AND STATING BRIEFLY THE FACTS ON WHICH YOU INTEND TO SUPPORT EACH GROUND (SEE SECTION 174 BELOW.
6. A LIST OF THE NAMES AND ADDRESSES OF PERSONS ON WHOM A COPY OF THE ENFORCEMENT NOTICE IS SERVED IS APPENDED TO THE ENFORCEMENT NOTICE.

**COPY OF SECTIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990
REQUIRED TO ACCOMPANY AN ENFORCEMENT NOTICE AS REQUIRED BY
REGULATION 5 OF THE TOWN AND COUNTRY PLANNING (ENFORCEMENT
NOTICES AND APPEALS) (ENGLAND) REGULATIONS 2002**

The regulations set out:-

- Expressions used in connection with enforcement
- Time limits for the service of an Enforcement Notice
- Issue of enforcement notice
- The contents and effect of the Notice
- Variation and withdrawal of Notices
- Appeals against enforcement notices
- Appeals: supplementary provisions
- General provisions relating to determination of appeals
- Grant or modification of planning permission on appeals against enforcement notices

171A Expressions used in connection with enforcement

- (1) For the purposes of this Act—
- (a) carrying out development without the required planning permission; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted,
- constitutes a breach of planning control.
- (2) For the purposes of this Act—
- (a) the issue of an enforcement notice (defined in section 172); or
- (b) the service of a breach of condition notice (defined in section 187A),
- constitutes taking enforcement action.
- (3) In this Part "planning permission" includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

171B Time limits

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- (4) The preceding subsections do not prevent—

- (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.
- (2) If, in the case of any breach of planning control, the time for issuing an enforcement notice has expired, before the coming into force of this section, by virtue of section 172(4)(b) of the principal Act (as originally enacted), nothing in this section enables any enforcement action to be taken in respect of the breach.

"172 Issue of enforcement notice"

- (1) The local planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them—
- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served—
- (a) on the owner and on the occupier of the land to which it relates; and

- (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- (3) The service of the notice shall take place—
- (a) not more than twenty-eight days after its date of issue; and
- (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

173 Contents and effect of notice

- (1) An enforcement notice shall state—
- (a) the matters which appear to the local planning authority to constitute the breach of planning control; and
- (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are—

- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
- (b) remedying any injury to amenity which has been caused by the breach.

- (5) An enforcement notice may, for example, require—

- (a) the alteration or removal of any buildings or works;
- (b) the carrying out of any building or other operations;
- (c) any activity on the land not to be carried on except to the extent specified in the notice; or

- (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

- (6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a "replacement building") which, subject to subsection (7), is as similar as possible to the demolished building.

- (7) A replacement building—

- (a) must comply with any requirement imposed by any enactment applicable to the construction of buildings;
- (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;

- (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice."

(3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).

(a) withdraw an enforcement notice issued by them; or

(1) The local planning authority may—

173A Variation and withdrawal of enforcement notices

planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of that construction.

(b) all the requirements of the notice with respect to that construction have been complied with,

(a) an enforcement notice requires the construction of a replacement building; and

(12) Where—

the activities.

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of

(b) all the requirements of the notice have been complied with,

and so; and

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not

(11) Where—

right of appeal under section 174.

172 to be accompanied by an explanatory note giving prescribed information as to the and regulations may require every copy of an enforcement notice served under section

(10) An enforcement notice shall specify such additional matters as may be prescribed,

ceased.

end of which the step is required to have been taken or the activity is required to have with an enforcement notice, in relation to any step or activity, are to the period at the apply to different steps or activities, references in this Part to the period for compliance specify different periods for different steps or activities; and, where different periods required to have been taken or any activities are required to have ceased and may (9) An enforcement notice shall specify the period at the end of which any steps are

subject to sections 175(4) and 289(4A), shall take effect on that date.

(8) An enforcement notice shall specify the date on which it is to take effect and,

174 Appeal against enforcement notice

(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

“(2) An appeal may be brought on any of the following grounds—

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made either—

(a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
(b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.”

(4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing— (a) specifying the grounds on which he is appealing against the enforcement notice; and (b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section “relevant occupier” means a person who—

(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence in writing; and

(b) continues so to occupy the land when the appeal is brought.

175 Appeals: supplementary provisions

(1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may—

(a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;

(b) specify the matters to be included in such a statement;

(c) require the authority or the appellant to give such notice of such an appeal as may be prescribed;

(d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) The notice to be prescribed under subsection (1)(c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.

(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Where an appeal is brought under section 174 the enforcement notice shall subject to any order under section 289(4A) "be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

176 General provisions relating to determination of appeals

(1) On the determination of an appeal under section 174, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice or for varying its terms.

(2) On such an appeal if the Secretary of State is satisfied that to do so will not cause the appellant or the local planning authority injustice, he may—

(a) correct any informality, defect or error in the enforcement notice; or

(b) give directions for varying its terms.

(3) The Secretary of State—

(a) may dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and

(b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (a), (b), or (d) of section 175(1) within the prescribed period.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

177 Grant or modification of planning permission on appeals against enforcement notices

(1) On the determination of an appeal under section 174, the Secretary of State may—
(a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;

(b) discharge any condition or limitation subject to which planning permission was granted;

(c) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use of it and to any planning permission relating to it.

(2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(3) Any planning permission granted by the Secretary of State under subsection (1) may—

(a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;

(b) be granted subject to such conditions as the Secretary of State thinks fit;

and section 72(1) and (5) shall apply with any necessary modifications in relation to the grant of permission under subsection (1) as it applies to a grant of permission under section 70(1).

(4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 174, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates.

“(5A) Where—

(a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;

(b) any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and

(c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.”

- (6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.
- (7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.
- (8) For the purposes of section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.



Tendring
District Council

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

RECORDED

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

19 December 2022

Our Ref: 22/00259/CHGUS1

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990

(AS AMENDED BY PLANNING & COMPENSATION ACT 1991)

PLANNING ENFORCEMENT NOTICE

LAND AT: 42-46 Old Road, Clacton on Sea, Essex, CO15 1HH
107 - 111 Pier Avenue, Clacton On Sea, Essex, CO15 1NJ,

The Council has issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice in view of your interest in the land. A list of names and addresses of the persons on whom a copy of the Enforcement Notice has been served is attached to the notice.

Unless an appeal is made to the Secretary of State the Enforcement Notice will take effect on 17th January 2023 and you must then ensure that the required steps for which you may be held responsible are complied with in full within the period specified in the notice.

If you wish to make an appeal against the Enforcement Notice this must be made by giving written notice of the appeal to the Secretary of State before the date specified in the Enforcement Notice as the date on which it is to take effect.

The grounds on which you may make an appeal are set out in section 174 of the Town and Country Planning Act 1990.

A summary of sections 171A, 171B and 172 to 177 of Town and Country Planning Act 1990 (including section 174) which relate to the statutory provisions concerning Enforcement Notices are contained in the enclosed "Enforcement Information Sheet".

In making an appeal against the Enforcement Notice you must submit to the Secretary of State a statement in writing specifying the grounds on which you are appealing and stating briefly the facts on which you propose to rely in support of each of those grounds.

If you want to appeal further details may be obtained from the Planning Inspectorate as set out on the enclosed leaflet from the Planning Inspectorate. It includes the ability to make an appeal electronically direct to the Planning Inspectorate.

Chief Executive
Ian Davidson

www.tendringdc.gov.uk
minicom 01255 475566

If you wish to appeal and plead Ground 174(a) in making an appeal against the Enforcement Notice i.e. "that planning permission should be granted for what is alleged in the enforcement notice, or that the condition which is alleged not to have complied with should be discharged." then you need to pay a planning fee of £924.00 to Tendring District Council.

Further to the above, I draw your attention to the Planning Contravention Notice served on you at the above address on 10th November 2022. The Notice was served under Section 171C (2) and (3) of the Town and Country Planning Act 1990 and requires you to supply certain information to the Council no later than 8th December 2022, to enable it to determine if a breach of planning control is occurring.

To date, no response to the Planning Contravention Notice has been received.

It is an offence to fail, without reasonable excuse, to comply with any requirements of the Planning Contravention Notice within twenty one days beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1000. Continuing failure to comply following a conviction will constitute a further offence. It is also an offence knowingly or recklessly to give information, in response to the Notice, which is false or misleading in any way. The maximum penalty on conviction of this offence is an unlimited fine.

I therefore respectfully request that you provide a response to the Planning Contravention Notice forthwith.

Yours faithfully


John Pateman-Gee
Planning Manager

Enclosures:
One copy of the Enforcement Notice
One copy of the "Enforcement Information Sheet"
One copy of "Planning Inspectorate Leaflet"

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**TOWN AND COUNTRY PLANNING ACT 1990**

(as amended by the Planning and Compulsory Purchase Act 2004)

ENFORCEMENT NOTICE

Issued By: Tendring District Council ("the Council")

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at 42-46 Old Road, Clacton on Sea, Essex CO15 1HH and 107-111 Pier Avenue, Clacton on Sea, Essex CO15 1NJ, shown edged in red on the attached plan ("the Land").

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

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).

4. THE REASONS FOR ISSUING THIS 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 out plans and decisions should be in accordance with an up to date development plan and in this matter Tending’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.

5. WHAT YOU ARE REQUIRED TO DO

Cease the use of the Land as a hostel (sui generis use) and remove any equipment brought onto the Land for such purposes.

6. TIME FOR COMPLIANCE

Two (2) months from the date this Notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 17th January 2023, unless an appeal is made against it beforehand.

Dated: 19th December 2022

Signed:



John Pateman-Gee
Planning Manager

22/00259/CHGUS1

On behalf of: Tendring District Council, Planning Services, Town Hall, Station Road,
Clacton on Sea, Essex CO15 1SE

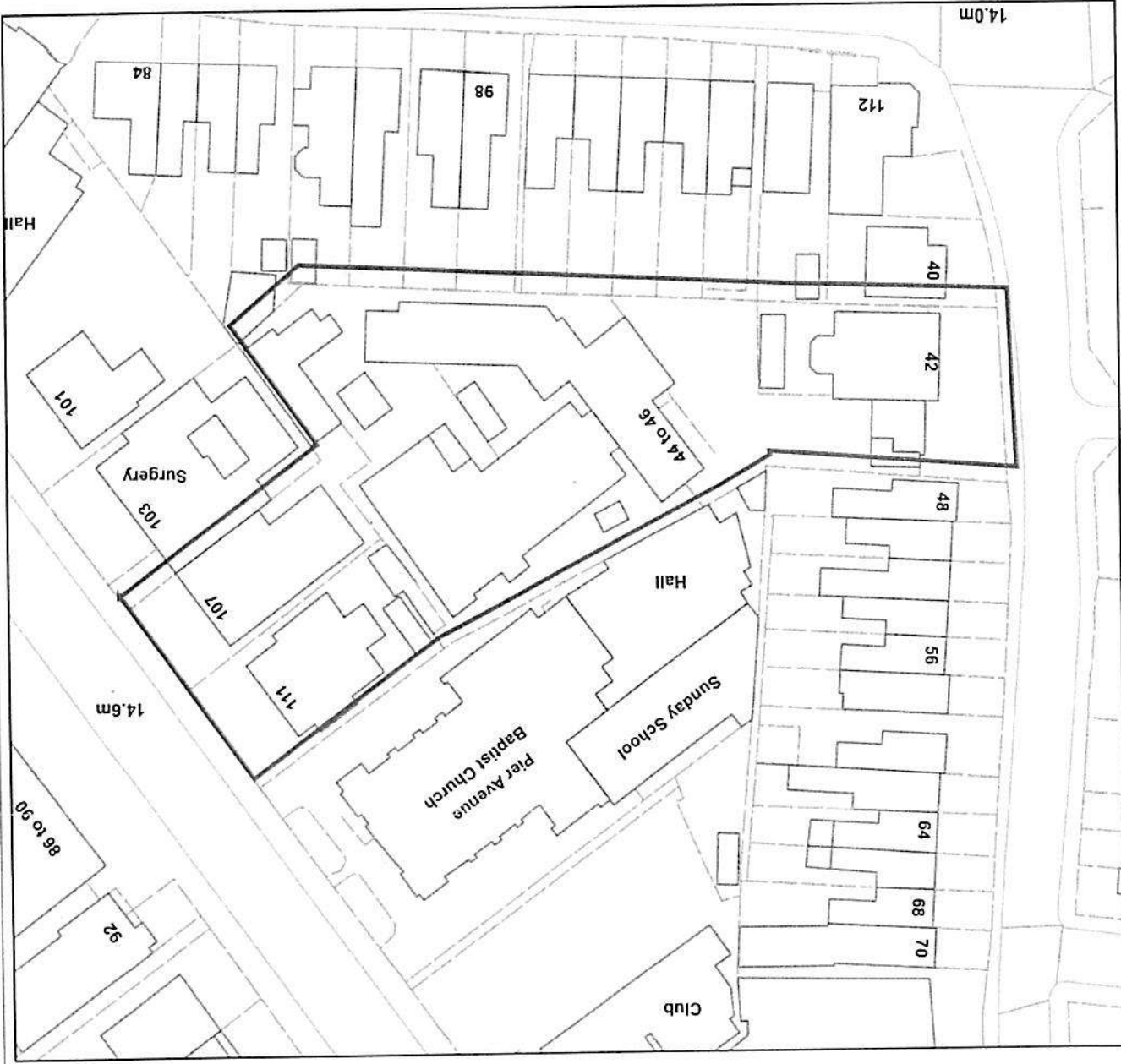
Please send all communications to John Pateman-Gee at the above address or to
jpatemangee@tendringdc.gov.uk, quoting reference 22/00259/CHGUS1

22/00259/CHGUS1

Enforcement Notice (Section 172)



Land at 42-46 Old Road and 107-111 Pier Avenue, Clacton-on-Sea, Essex CO15 1NJ



Scale: 1:750

Organisation	Tendring District Council
Department	Planning Department
Comments	Ref: 22/00259/CHGUS1
Date	19/12/2022
MSA Number	100018684

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ANNEX**YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed information sheet from The Planning Inspectorate sets out how to do this. Read it carefully.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

SERVICE

Copies of this notice have been served on: -

Wylidfield Homes Limited
591 London Road
Chesham
Sutton
SM3 9AG

Sandra Davidson Estate Agents Limited
6 Roding Lane South
Ilford,
Essex
IG4 5NX

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

SDEA Limited
6 Roding Lane South
Ilford
Essex
IG4 5NX

SD Commercial (UK) Limited
6 Roding Lane South
Ilford
Essex
IG4 5NX

Clearsprings Ready Homes Limited
26 Brook Road
Rayleigh
Essex
SS6 7XJ

Barclays Bank PLC
Lending Operations
P.O. Box 299
Birmingham
B1 3PF

The Occupiers
42-46 Old Road
Clacton On Sea
Essex
CO15 1HH

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

The Planning Inspectorate

Direct Line 0117-372 6372

Switchboard 0117-372 8000

Fax No 0117-372 8782

www.planning-inspectorate.gov.uk

CST Room 3/05
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN



If you want to appeal against this enforcement notice you can do it:-

- on-line at the Planning Casework Service area of the Planning Portal (www.planningportal.gov.uk/pcs); or
- by getting enforcement appeal forms by phoning us on 0117 372 6372 or by emailing us enquiries@pins.gsi.gov.uk

You MUST make sure that we receive your appeal before the effective date on the enforcement notice.

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your address; and
- the effective date of the enforcement notice.

We MUST receive this before the effective date on the enforcement notice. This should **immediately** be followed by your completed appeal forms.

Q. SQUARE

Appendix 2

Room No.	Date moved in	Specific Needs/Reason for needing care
101	28/09/2023	Disable
102	28/09/2023	Partially deaf
103	20/10/2022	Right Arm Amputated
104	08/02/2023	Supports Mother who is a resident.
106	06/12/2022	Mobility Issues
108	23/09/2023	Partially Deaf,
201	09/11/2022	Physical Disability including limited use of legs
202	04/02/2023	Only halal food, right foot half amputated, severe mental health problems, self-harming, suicidal adiation
204	20/12/2022	Mental Health Issues/self-harming,
205	05/03/2023	Back and hip problems resulting in mobility Issue
206	24/05/2023	Uses a wheelchair as paralysed in left leg and left arm
207	24/05/2023	
208	14/05/2023	Mobility problem, uses a walking stick. Blind in one eye. Thyroid problem. Mental Health
209	24/05/2023	Family support for resident in 207
210	24/05/2023	Family support for resident in 207
210	24/05/2023	Family support for resident in 207
211	04/11/2022	Blind
301	01/06/2023	Family support for Mother.
301	01/06/2023	Wheelchair user following a stroke and heart problems type 2 diabetic mental health (schizophrenic)
302	12/11/2022	PTSD, anxiety& Depression. Medication for mental health and stomach problems
303	21/03/2023	Mobility issues and eye sight issues
304	28/07/2023	Disabled (paralyzed on one side) and has mental health concerns.
306	04/06/2023	Has Epilepsy. Has trouble speaking due to previous stroke. Mental health issue (Suffer's with Psychosis).
307	21/06/2023	Mobility issues due to pelvis/hips being severely damaged.
308	12/05/2023	Mobilty issues
309	15/11/2022	Mobility issues.
310	20/07/2023	Mobilty isses and eye problems
311	02/09/2023	Disable
401	23/02/2023	Wheelchair User.
402	07/02/2023	In wheelchair due to being paralised.
402	07/02/2023	Supports husband who is a wheelchair user

403	08/02/2023	Wheelchair user.
404	21/10/2023	Mental health issues
405	08/02/2023	Supports Mother
406	26/09/2023	Partially blind
407	03/03/2023	Mobility Issue: Left leg amputated from the knee down
408	30/01/2023	Almost completely blind.
409	25/07/2023	Wheelchair user as half paralised.
410	28/04/2023	Limited mobility due to Tuberculosis and complication, leg and hands issues.
411	09/12/2023	Suffered an accident in Afghanistan which has left him in pain
413	25/01/2023	Physical disabilities to both hands and legs and is therefore, a wheelchair user.
413	25/01/2023	Physical disability, hands are almost non-useable.
501	16/06/2023	Blind.
502	24/06/2023	Has had 13 operations, limited mobility motor bike incident.
503	15/06/2023	Cares for son
503	15/06/2023	Cerebral Palsy and Epilepsy.
505	21/10/2023	Deaf and mute
506	21/12/2023	Partially blind
506	21/12/2023	Blind- in both eyes
507	20/12/2023	Limited mobility due to issues with their right leg.
508	29/11/2023	Limited mobility.
510	10/08/2023	Blind in one eye
511	30/06/2023	Uses Crutches, has had recent operation
512	19/10/2023	Partially Deaf