

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		OA	12.11.24
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		AN	12/11/24
Assistant Planner final checks and despatch:		ER	13/11/2024

Application: 24/01432/COUNOT **Town / Parish:** Clacton Non Parished

Applicant: Penny - Penny Investments Ltd

Address: 161 Old Road Clacton On Sea Essex

Development: Prior Approval Application under Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of a commercial unit (Use Class E) to a residential (one bedroom) C3 dwelling unit.

1. Town / Parish Council

Clacton Non-Parished N/A

2. Consultation Responses

Environmental Protection 03.10.2024 With reference to the above application, please see below for comments from the EP Team:

Construction Activities: In order to minimise potential nuisance caused by demolition/construction works, Environmental Protection recommend that the following below is conditioned;

- No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.
- No materials produced as a result of the site development or clearance shall be burned on site.
- No dust emissions should leave the boundary of the site

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

REASON: to protect the amenity of nearby residential premises

The information submitted with the application has been assessed by the Highway Authority and conclusions reached based on a desktop study on the information submitted with the application. No site visit was undertaken in conjunction with this planning application. It is noted that the proposed conversion does not include any external alterations and no new or altered access or parking provision is proposed as part of this application. The conversion into a one-bed residential unit would involve considerably less activity than the previous use of the premises. Owing to the sites central location the proposal has a number of key facilities and amenities all within walking distance and falls within a primary shopping area, the location is close to existing public transport facilities that offer numerous bus routes that run through the centre of the town including the Railway Station located to the east of the site; considering these factors, the Highway Authority would not deem the introduction of the proposal at this location to have a severe impact:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. The powered two-wheeler/cycle parking facilities as shown on the approved plan are to be provided prior to the first occupation of the development and retained at all times.

Reason: To ensure appropriate powered two-wheeler and bicycle parking is provided in accordance with Policy DM8.

2. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack, for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

3. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011 and National Planning Policy Framework 2023.

Informative:

i) All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

ii) In main urban areas with frequent and extensive public transport, cycling and walking links, the EPOA Parking Standards recommend that a reduced parking standard provision may be applied to residential developments. A reduced parking standard provision level can be applied to this proposal as it is located very close to regular public transport services and public car parking facilities.

iii) The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

iv) Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the Essex Climate Action Commission proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the Essex Developers' Group Climate Charter [2022] and to view the advice contained in the Essex Design Guide. Climate Action Advice guides for residents, businesses and schools are also available.

3. **Planning History**

92/00556/FUL	Change of use from glass suppliers to auction rooms	Approved	30.06.1992
13/00789/FUL	Conversion of retail building to form four studio apartments.	Refused	19.08.2013
13/01180/FUL	Change of use from sui generis and subdivision to form four A1 retail units.	Approved	27.11.2013
14/01834/FUL	Conversion of premises into four dwelling units.	Approved	06.02.2015
24/01432/COUNO T	Prior Approval Application under Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of a shop (Use Class E(a)) to a residential (one bedroom) C3 dwelling unit.	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.

In relation to housing supply:

The Framework requires Councils to significantly boost the supply of homes to meet the District's housing need. However, the revised Framework, published on 19th December 2023, sets out in Paragraph 76 that (for applications made on or after the date of publication of this version of the Framework) local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:

- their adopted plan is less than five years old; and
- that adopted plan identified at least a five-year supply of specific, deliverable sites at the time that its examination concluded.

The adopted Local Plan meets these criteria.

Notwithstanding this updated provision, the Council will continue to demonstrate an updated supply of specific deliverable sites within its Strategic Housing Land Availability Assessment (SHLAA), which is published annually. The most recent SHLAA was published by the Council in July 2024, and demonstrates a 6.26-year supply of deliverable housing sites against the annual requirement of 550 dwellings per annum set out within the adopted Local Plan, plus a 5% buffer to ensure choice and competition in the market. (The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>)

On 19th December 2023 the Government published the Housing Delivery Test (HDT) 2022 measurement. Against a requirement for 1,420 homes for 2019-2022, the total number of homes delivered was 2,207. The Council's HDT 2022 measurement was therefore 155%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to decisions relating to new housing development.

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 no Neighbourhood Plan in place for this area.

6. Legislation

Town and Country Planning (General Permitted Development) (England) Order 2015.

7. Officer Appraisal

Application Site

The site is located to the west of Old Road, Clacton-on-Sea within the defined settlement boundary and the Old Road Neighbourhood Centre. The site is also within a priority area for regeneration. The ground floor consists of a vacant unit which ceased operation on 10th May 2024. The first floor is not subject of this application.

Planning History

The building was granted planning permission for retail and office use in May 1962 through planning permission CLA-149-62 having previously been residential.

Planning permissions 13/00789/FUL, 13/01180/FUL & 14/01834/FUL all relate to the building at the rear.

Proposal

The most recent use of the site was as a dog groomers considered to be classed as **E(c)(iii)** Other appropriate services in a commercial, business or service locality. Streetview shows the use as a dog groomers has been in place since October 2014. The proposal is to convert this to a residential (one bedroom C3 dwelling unit). This will now be assessed under the Class MA legislation below.

Assessment

Class MA – Commercial, Business and Service uses to Dwellinghouses

Class MA encompasses development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

(1) Development is not permitted by Class MA —

(b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

The use of the building is considered to be as a former dog groomers which complies as Class E.

(d) if land covered by, or within the curtilage of, the building—

- (i) is or forms part of a site of special scientific interest;*
- (ii) is or forms part of a listed building or land within its curtilage;*
- (iii) is or forms part of a scheduled monument or land within its curtilage;*
- (iv) is or forms part of a safety hazard area; or*
- (v) is or forms part of a military explosives storage area;*

The building subject to this application is not Listed and the site is not affected by any of the above clauses and therefore the proposals complies.

(e) if the building is within—

- (i) an area of outstanding natural beauty;*
- (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;*
- (iii) the Broads;*
- (iv) a National Park; or*
- (v) a World Heritage Site;*

The building is not within any of the above designated areas, therefore the proposal complies.

(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

The site is not occupied under an agricultural tenancy; therefore the proposal complies.

(g) before 1 August 2022, if—

- (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and*
- (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.*

The proposed development is of a description falling within Class O immediately before 1st August 2021, but no article 4 direction was in place which would have prevented the conversion. Therefore, the proposal complies.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—

(a) the following classes of the Schedule as it had effect before 1st September 2020—

- (i) Class A1 (shops);*
- (ii) Class A2 (financial and professional services);*
- (iii) Class A3 (food and drink);*
- (iv) Class B1 (business);*
- (v) Class D1(a) (non-residential institutions – medical or health services);*
- (vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);*
- (vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;*

(b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

Conditions

MA.2.— *(1) Development under Class MA is permitted subject to the following conditions.*

(2) Before beginning development under Class MA, 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—

(a) transport impacts of the development, particularly to ensure safe site access;

The application involves no external alterations. The proposal will result in the addition of one residential dwelling. Essex County Council Highways have been consulted on this application. They state that owing to the sites central location the proposal has a number of key facilities and amenities all within walking distance and falls within a primary shopping area, the location is close to existing public transport facilities that offer numerous bus routes that run through the centre of the town including the Railway Station located to the east of the site; considering these factors, the Highway Authority would not deem the introduction of the proposal at this location to have a severe impact. Therefore the proposals are acceptable against this criteria subject to conditions.

(b) contamination risks in relation to the building;

There are no known contamination risks in relation to the site.

(c) flooding risks in relation to the building;

The site falls within Flood Zone 1 (FZ1) according to the Government's Flood Risk Map for Flooding but lies within the Clacton Critical Drainage Area (CDA) as shown in the Clacton Surface Water Management Plan (CSWMP) where it should be noted that the CSWMP updates the relevant SFRA for the area in this respect. However the development is purely for a conversion of an existing building and will not see any intensification of the site in respect of surface water flooding. The proposals comply.

(d) impacts of noise from commercial premises on the intended occupiers of the development;

The site is within a mixed use residential/commercial area and therefore it is considered that existing noise in the area would not be so significant to be detrimental to future occupiers. The Council's Environmental Protection team have been consulted on this application. They have no objection subject to a sufficient Construction Method Statement being provided prior to commencement.

(e) where—

(i) the building is located in a conservation area, and

(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

The site is not in a conservation area and therefore the proposals comply.

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;

Windows are provided to the kitchen and living areas for the flat and the bedroom to the front. No windows are included within the shower room however this is not considered a habitable room according to Part B of the building regulations approved document. The proposal therefore complies.

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

The site is not located within an area that is considered to be important for general or heavy industry waste management, storage and distribution, or a mix of such uses.

(h) where the development involves the loss of services provided by—

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost.

The development does not involve the loss of services provided by a registered nursery or health centre.

(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

The development does not meet the criteria for the fire risk condition.

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

The application was submitted after 1 August 2021.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph.

Considered to have been adhered to.

Other Considerations

No letters of representation have been submitted on this Prior Approval.

Conclusion

The proposal is consistent with the above mentioned Order and therefore the prior approval of the Local Planning Authority is not required.

Habitats, Protected Species and Biodiversity Enhancement

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

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 Prior Approvals, this proposal is for prior approval and therefore not 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.

8. **Recommendation**

Prior Approval not required

9. **Conditions / Reasons for Refusal**

- 1 **CONDITION:** Development under Class MA is permitted subject to the condition that development must be completed within a period of 3 years starting with the prior approval date.

 REASON: In order to comply with Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 2 **CONDITION:** Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order (as amended) and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

 REASON: In the interest of protecting residential amenity
- 3 **CONDITION:** No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.

 REASON: Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).
- 4 **CONDITION:** No materials produced as a result of the site development or clearance shall be burned on site.

 REASON: Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).
- 5 **CONDITION:** Areas within the curtilage of the site for the purpose of loading / unloading / reception and storage of building materials and manoeuvring of all vehicles, including construction traffic shall be provided clear of the highway.

 REASON: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety.

10. **Informatives**

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Highways Informative

It is strongly recommended that cycle parking should be provided in accordance with the EPOA Parking Standards. The facility should be secure, convenient, always covered and provided prior to first occupation and retained.

Biodiversity Enhancements Informative

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:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO
Has there been a declaration of interest made on this application? Please use the below options as required. No Declarations Of Interest Made / Declaration of Interest Made by...(specify who and why).	YES	NO