

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	AN	14/05/2024
Team Leader authorisation / sign off:	ML	14/05/2024
Assistant Planner final checks and despatch:	ER	16/05/2024

Application: 24/00354/LUEX **Town / Parish:** Harwich Town Council

Applicant: Lord Robert Culff

Address: 22 - 24 Main Road Harwich Essex

Development: Application for Lawful Development Certificate for Existing Use or Development for commencement of 10/00812/FUL thereby preserving the permission.

1. Town / Parish Council

Harwich Town Council Harwich Town Council makes no objections to this application on the understanding that a structural survey is carried out to establish whether the building, which has remained in a near derelict condition for a number of years, is structurally sound and that enforcement action is taken by the planning authority to ensure the site is tidied and made safe so as not to interfere with the neighbouring property/ies. Furthermore, if the planning authority is minded to grant permission, Harwich Town council would request that all works are completed within 12 months.

2. Consultation Responses

N/a

3. Planning History

01/00167/FUL	Conversion of ground floor from 1 residential flat and 1 bed-sit unit to 2 self contained flats	Approved	15.03.2001
07/01929/FUL	Conversion of upper ground floor from 4 no. bed sits to 2 no. flats. Erection of 1.1m high balustrade to create balcony.	Refused	30.01.2008
08/00244/FUL	Conversion of upper ground floor from 4 no. bed sits to 2 no. flats.	Approved	08.04.2008
09/01310/FUL	Conversion of 1 no. one bedroom lower ground floor flat to 2 no. one bedroom lower ground floor flats and associated alterations and extension.	Refused	06.04.2010
10/00812/FUL	Single storey rear extension. Change to front elevation; existing doors to be replaced by windows and new porch with entrance door.	Approved	18.11.2010
12/01333/LUEX	Lawful development certificate for use as a House of Multiple Occupation ('Suis Generis' use).	Granted	18.02.2013

24/00354/LUEX Application for Lawful Development Current Certificate for Existing Use or Development for commencement of 10/00812/FUL thereby preserving the permission.

4. Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

5. Neighbourhood Plans

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

There is currently no Neighbourhood Plan for this area.

6. Relevant Policies / Government Guidance

N/a

7. Officer Appraisal (including Site Description and Proposal)

Site Description

The application site comprises a vacant mid terrace four storey property which is comprised of a mixture of flats and bedsit rooms as established by 12/01333/LUEX. The property is in a state of disrepair having been long term vacant.

Proposal

In this case the applicant is seeking to confirm that development was carried out in accordance with condition 1 of 10/00812/FUL which required development to commence within three years of the date of that planning permission i.e. by 18/11/2013. 10/00812/FUL approved: 'Single storey rear extension. Change to front elevation; existing doors to be replaced by windows and new porch with entrance door.'

There were only two conditions on that planning permission with condition 2 confirming the approved plans: drawing numbers 2626/TP/01 and 2626/TP/02 as received 9th November 2010. To implement the permission and preserve it in perpetuity the applicant therefore solely needed to make a material start to the approved development by 18/11/2013. This application seeks confirmation that that has occurred.

Evidence provided

- The application form states concrete foundations were poured prior to the expiry date.

- Letter dated 29/02/2024 from the applicant's accountant setting out costs incurred at the site address. Relevant to the time period (i.e. from grant of permission 18/11/2010 to expiry date of permission 18/11/2013):

- August 2012 Structural design
- September 2012 Building Regs
- October 2012 Structural design
- October 2012 demolition of scaffolding
- November 2012 Muckaway
- November 2012 Construction drawings for building regs

- Receipt from Canvey Concrete Pumping Ltd dated 30/08/2012 at the site address for 6 square metres of concrete.

- Receipt from Collins skip hire dated 08/08/2012 at the site address for 8 yard skip.

- Receipt from Essex Recycling Limited dated 15/08/2012 at the site address for 1 load of Grab Away.

- Receipt from D.B. Concrete Limited dated 30/08/2012 at the site address for six bags of 20mm agg opc pump mix.

- Receipt from Collins skip hire dated 09/08/2012 at the site address for exchange of 8 yard skip.

Evidence sourced by case officer from planning/building control history files

- 12/01333/LUEX to confirm use as an HMO includes a plan produced by TDC (assumed to be from Housing) which states the basement "is in the process of being refurbished with planning permission."

- Building control record: 12/06649/MUL Single storey extensions and internal alterations to ground floor. Decision 05/11/2012: Rejected: Insufficient information deposited to enable the drawings to be determined as complying with the Building Regulations. Various dates have been input in the Inspections screen including commencement 11/09/2012, non-statutory inspections 24/10/2012 and 06/11/2012, drains 20/11/2012, 22/11/2012 and 27/11/2012, and work in progress 18/03/2013.

- 12/06649/MUL/A Single storey extensions and internal alterations to ground floor. Decision 04/01/2013: Rejected: Insufficient information deposited to enable the drawings to be determined as complying with the Building Regulations.

- Planning Enforcement records: 14/00285/UNTDY3 report dated 02/10/2014 refers to footings in the rear garden.

Assessment

The Planning Practice Guidance (PPG) explains that the statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act 1990, and that 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.

The PPG explains that 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.

In this instance, s192 is relevant, stating:

(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

The PPG also confirms: In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The approved plans show an existing 1-bedroom lower ground floor flat extended to the rear to provide a 3 bedroom lower ground floor flat. The evidence provided by the applicant indicates that the necessary materials for site clearance and construction of foundations were delivered to the site within the relevant time period. The evidence sourced from the planning, enforcement and particularly the building control files detailing inspections undertaken, evidence that works relating to the planning permission were commenced within the relevant time period.

Ecology and Biodiversity

General duty on all authorities

The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.

This development is subject to the general duty outlined above. An informative has been imposed strongly encouraging the applicant to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Therefore, the development on balance, with consideration of the impact of the development and baseline situation on site, is considered likely to conserve and enhance biodiversity interests.

Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. This excludes applications for Lawful Development Certificates, this proposal is not therefore applicable for Biodiversity Net Gain.

Conclusion: In accordance with the overarching duty outlined above, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

Representations

Harwich Town Council comments are detailed in full above. In relation to their concerns regarding the structural condition of the building, the grant of a lawful development certificate does not remove the need to comply with any other legal requirements such as the Building Regulations. Building regulations approval will be required for the proposed works.

In relation to their concerns about the untidy nature of the site it is agreed that the site is untidy but is not currently considered to be in such a condition that enforcement colleagues could consider

taking action. This issue has been raised with the applicant. If the site condition deteriorates further interested parties should approach our Planning Enforcement Team.

The Town Council also request that all works are completed within 12 months. This is outside our control. In demonstrating that the applicant has implemented the planning permission it is now preserved in perpetuity. However as discussed above if the site becomes particularly untidy the enforcement team can consider action to require the applicant to tidy the site.

No other representations have been received.

Conclusion

The evidence sourced from the planning, enforcement and particularly the building control files detailing inspections undertaken, evidence that works relating to the planning permission were commenced within the relevant time period as claimed by the applicant. This lawful use certificate is therefore granted.

8. Recommendation

Lawful Use Certificate Granted

9. Reason to Grant Certificate

PROPOSED BUILDING OPERATIONS - LAWFUL

The material operations associated with planning permission reference 10/00812/FUL comprising of the commencement of foundations have been initiated prior to the expiry of the planning application deadline.

As such the Local Planning Authority is satisfied that planning permission 10/00812/FUL has been lawfully implemented within the required timescale and that a Certificate of Lawful Existing Use should therefore be granted in accordance with Section 192 of the Town and Country Planning Act. The development is considered to be lawful.

10. Informatives

In accordance with the Council's general duty to conserve and enhance biodiversity, you are strongly encouraged to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Suggested enhancements could include:
<https://www.rhs.org.uk/wildlife/in-the-garden/encourage-wildlife-to-your-garden>

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected

characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

12. Notification of Decision

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