

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	AL	23/04/2024
Planning Manager / Team Leader authorisation:	JJJ	25/04/2024
Planning Technician final checks and despatch:	ER	25/04/2024

Application: 23/01526/LUEX **Town / Parish:** Clacton Non Parished

Applicant: Mr Mario Aristidou

Address: Kovalam 3 Rosemary Road Clacton On Sea

Development: Application for an Existing Lawful Development Certificate for change of use from retail to one flat and one studio flat with retention of retail unit.

1. Town / Parish Council

No parish or town council.

Consultation not required for LUEX applications.

2. Consultation Responses

Consultations not required for LUEX applications.

3. Relevant Planning History

05/01953/FUL	Rear extension incorporating disabled W.C and external ductwork for kitchen extractor.	Approved	21.12.2005
05/01954/FUL	Rear extension incorporating disabled W.C and external ductwork for kitchen extractor, external 2 storey tower for food hoist to rear and change of use of 1st floor to A3.	Approved	21.12.2005
18/00808/FUL	Change of use from A1 retail to provide 3 x one bed flats on ground floor.	Refused	23.01.2019
19/00266/LUPROP	Proposed Change of Use from 2 no. Class A1 Retail units to a Mixed use comprising 2 no. Class A1 Retail units (ground floor) and 3 no. C3 flats above (2 flats at first floor and 1 flat at second floor).	Granted	31.01.2020
20/00884/FUL 21/00026/NONDET APP/P1560/W/21/327 6871	Proposed retention of retail unit and creation of 1 ground floor studio flat and 1 ground floor one bed flat. Removal of existing rear extension and creation of amenity space and provision of cycle spaces.	LPA failed to determine the application within the statutory determination period, a subsequent Non-determination Appeal was dismissed by the Planning Inspectorate on 3rd	

4. Relevant Policies / Government Guidance

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

5. Site Description and Background

5.1 Site and Context

The application relates to number 3 Rosemary Road located at the eastern periphery of Clacton Town Centre, close to the junction with Carnarvon Road. The site comprises a detached building from the early 19th century with a bell gable and attractive detailing on the front facade.

The site lies within the Clacton on Sea Settlement Development Boundary, Clacton Seafront Conservation Area and a Priority Area for Regeneration, as defined within the adopted Tendring District Local Plan 2013-2033 and Beyond.

The site is bounded to the immediate east by the Grosvenor Court, a four-storey block of flats. To the south is a block of 5 garages, and to the west on the corner of Rosemary Crescent is a 3 storey 2 bed house of contemporary design approved under application 07/01698/FUL.

Generally, the character of the locality is mixed, with examples of both commercial and residential on this edge of town centre location.

5.2 Background & Planning History

December 2005

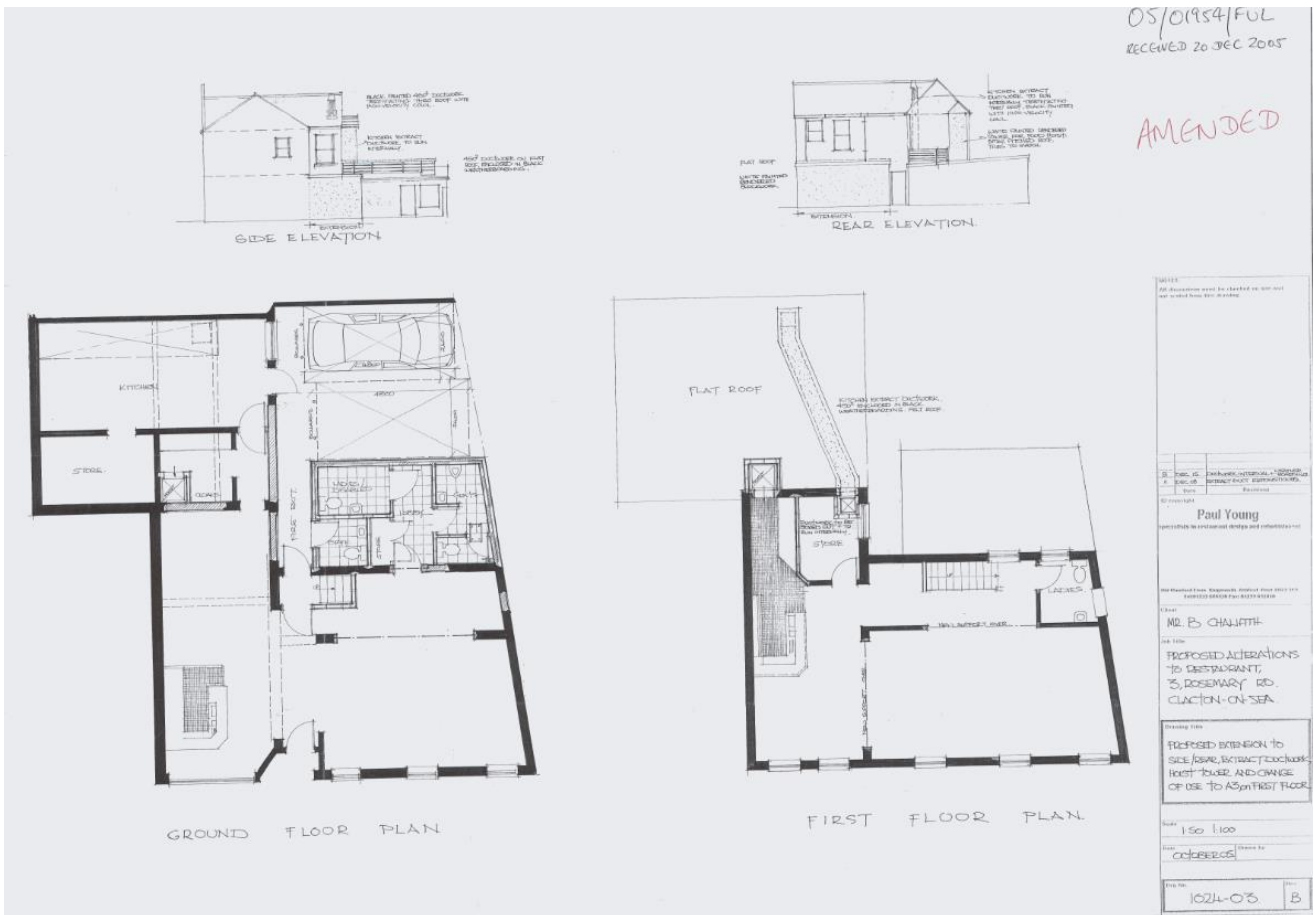
05/01954/FUL	Rear extension incorporating disabled W.C and external ductwork for kitchen extractor, external 2 storey tower for food hoist to rear and change of use of 1st floor to A3.	Approved	21.12.2005
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Planning history records show that the premises was formally used as Indian Restaurant (previously Class A3 but now Class E following the coming into force of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, and further amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015).

As set out above, permission was granted under application reference 05/01954/FUL for a rear extension incorporating disabled W.C and external ductwork for kitchen extractor, external 2 storey tower for food hoist to rear and change of use of 1st floor to A3. The approved plans for this 2005 permission are included below:

05/01954/FUL - Approved Plans

See overleaf.



January 2019

18/00808/FUL Change of use from A1 retail to provide 3 Refused 23.01.2019
 x one bed flats on ground floor.

At the time of the above application, the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2015 (as amended) Part 3, Class A, allowed a change of use of a building from a use falling within Class A3 (restaurants and cafes) to a use falling within Class A1 (shops) of that Schedule without needing planning permission or prior notification.

As part of the application submission for 18/00808/FUL, the Agent claimed that an A1 retail use was implemented in November 2018 thus changing the use for which photographs and receipts were submitted. The A1 retail use was for a Christmas tree shop implemented in November 2018. Clearly the January 2019 submission is a planning application and as part of this submission the Agent argued that the A1 retail unit could be subdivided into smaller units under s55(2)(f) of the Town and Country Planning Act 1990 thus allowing further permitted changes under Part 3 Class G consisting of a change of use of a building from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A1 (shops) of that Schedule and as up to 2 flats.

The supporting statement explained that 'The unit will be subdivided into two units, and 3 one bed flats will be created' and that 'It is now proposed for the ground floor retail A1 unit to be converted into 3 x one bed flats of 40 sq m each.'

The Agent set out the criteria, under which he claimed, allowed for implementation of permitted development to change the use of the premises, split the unit into 2 retail units and provide 3 flats above. These changes had not occurred at the time of the application and the application was

assessed and determined based on the most recent lawful use as an A3 Restaurant. Photographs taken by officers on 19th January 2019 (scanned to the file as '18/00808/FUL Photos dated 19.01.2019') show that the premises was closed. At the time Officers concluded that shop use was a seasonal 'pop up shop' and did not constitute a material change of use from A3 to A1.

An assessment of the works claimed to be permitted development were not formally assessed (as mentioned above the application sought full planning permission and not a lawful development certificate).

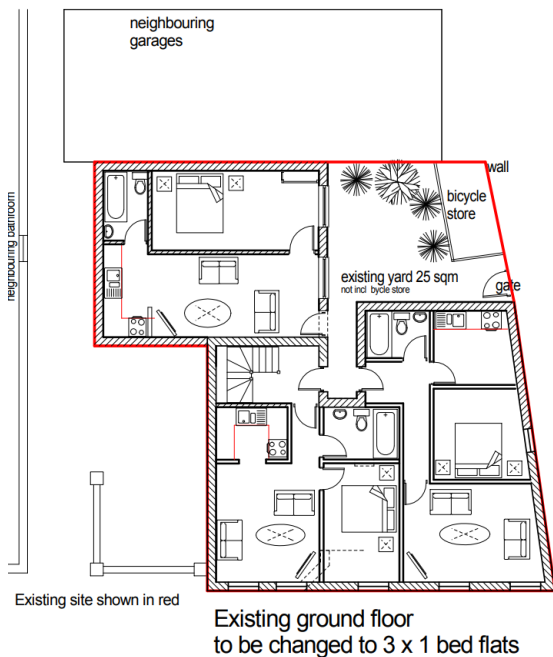
The application clearly sought full permission for the change of use from A1 retail to provide 3 x one bed flats on the ground floor. The application was assessed on this basis.

The application was refused on the following grounds (based on the local plan policies relevant at the time):

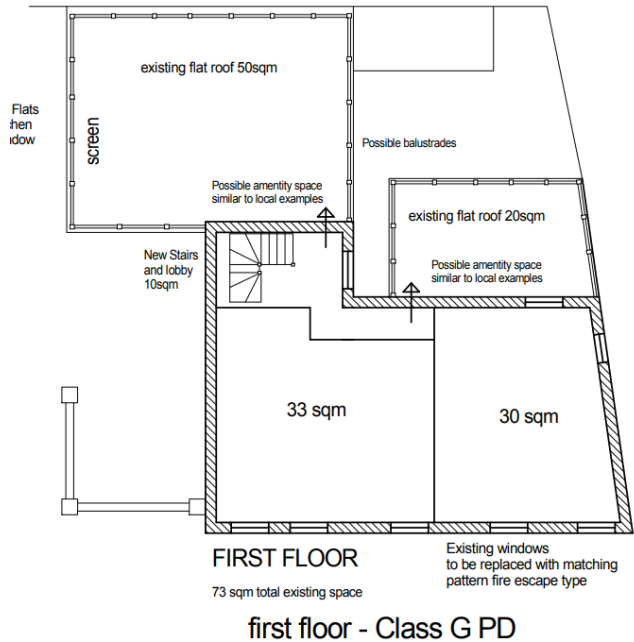
1. The loss of the commercial use would have an adverse impact on the vitality and economic prospects of the area (loss of employment in a town centre, regen area contrary to policy at the time).
2. The development proposes 3 one-bedroom flats, with all 3 bathrooms and kitchen areas having no windows / natural light. The rear flat has a poor outlook with only a single lounge window and a single bedroom window looking into the small, enclosed yard. The proposed development fails to provide a good standard of amenity for future occupants. The 25sqm yard area to serve all 3 flats is severely undersized, wholly inappropriate and unusable. This would be overtaken by cycle storage and bin storage further reducing the usability of the space and exacerbating the poor outlook from the rear flat windows. The proposed development fails to provide a good standard of amenity for future occupants.

18/00808/FUL Refused Plans

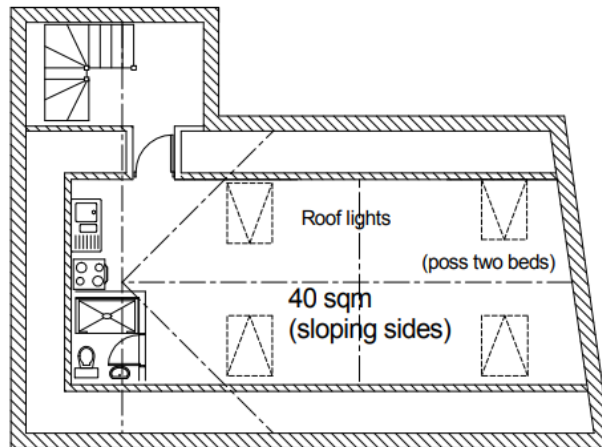
GROUND FLOOR 3 X 1 BED FLATS



FIRST FLOOR (REPLACEMENT WINDOWS)



ROOFSpace / SECOND FLOOR PLAN



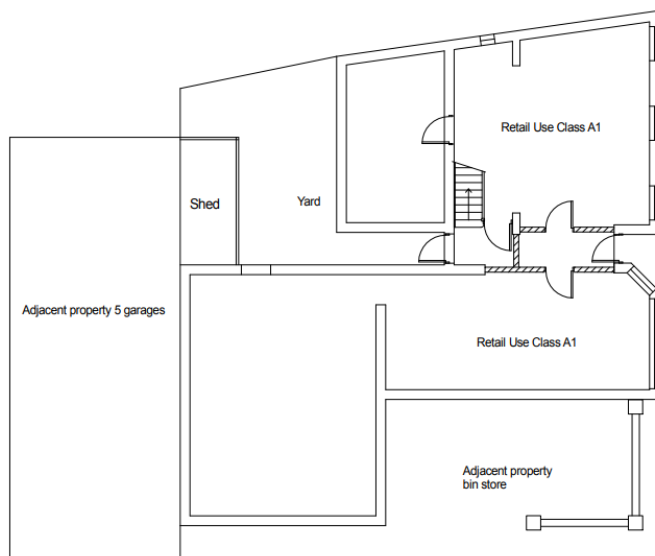
January 2020

19/00266/LUPROP Proposed Change of Use from 2 no. Class A1 Retail units to a Mixed use comprising 2 no. Class A1 Retail units (ground floor) and 3 no. C3 flats above (2 flats at first floor and 1 flat at second floor). Granted 31.01.2020

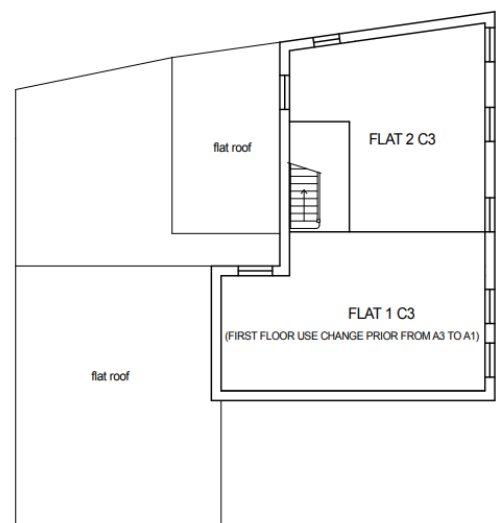
The nature and description of the application evolved over the 10 months from the date of submission (once a better understanding of what the applicant was trying to achieve became apparent and was agreed).

The application sought a Lawful Use Development Certificate for a proposed use comprising a change of use from 2 no. Class A1 Retail units to a mixed use comprising 2 no. Class A1 Retail units (ground floor) and 3 no. C3 flats above (2 flats at first floor and 1 flat at second floor).

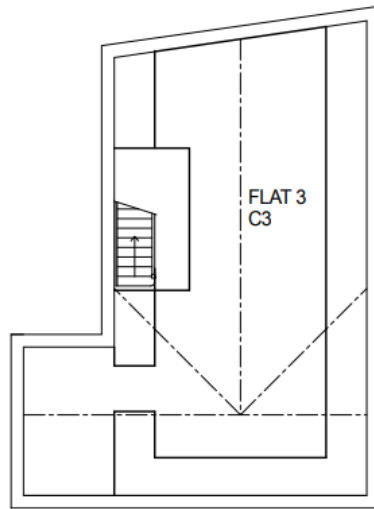
19/00266/LUPROP Indicative Layout Plans



PROPOSED INDICATIVE LAYOUT GROUND FLOOR



PROPOSED INDICATIVE LAYOUT FIRST FLOOR



PROPOSED INDICATIVE LAYOUT SECOND FLOOR (LOFT)

The application for the certificate of lawfulness for a proposed use was assessed under the provisions of Schedule 2, Article 3, Part 3, Class G (a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – the correct version at the time of decision.

At the time of the application, the premises was in a poor state externally, having been vacant for a number of years, with a boarded-up frontage and windows. As explained above, the building was previously occupied as Class A3 restaurant. At the time of submission (14.03.2019), the building was a vacant, unusable space.

The planning agent submitted the application on the basis that the permitted development rights for changes of use, internal alterations and the creation of flats above could be carried out as a phased lawful use development certificate utilising various permitted development rights at different stages. However, this was incorrect.

The permitted development rights set out within Class G states that development consisting of a change of use of a building from Class A1 to a mixed use for any purpose within Class A1 of that Schedule and as up to 2 flats is permitted.

The permitted development rights allowed by Class G were not engaged until such time as the unit was open and operating lawfully as Class A1 Retail. A lawful use certificate for the change of use from A3 to a mixed-use development of 2 x A1 units and 3 flats is not permitted by legislation. Just as the permitted development rights for dwellings are not engaged until the property is occupied, the permitted development rights available for an A1 use are not engaged until such time as the A1 use becomes established or lawful (whichever may be relevant).

Therefore, the application could not be determined until such time as the Council were satisfied that a change of use from Class A3 to Class A1 had occurred under the provisions of Town and Country Planning (Use Classes) Order 1987 (as amended) and that the unit had been split under the provisions of Section 55 of the Town and Country Planning Act.

Numerous emails were exchanged, and additional information provided by the applicant and agent during the course of the application. The evidence and photographs gathered during the site visits (at the time) undertaken by the planning officer, enforcement officer and compliance officer (21st January and 28th January 2020) satisfactorily demonstrated that the ground floor was operating as 2 retail units.

Having regard to the evidence submitted and that obtained by officers of the Council during site visits, a certificate of lawful development for the proposed use was granted subject to the standard conditions set out within the legislation (at that time), as follows:

Development permitted by Class G is subject to the following conditions -

- (a) some or all of the parts of the building used for any purposes within Class A1 as the case may be, of the Schedule to the Use Classes Order is situated on a floor below the lowest part of the building used as a flat;
- (b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat;
- (c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence) -
 - i. by a single person or by people living together as a family, or
 - ii. by not more than 6 residents living together as a single household (including a household where care is provided for residents)

June 2021

20/00884/FUL	Proposed retention of retail unit and creation of 1 ground floor studio flat and 1	Non-	03.03.2022
21/00026/NONDET	ground floor one bed flat. Removal of	determination	
APP/P1560/W/21/32	existing rear extension and creation of	Appeal	
76871	amenity space and provision of cycle spaces.		

The appeal reference APP/P1560/W/21/3276871 followed the failure of the council to determine application 20/00884/FUL within the prescribed statutory timescale. The Council's statement confirmed that, had the Council determined the application, it would have given a single reason for refusal, as follows:

'The proposal would be harmful to the living conditions of future occupants, having particular regard to natural light, outlook and privacy. As a result, the proposal would be contrary to the final bullet of Policy SP7 of the adopted Part 1, and Policy SPL3 Part B (e) of the emerging Part 2 of the 2013-33 Local Plan. It would also be at odds with Paragraph 103 (f) of the National Planning Policy Framework 2021.'

The appeal concluded that (at Paragraph 14 of the appeal decision dated 3rd March 2022):

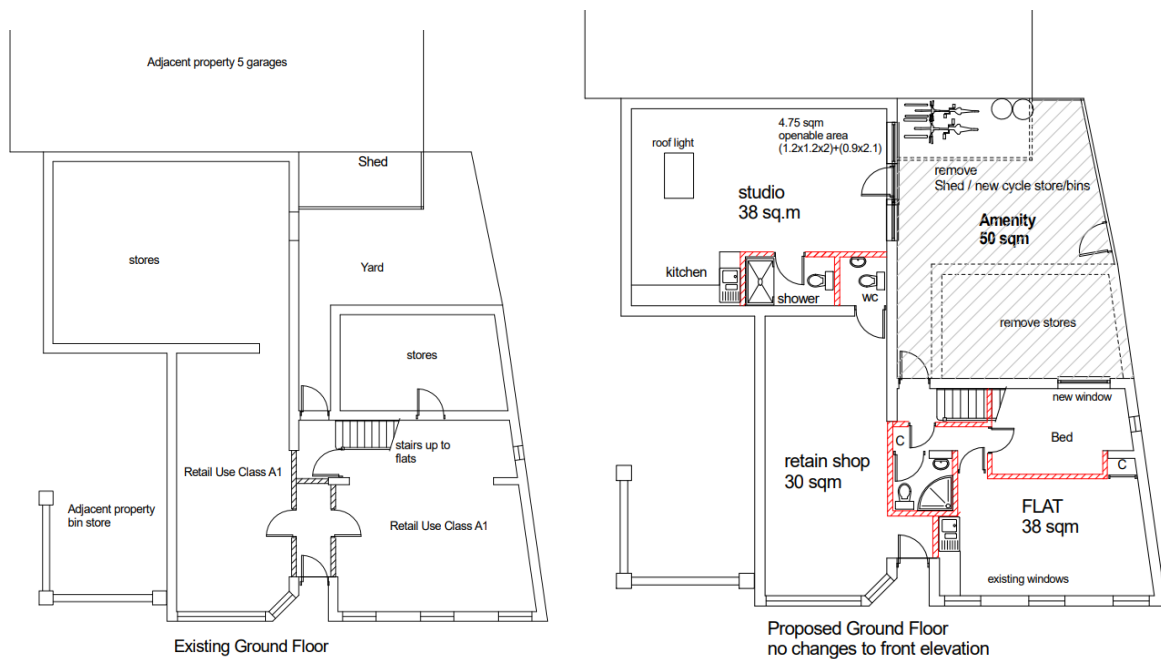
'...the proposed development would not provide acceptable living conditions for future occupiers of the dwelling in respect of outlook. It would therefore conflict with policy SP7 of the LP which requires development to meet high standards of urban design which protect the amenity of future residents with regard to outlook. It would also fail to accord with policy SPL3 Part B(e) which requires buildings to be designed to ensure adequate outlook for future residents.'

The appeal was clearly dismissed due to the unacceptable living conditions, not 'a technicality' as suggested by the agent within the Copy of letter: to Enforcement Officer (LDC evidence) dated 19th June 2023 submitted with this application.

20/00884/FUL Plans

See overleaf.

20/00884/FUL Existing and Proposed Floor Plans



6. The Submission

6.1 Supporting Information

The application is accompanied by the following plans, documents and supporting information which form the basis of the Council's assessment of the applicant's claim:

▪ **Application form**

- The **Reason for the application for the Lawful Development Certificate** is indicated as 'An existing use', 'being a use, building works or activity which is still going on at the date of this application'.
- The **relevant Use Class** is given as C3 – Dwellinghouses.
- Under the **Description of Existing Use, Building Works or Activity**, only the copy of the letter to enforcement officer (LDC evidence) is listed.
- Under the **Grounds for application for a Lawful Development Certificate**, the applicant indicates:

Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

Again, only the copy of the letter to enforcement officer (LDC evidence) is listed as details.

- The applicant confirms that the certificate does not relate to a breach of condition or limitation and states under why a Lawful Development Certificate should be granted, 'Please see Copy of letter to enforcement officer (LDC evidence)'.
- The application form states that the use or activity begun, or the building works were substantially completed on 17 May 2023.

- The applicant states that Pre-application Advice has been provided by the Council's Enforcement Officer on 19 June 2023 (Response to enforcement officer email, or letter to enforcement officer (LDC evidence)).
- **Copy of letter: to Enforcement Officer (LDC evidence) dated 19th June 2023**
- **Copy of letter: to Planning Services notice of the intended development for change of use from A1 retail to provide 1 x one bed flat and 1 x studio flat with retention of retail unit dated 10th June 2021 which will commence 14th June 2021**
- **Copy of: Building Regulation completion certificate: Creation of 2 No Flats and 2 No Shop Units Ref: CBC/21/55483/HQ by Completed Building Control Ltd dated 17/05/2023**
- **1:1250 Red Lined Site Plan**
- **Copy of: Statutory Instrument 2021 No. 814 of The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021**
- **Copy of: Explanatory Memorandum to the Town and Country Planning (General Permitted Development Order 2021 No. 814**
- **Drawing number 1286/500 Floor Plans – Previously approved 19/00266/LUPROP, Stage 1 works, Stage 2 Works, and Stage 3 Works**

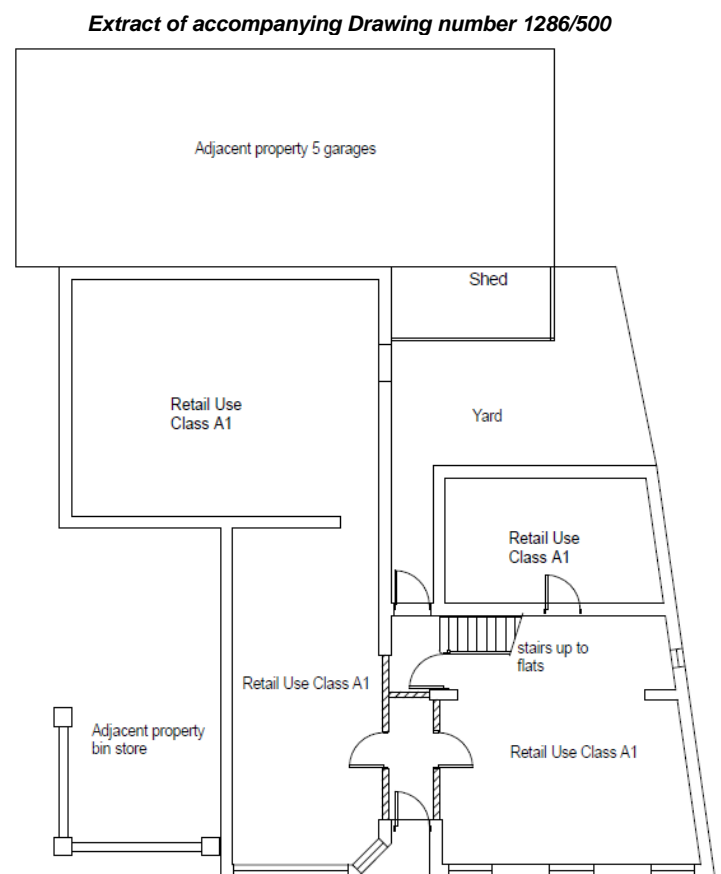
6.2 The Submission – The Accompanying Plans

▪ ORIGINAL GROUND FLOOR PLANS

These 'Existing' floor plans were originally submitted with the Lawful Use Certificate for a Proposed Use (LUPROP) application reference 19/00266/LUPROP to demonstrate that the ground floor retail use was in place thus allowing flats above under the permitted development rights at the time.

Site photos were taken at the time showing the unfinished state of the units (plasterboard and no flooring) with some hanging rails and other various items for sale. The photos showed 2 retail units as on the floor plans.

Emails from the owner dated 25th and 30th October (extracts shown below) confirms that the shops were open for 2 weeks in January and have not re-opened since.



Existing Ground Floor

previously approved
reference 19_00266_LUPROP

STAGE 1 PLANS

The floor plans provided as 'Stage 1' are not dated nor has any evidence been provided to demonstrate that the operational development works to subdivide the building shown on the 'Stage 1' floor plan were undertaken or that the 4 no. units operated at any time for retail uses.

As mentioned above, the emails from the owner dated 25th and 30th October confirms that the shops were open for 2 weeks in January and have not re-opened since.

Based on the emails from the owner, and in the absence of any other evidence supporting this current application, officers cannot confirm that 'Stage 1' was ever implemented, completed and used as shown.

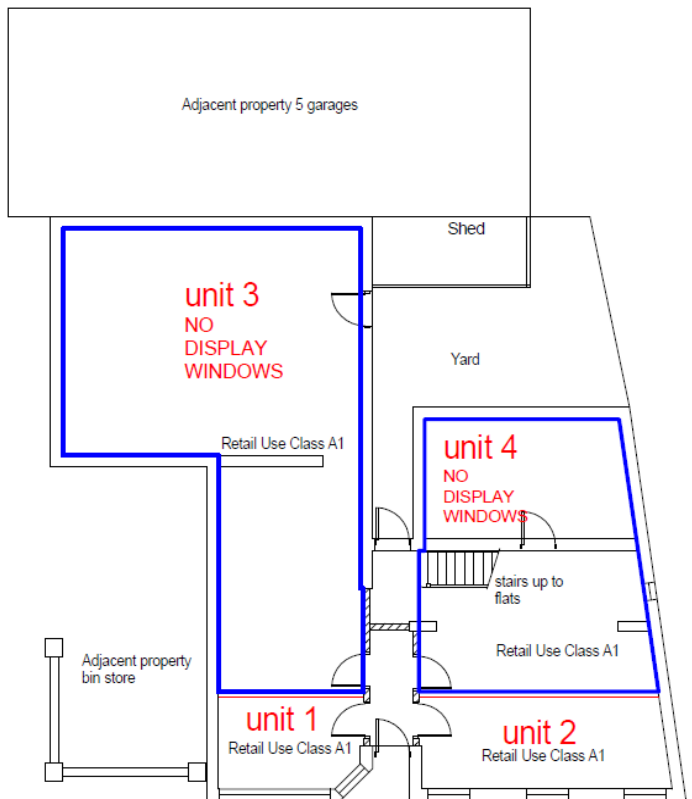
As explained at the time of application 19/00266/LUPROP and covered within Section 5.2 Background & Planning History above, permitted development rights for changes of use, internal alterations and the creation of flats above cannot be carried out as a phased lawful use development certificate

utilising various permitted development rights at different stages. Just as the permitted development rights for dwellings are not engaged until the property is occupied, the permitted development rights available for an A1 use are not engaged until such time as the A1 use becomes operational or lawful.

Moreover, regardless of any permitted development rights that the applicant is claiming apply (i.e. not development under s55(3)(f) of the TCPA), if a retail shop is subdivided with internal alterations only (no external works) to create 2, 3 or 4 retail units, this is likely to constitute development requiring planning permission because it could be argued that a material change of use had occurred through the creation of additional shop units. This would be a consideration of fact and degree as the use classes are the same. For example, the principle question would be; does the subdivision and creation of additional shops amount to an intensification of that use that would then constitute development requiring planning permission.

If officers accept the 'Stage 1' plans were implemented as claimed within this application submission, this could be incorrectly taken that the Local Planning Authority have accepted that planning permission was not required for the subdivision of the building into 4 units. This is not the case. For the permitted development rights to become enacted, each of the stages shown within the accompanying plans must have been completed and used as shown, to allow the next stage to be undertaken without requiring planning permission. No evidence of this has been provided.

Extract of accompanying Drawing number 1286/500



STAGE 1

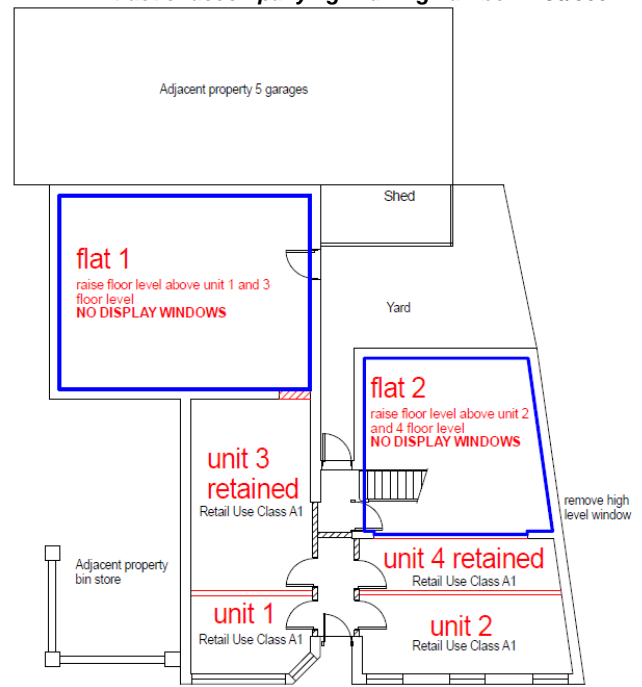
Existing Ground Floor split into 4 retail units
Permission not required as s55(2)(f) of TCPA
No minimum size of retail unit required

▪ **STAGE 2 PLANS**

As with the ‘Stage 1’ plans, the floor plans provided as ‘Stage 2’ are not dated nor has any evidence been provided to demonstrate that the operational development works to subdivide the building shown on were undertaken or that the further subdivided smaller 4 no. units operated at any time.

As mentioned above, the emails from the owner dated 25th and 30th October confirm that the shops were open for 2 weeks in January and have not re-opened since. Based on the emails from the owner, and in the absence of any other evidence supporting this current application, officers must conclude that ‘Stage 1’ and ‘Stage 2’ were not actioned.

Extract of accompanying Drawing number 1286/500



STAGE 2 - units 1 and 2 retained
units 3 and 4 are changed use to create 2 flats

▪ **STAGE 3 PLANS**

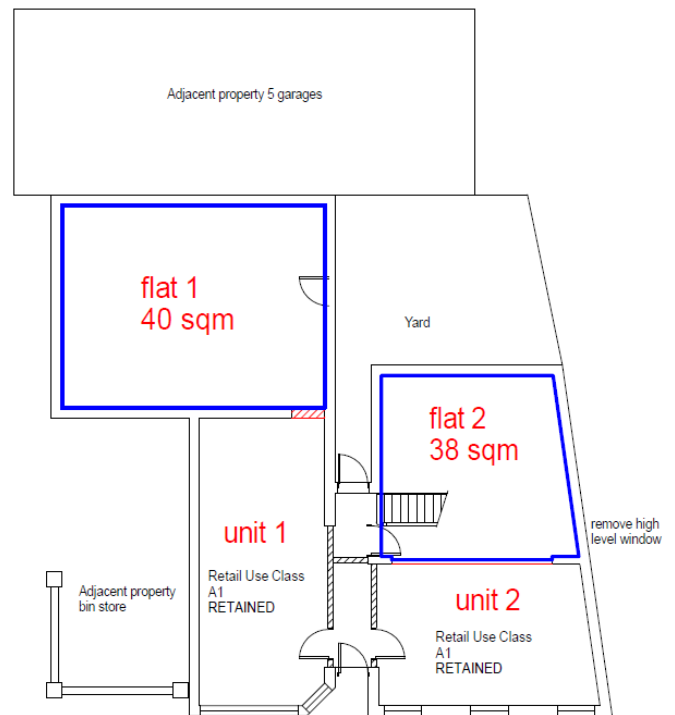
These ‘Stage 3’ plans are essentially what this Lawful Use Certificate application seeks confirmation as permitted development, claimed to be permitted by Class G (under the July 2021 version of the GPDO).

As explained above, for the Class G permitted development rights to apply as claimed, stages 1 and 2 would need to have been completed, occupied and used. No evidence has been provided to confirm this.

In short, officers do not have sufficient evidence to agree that the permitted development rights claimed to have been used under Class G were enacted as there is no evidence to show the physical state and use of the building immediately prior.

Moreover, the applicant claims that the floor levels for the parts of the buildings serving Flat 1 and Flat 2 have been raised to comply with the condition of Class G that requires the flat to be **‘situated on a floor below the lowest part of the building used as flat’**, as stated on the plans (extract below).

Extract of accompanying Drawing number 1286/500



STAGE 3
- After Conversion
units 3 and 4 removed

Conditions

G.1 Development permitted by Class G is subject to the following conditions—
(a) some or all of the parts of the building used as Class A1 is situated on a floor below the lowest part of the building used as a flat;

Complies - Flats to be situated above A1 retail unit
flat 1 and flat 2 floor level raised to accommodate new insulation and coverings and raise floor level

6.3 Description of 'The Claim'

The full explanation of the Lawful Development Certificate sought (extract above) is included on the accompanying drawing Drawing number 1286/500 Floor Plans and copied in full below:

Schedule 2 Part 3 Class G of GPDO
allow a mix use of 1 A1 unit and 2 flats - UNITS 3 AND 4

Conditions

G.1 Development permitted by Class G is subject to the following conditions—

(a) some or all of the parts of the building used as Class A1 is situated on a floor **below the lowest part of the building used as a flat;**

Complies - Flats to be situated above A1 retail unit

flat 1 and flat 2 floor level raised to accommodate new insulation and coverings and raise floor level

Interpretation

2.— (1) In this Order—“building”—

(a) includes any structure or erection and includes any part of a building

(b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat;

Complies - No Display Windows to units 3 and 4

(c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence)—

(i) by a single person or by people living together as a family, or

(ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

NOT HMO

EXPLANATORY MEMORANDUM 2021 No. 814

7.4

CLASS G

does not require prior approval at this time

NOTICE TO COUNCIL GIVEN 10th June 2021

WORK COMMENCED 22nd June 2021

Final Certificate 17th May 2022

In summary, the applicant is claiming, and thus seeking a Lawful Development Certificate that (officers' own summary):


- **Change of use of rear into 2 ground floor flats granted planning permission by virtue of Part 3 Schedule 2 of the General Permitted Development Order 2015 Part 3 Class G Permitted Development rights. The works have been commenced, undertaken, and completed under the GPDO relevant at the time of the development (a time when Prior Approval was not required).**

The applicant is claiming that building operations have been undertaken as permitted development including raising the floor level to rear section of the building, subdivision of the rear section of the building from the front retail units, and removal of high-level window in the side elevation.

However, this application does not seek confirmation that the operational development is lawful and relates solely to the change of use to flats. Class G covers use and not operational development.

For the avoidance of doubt, this lawful development certificate is not seeking confirmation that the building works are lawful and officers have not assessed this.

7. **Summary of Key Dates and Records (timeline)**

DATE	OFFICER COMMENT
April 2015	S.I. 2015 596 Town and Country Planning (General Permitted Development) (England) Order 2015 Original Statutory Instrument (replaced the previous GPDO 1995 version).
April 2018	SI 2018 No. 343 Town and Country Planning, England the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018 S.I. 2015/596 GPDO relevant at the time of the decision for 19/00266/LUPROP.
December 2018	Application reference 18/00808/FUL submitted on 10.12.2018 for the change of use from A1 retail to provide 3 x one bed flats on ground floor.
January 2019	Site visit 19 January 2019 front elevation photo. 
January 2019	Application reference 18/00808/FUL refused. Refused at a time when the site was located within the Town Centre Boundary and Local Plan policy did not support loss of employment / retail in these defined areas.
March 2019	Application reference 19/00266/LUPROP submitted on 14.03.2019 for: Proposed Change of Use from 2 no. Class A1 Retail units to a Mixed use comprising 2 no. Class A1 Retail units (ground floor) and 3 no. C3 flats above (2 flats at first floor and 1 flat at second floor).

**August
2019**

Site visit **20 August 2019** – photo from inside Unit 1 looking out toward Rosemary Road.



Sept 2019

Site visit **20 August 2019** showing front elevation and some internal works.



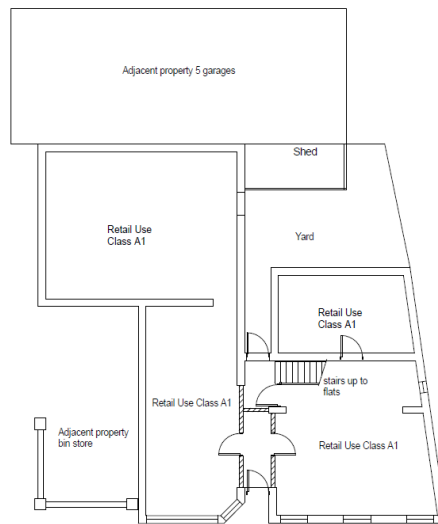
January 2020

Site visit 21 January 2020 showing clothes racks to demonstrate pop-up retail use.



January 2020

Application reference 19/00266/LUPROP granted for change of use from 2 no. Class A1 Retail units to a mixed use comprising 2 no. Class A1 Retail units (ground floor) and 3 no. C3 flats above (2 flats at first floor and 1 flat at second floor). Assessed and granted under 2018 version of the GPDO (next update March 2020 via SI 2020 No. 330).



Existing Ground Floor

previously approved
reference 19_00266_LUPROP

June 2021	Application reference 20/00884/FUL - No decision made by LPA - Non-Determination Appeal submitted.
June 2021	<p>Notice sent to Planning Services of intended development for change of use from A1 retail to provide 1 x one bed flat and 1 x studio flat with retention of retail unit dated will commence June 2021.</p> <p>From: Colin Smith <[REDACTED]> Sent: 10 June 2021 20:19 To: Planning Services <planningservices@tendringdc.gov.uk>; Marios Aristidou <[REDACTED]> Subject: 3 Rosemary Road Clacton On Sea</p> <p>Dear Sirs</p> <p>Please find attached formal notification and drawings for your information</p> <p>Best Regards</p> <p>Colin J. Smith</p>
June 2021	<p>Reply to Colin Smith sent on 15 June 2021 confirming that the LPA consider that the development does not meet Class G (b) and therefore cannot be undertaken as permitted development.</p> <p>On Tue, 15 Jun 2021, 12:01 Elliott Harwood-Bee, <[REDACTED]> wrote:</p> <p>Dear Colin Smith</p> <p>Thank you for your letter dated 10th June 2021 and accompanying plans.</p> <p>Following discussions with planning officers, I would advise you that the proposal does not appear to be permitted development by virtue of condition G(b), which states that “<i>where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat</i>”.</p> <p>Other permitted development rights exist under Class M. However, prior approval is required to be sought first through the submission of the relevant form and application fee. Please note that if such development commences without prior approval having first been sought, then an application for full planning permission would be required.</p> <p>Kind Regards</p> <p>Planning Services</p> <p>Tendring District Council</p> <p>The Council's Privacy Notice is available on its website : PRIVACY NOTICE</p> <p>This email may contain Copyright Material and/or sensitive or protectively marked/classified material. The email is intended for the named addressee(s). Unless you are the named addressee (or authorised to receive it for the addressee), you may not copy, use it, or disclose it to anyone else. If you have received this transmission in error please notify the sender immediately. All email traffic may be subject to recording and/or monitoring in accordance with relevant legislation. Correspondence sent to the Council may be shared internally and/or with legitimate and authorised external organisations to enable the matter contained therein to be dealt with appropriately and/or to comply with legislative requirements.</p> <p>Tendring District Council does not accept service of legal documents by e-mail.</p>
June 2021	Development commences - Accompanying Building Regulation Completion Certificate shows commencement date of 22 June 2021.
July 2021	<p>Officers have retrieved the version of the GPDO, correct at the time of the commencement of development from the Planning Jungle Limited. This is the version used for the assessment of the works / change of use claimed within this Lawful Development Certificate application.</p> <p>This version does NOT include the SIs that came into force after 31 July 2021.</p>

Planning Jungle Limited

**Consolidated Versions of Legislation:
The Town and Country Planning
(General Permitted Development) (England) Order 2015
(as amended) (31/07/2021 version)**

Last updated: **July 2023** (note: regular updates not required)
Number of Statutory Instruments (SIs) incorporated: **23**

Note: This document does not include SIs that come into force after 31/07/2021.

Introduction:

This is one of a number of documents produced by Planning Jungle Limited (www.planningjungle.com). This company provides one of the most comprehensive resources available relating to **householder permitted development** legislation, and one of the only sources of consolidated versions of planning secondary legislation.

About this document:

This document provides a consolidated version of the GPDO 2015 (31/07/2021 version).

August 2021	SI 2021 No.814 the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 Came into force 1 st August 2012
	Explanatory Memorandum to SI 2021 No. 814, Paragraph 7.4 states: A building or use will continue to be subject to any permitted development rights that it was entitled to on or before 31 August 2020. These transitional provisions remain in place until 31 July 2021. It is therefore necessary to make consequential amendments to have effect from 1 August 2021.
October 2021	Non-determination appeal start date.
January 2022	Non-determination appeal site visit undertaken. Paragraph 8 of the appeal decision describes the appeal site as: 'The building comprises ground floor retail units with storage to the rear with internal access to the three upper floor flats.'
March 2022	Non-determination appeal dismissed - reference 21/00026/NONDET and APP/P1560/W/21/3276871
May 2023	Building Control Completion Certificate
June 2023	Letter to Enforcement – works undertaken as PD
October 2023	Email from owner / applicant to Tendring Council Business Rates department explaining 'shops have always been closed' and that the a pop-up shop was open for 2/3 weeks to change the use 'as council wanted proof before excepting we was running shops' (extract overleaf):

	<p>From: Marios Andreas [REDACTED] Sent: Wednesday, October 25, 2023 4:14:12 PM To: Business Rates <business.rates@tendringdc.gov.uk> Subject: Re: 3 rosemary road tax</p> <p>Hi</p> <p>Case has been on hold Please confirm</p> <p>The shops have always been closed</p> <p>The reason shops was open for 2/3 weeks was to change the use as council/ wanted proof before excepting we was running shops So we created popup shops once council seen opening then closed and continue with works created abover property's and shops permitted development</p> <p>This was all PD rights on going works</p> <p>Hope this is of some help</p> <p>And the above tax is now waved</p> <p>Please let me know if you have anything else needed</p> <p>Kind regards</p> <p>Marios aristidou</p> <p>Sent from Outlook for Android</p>
<p>October 2023</p>	<p>Email from owner to Tendring Council Business Rates department confirming shops open for 2 weeks in January 2020 only</p> <p>From: Marios Andreas [REDACTED] Sent: Monday, October 30, 2023 1:32 PM To: Business Rates <business.rates@tendringdc.gov.uk> Subject: Re: 3 rosemary road tax</p> <p>Hi</p> <p>Further to your email above in relation to accounts 4036251X & 40362494, at 3 and 3a Rosemary Road, Clacton.</p> <p>Shops open for 2 weeks in January 2020 Shops closed after council came and visited 2020 January 16th sgin off Open for 2 weeks in January only</p> <p>Shops haven't been Operated from date of purchase</p> <p>Works started back 2018 once bought property and continue to be worked on</p> <p>Hope this is off some help</p> <p>Spoken with Louise today as deadline was due tomorrow</p> <p>So hopefully finds you well</p> <p>If anything else needed please do not hesitate to contact myself on 07305844462 Or reply to this email</p> <p>Kind regards</p> <p>Marios aristidou</p> <p>Sent from Outlook for Android</p>

8. Relevant Legislation and Guidance

8.1 Statutory Framework Covering “lawfulness”

There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that:

- (a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under [section 191 of the Town and Country Planning Act 1990](#); or
- (b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under [section 192 of the Town and Country Planning Act 1990](#).

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

Section 191 - Certificate of lawfulness of existing use or development, states:

1. If any person wishes to ascertain whether—
 - (a) any existing use of buildings or other land is lawful;
 - (b) any operations which have been carried out in, on, over or under land are lawful; or
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. Where relevant, the Planning and Compensation Act 1991 (section 171B) sets out the time limits within which local planning authorities can take planning enforcement action against breaches of planning control (i.e. the new 10-year rule as set out within the enforcement reforms introduced through the Levelling-up and Regeneration Act 2023 which came into effect on 25 April 2024.).

Where a lawful development certificate case is made on the basis that planning permission is not required, this would relate to permitted development rights. Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. contact with the local planning authority is generally only necessary before carrying out permitted development where prior approval from the local planning authority is required in advance of development. The relevant Parts in Schedule 2 to the General Permitted Development Order set out the procedures which must be followed when advance notification is required.

8.2 Legislation Relevant to this Case

In this instance, the Lawful Development Certificate application has been made on the basis of an existing use carried out as permitted development and therefore must be assessed under section 191(1) (a) of the Town and Country Planning Act 1990 and the relevant part and version of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Time limit parameters for immunity / no enforcement action specified within the Planning and Compensation Act 1991 (section 171B) do not apply in this case.

The application claims permitted development has been undertaken under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), SCHEDULE 2, PART 3, Class G – retail or betting office or pay day loan shop to mixed use, (a) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A1 (shops) of that Schedule and as up to 2 flats.

8.3 Lawful Development Certificate Requirements

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted.

Along with the relevant application form, the application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application.

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

9. Assessment

9.1 Current Class G Permitted Development Rights

An extract from the latest consolidated version of the GDPO (taken from The Planning Jungle retrieved on 24/04/2024) is shown below.

The relevant changes and corresponding SI, including the addition of a Prior Approval requirement at Conditions G.1, (d) are noted.

Class G – ~~retail commercial, business and service~~ or betting office or pay day loan shop to mixed use

Commented [S131]: Replaced by 2021 No. 814

Permitted development

G. Development consisting of a change of use of a building—

- ~~(a) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A1 (shops) of that Schedule and as up to 2 flats;~~
- (a) from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to 2 flats;
- ~~(b) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A2 (financial and professional services) of that Schedule and as up to 2 flats;~~
- (c) from a use
 - (i) for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order, or
 - (ii) as a betting office or a pay day loan shop,to a mixed use for any purpose within Class A2 (financial and professional services) of that Schedule and as up to 2 flats;
- (c) from a use within article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of the Use Classes Order, to a mixed use for any purpose within Class E (commercial, business and service) of Schedule 2 to that Order and as up to 2 flats;
- ~~(d) where that building has a display window at ground floor level, from a use—~~

Commented [S132]: Paragraph (a) was replaced by 2021 No. 814

Commented [S133]: Paragraph (b) was deleted by 2021 No. 814

Commented [S134]: Paragraph (c) was replaced by 2021 No. 814

- ~~(i) for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order, or~~
- ~~(ii) as a betting office or a pay day loan shop;~~
- ~~to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to 2 flats;~~
- (e) from a use as a betting office or a pay day loan shop falling within article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of the Use Classes Order to a mixed use as a betting office or a pay day loan shop falling within article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of the Use Classes Order and as up to 2 flats.

Commented [S135]: Paragraph (d) was deleted by 2021 No. 814

Commented [S136]: Replaced by 2021 No. 814

Commented [S137]: Replaced by 2021 No. 814

Conditions

G.1 Development permitted by Class G is subject to the following conditions—

- (a) some or all of the parts of the building used as a betting office or pay day loan shop or for any purposes within Class A1 or Class A2, as the case may be, of the Schedule to for a use within, as the case may be, article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of, or Class E of Schedule 2 to, the Use Classes Order is situated on a floor below the lowest part of the building used as a flat;
- (b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat;
- (c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence)—
 - (i) by a single person or by people living together as a family, or
 - (ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents);
- (d) before beginning development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
 - (i) contamination risks in relation to the building;
 - (ii) flooding risks in relation to the building;
 - (iii) impacts of noise from commercial premises on the intended occupiers of the development;
 - (iv) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
 - (v) arrangements required for the storage and management of domestic waste.

Commented [S138]: Replaced by 2021 No. 814

Commented [S139]: Inserted by 2021 No. 814

Commented [S140]: Paragraph (d) was inserted by 2021 No. 814

Interpretation of Class G

G.2 For the purposes of Class G, “care” 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.

9.2 July 2021 Class G Permitted Development Rights

An extract from the 31 July 2021 version of the GPDO is shown below. This is relevant to this case as the claim is being made on the basis that the change of use was permitted development under Class G of the GPDO version relevant at the time when the carrying out of building operations begun (start date for the work shown on accompanying building control certificate as 22/06/2021).

SI 2021 No.814 the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 came into force 1st August 2021. Explanatory Memorandum to SI 2021 No. 814, Paragraph 7.4 states:

A building or use will continue to be subject to any permitted development rights that it was entitled to on or before 31 August 2020. These transitional provisions remain in place until 31 July 2021. It is therefore necessary to make consequential amendments to have effect from 1 August 2021.

The development claimed has been assessed under the July 2021 version of the GPDO, as set out below.

Class G – retail or betting office or pay day loan shop to mixed use

Permitted development

G. Development consisting of a change of use of a building—

- (a) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A1 (shops) of that Schedule and as up to 2 flats;**
- (b) from a use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order, to a mixed use for any purpose within Class A2 (financial and professional services) of that Schedule and as up to 2 flats;**
- (c) from a use—**
 - (i) for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order, or**
 - (ii) as a betting office or a pay day loan shop,****to a mixed use for any purpose within Class A2 (financial and professional services) of that Schedule and as up to 2 flats;**
- (d) where that building has a display window at ground floor level, from a use—**
 - (i) for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order, or**
 - (ii) as a betting office or a pay day loan shop, to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to 2 flats;**
- (e) from a use as a betting office or a pay day loan shop to a mixed use as a betting office or a pay day loan shop and as up to 2 flats.**

Conditions

G.1 Development permitted by Class G is subject to the following conditions—

- (a) some or all of the parts of the building used as a betting office or pay day loan shop or for any purposes within Class A1 or Class A2, as the case may be, of the Schedule to the Use Classes Order is situated on a floor below the lowest part of the building used as a flat;
- (b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat;**
- (c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence)—
 - (i) by a single person or by people living together as a family, or
 - (ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

Interpretation of Class G

G.2 For the purposes of Class G, “care” 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.

10. Other Matters – Objection Comments

The site lies within the non-parished area of Clacton on Sea.

A local ward Councillor has raised concerns which are summarised below:

- The two flats being created at the back of the building on the ground floor do not have planning permission.
- Planning application 20/00884/FUL sought the creation of 2 ground floor flats, but permission was dismissed on appeal by the Planning Inspector in March 2022 on sound planning grounds.
- An examination of the Inspector's Appeal Decision shows that no suggestion is made that ground floor flats are/would be allowed under permitted development rights. Surely, if that were the case, the Inspector would have pointed this out in the decision.
- It is my understanding that national permitted development rights do allow for the creation of flats above shops but there is very limited evidence to suggest the ground floor units at the front of the building have ever actually been used for shops.
- These flats are behind and on the same ground level as the units at the front. They are not on a floor directly above.

These matters have been highlighted and covered in the main report above.

11. Other Matters – Evidence Sharing

As set out within Paragraph: 006 Reference ID: 17c-006-20140306 of the NPPG, when assessing Lawful Development Certificate application, the local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In this instance, the evidence gathered by the local planning authority comprises correspondence between the owner /applicant or the agent and the relevant Council departments. The evidence obtained by the local planning authority is simply copies of correspondence already held by the applicant, and it is not considered necessary to seek the applicant's comments.

12. Conclusions

- The certificate claims a change of use to 2 flats has been undertaken as permitted by Class G (July 2021 Version thus not requiring a Prior Notification Application).
- Class G relates to a 'Development consisting of a change of use of a building'.
- Conditions under G.1 relates to the 'Development permitted by Class G' which is a 'change of use'.
- The accompanying Building Control Certificate states that building works were started in July 2021.
- TCPA Section 56 Time when development begun, (1) (c) states that if the development consists of both carrying out of operations and a change in use, development of land shall be taken to be initiated at the earlier of the times mentioned in paragraphs (a) 'operations' and (b) 'change of use'. Thus, the applicant is claiming the works commenced under the July 2021 GPDO. However, the applicant is seeking a lawful development certificate under Class G which does not permit building operations, only the change of use (subject to the conditions).
- The change of use itself would need to have commenced prior to the August 2021 GPDO for the Prior Approval application process to not be relevant.
- The applicant fails to provide a clear explanation of the building works that have been undertaken. The applicant fails to provide any evidence that demonstrates the use and physical condition of the building immediately prior to the Class G development hereby claimed to be lawful, was lawful itself.
- Class G permits a change of use, not building operations.
- The accompanying Building Control Certificate states that building works were completed on 17/05/2023.

- At the time of submission, the flats subject of this application were being marketed for rent on Haart Estate Agency (and Rightmove) and were therefore vacant / unoccupied. The 'Development consisting of a change of use of a building' had not been instituted (change of use had not occurred).
- Regardless of the timings of works undertaken or completed, or the commencement of the use, the development fails to comply with Class G, Conditions G.1 Criterion (b) as the development consists of a **change of use of a building** (does not specify PART of a building) with a display window at ground floor level (the subdivision of the building to create units with no windows does not remove the display window from the 'building') and would involve use in part as a flat.
- Email from marketing agent received on 24/04/2024 confirms that 1 unit remains vacant and the other unit has been occupied since 22/04/2024. This confirms that the use as a residential dwelling / flat commenced on 22/04/2024. Class G only permits uses and Class G is the basis of this Lawful Development Certificate application. The commencement or completion date of operational works (as included within the accompanying Building Control Certificate) are therefore not relevant.
- The raising of the internal floor level by 15cm does not form part of the lawful development sought under this application.
- Prior Approval is no longer available as the works have been undertaken. Nevertheless, a Prior Approval application, had it been submitted prior to the works, would fail the Class G Conditions G.1 (b).

13. Recommendation

Lawful Development Certificate - Refused

14. Reasons for Refusal

1. LAWFUL DEVELOPMENT CERTIFICATE – REFUSED

The development fails to comply with Class G, Conditions G.1 Criterion (b) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as the development consists of a change of use of a building with a display window at ground floor level and would involve use in part as a flat. The subdivision of the building internally to create separate units with no windows does not remove the display window from the 'building' and would involve use in part as a flat.

Regardless of the timings of any building operations undertaken or completed, or the commencement of the use as Class C3 Residential Dwellings, the development fails to comply with Class G Conditions.

15. Informatives

Plans and Supporting Documents

The Local Planning Authority has resolved to refuse the application for the reason(s) set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (accounting for any updated or amended documents):

- Application form
- Copy of letter: to Enforcement Officer (LDC evidence) dated 19th June 2023

- Copy of letter: to Planning Services notice of the intended development for change of use from A1 retail to provide 1 x one bed flat and 1 x studio flat with retention of retail unit dated 10th June 2021 which will commence 14th June 2021
- Copy of: Building Regulation completion certificate: Creation of 2 No Flats and 2 No Shop Units Ref: CBC/21/55483/HQ by Completed Building Control Ltd dated 17/05/2023
- 1:1250 Red Lined Site Plan
- Copy of: Statutory Instrument 2021 No. 814 of The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021
- Copy of: Explanatory Memorandum to the Town and Country Planning (General Permitted Development Order 2021 No. 814
- Drawing number 1286/500 Floor Plans - Previously approved 19/00266/LUPROP, Stage 1 works, Stage 2 Works, and Stage 3 Works

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