

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		JJ	11/07/2024
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		AN	11/07/24
Assistant Planner final checks and despatch:		ER	11/07/2024

Application: 24/00576/LUPROP **Town / Parish:** Clacton Non Parished

Applicant: Mr Paul Newman

Address: 234 St Johns Road Clacton On Sea Essex

Development: Application for Lawful Development Certificate for Proposed Use or Development to construct a garden room to rear garden.

1. Town / Parish Council

Clacton Non Parished

2. Consultation Responses

N/A

3. Planning History

06/00392/FUL	New 2 bed bungalow	Refused	28.04.2006
07/00241/FUL	Front garden wall.	Refused	10.04.2007
07/01130/FUL	Single storey side/rear extension.	Approved	30.08.2007
07/01257/FUL	Retention of boundary walls and gates.	Refused	12.09.2007
24/00576/LUPRO P	Application for Lawful Development Certificate for Proposed Use or Development to construct a garden room to rear garden.	Current	

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>

6. Relevant Policies / Government Guidance

Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class E.

7. Officer Appraisal (including Site Description and Proposal)

Application Site

The application site comprises of a one and a half storey detached bungalow located to the North of St Johns Road. The site is within the Settlement Development Boundary.

Proposal

The application seeks a Lawful Development Certificate for the proposed development of a detached outbuilding stated for use as a granny annex to be used by owner and close relatives.

A lawful use certificate is, 'a certificate issued by a local planning authority, on application, stating that an existing (LDC 191) or proposed use (LDC 192), or other forms of development, can be considered as lawful for planning purposes'. Main considerations are;

- Planning History;
- General Permitted Development Order
- Conclusion.

Planning History

There is no planning history for the property restricting permitted development rights; therefore, these rights for the property still exist.

Permitted Development

Class E - The provision within the curtilage of the dwellinghouse of-

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

E.1 Development is not permitted as a result of the works if-	Caught By Criterion?
(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);	N
(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);	N

(c) any part of the building enclosure pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;	N
(d) the building would have more than one storey;	N
(e) the height of the building, enclosure or container would exceed – (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse or; (iii) 3 metres in any other case;	N Y N
(f) the height of the eaves of the building would exceed 2.5 metres	Y
(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;	N
(h) it would include the construction or provision of a veranda, balcony or raised platform;	N
(i) it relates to a dwelling or a microwave antenna; or	N
(j) the capacity of the container would exceed 3,500 litres.	N

E.2 In the case of any land within the curtilage of the dwellinghouse which is within – (a) a World Heritage Site, (b) a National Park, (c) an area of outstanding natural beauty, Or (d) the Broads.	N/A
development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.	

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land , development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwelling house and the boundary of the curtilage of the dwellinghouse.	N/A
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Other: Have permitted development rights been removed by way of a condition? Application number and condition;	NO
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Planning Permission required?	YES
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Reasons why permission required: The application is for the proposed construction of a garden room to the rear of the garden. This will be used as an annex to the main property. The proposal must meet the requirements of Class E of Part 1 of Schedule 2 of the General Permitted Development Order. This order states that:
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(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure;

The proposal is for an outbuilding to be used as a large annexe containing two bedrooms, a lounge, bathroom and kitchen. The scale of self-contained accommodation proposed is considered akin to a separate dwelling and would not be incidental to the existing dwelling contrary to Class E (a).

The order also states:

(e) the height of the building, enclosure or container would exceed –
(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse

(f) the height of the eaves of the building would exceed 2.5 metres

The proposed building has an overall height of 2.8 metres and is located 1 metre from the boundary. As the proposal exceeds 2.5 metres in height and is within 2 metres of the boundary this is contrary to Class E (e) (ii) the roof is also a flat roof and the eaves exceed 2.5 metres in height this is contrary to Class E (f) planning permission is required.

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 would be imposed on any approval 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

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.

Protected Species

In accordance with Natural England’s standing advice the proposed development site and surrounding habitat have been assessed for potential impacts on protected species. It is considered that the proposal is unlikely to adversely impact upon protected species or habitats.

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.

Conclusion

The proposal comprises works which require planning permission. The application for a certificate of Lawfulness of Proposed development is therefore refused.

8. Recommendation

Lawful Use / Development Refused

9. Reasons for Refusal

1. The proposal comprises a large annex containing two bedrooms, a lounge, bathroom and kitchen. The scale of self-contained accommodation proposed is considered akin to a separate dwelling and would not be incidental to the existing dwelling contrary to Class E (a) of Part 1 of Schedule 2 of the General Permitted Development Order. The application for a certificate of Lawfulness of Proposed use/development is therefore refused.
2. The proposed building exceeds the height of 2.5 metres and is within 2 metres of the boundary, contrary to Class E (e) (ii) of Part 1 of Schedule 2 of the General Permitted Development Order. The application for a certificate of Lawfulness of Proposed use / development is therefore refused.
3. The eaves of the proposed building exceed 2.5 metres in height, contrary to Class E (f) of Part 1 of Schedule 2 of the General Permitted Development Order. The application for a certificate of Lawfulness of Proposed use / development is therefore refused.

10. 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):

Existing and Proposed Block Plans - Rec'd 09.05.2024
Proposed Floor Plan and Front Elevation - Rec'd 09.05.2024
Proposed Roof Plan and Elevations - Rec'd 09.05.2024
Site Plan - Rec'd 17.05.2024

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