

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Planning Officer recommendation:	CC	02.05.2025
EIA Development - Notify Planning Casework Unit of Decision:	N/A	
Pre-commencement condition agreement:	N/A	
Team Leader authorisation / sign off:	AN	02/05/25
Assistant Planner final checks and despatch:	ER	02/05/2025

Application: 25/00329/LUEX **Town / Parish:** Clacton Non Parished

Applicant: Houghton Homes Group Ltd

Address: 108B and C Old Road Clacton On Sea Essex

Development: Application for Lawful Development Certificate for Existing Use or Development for two residential flats.

1. Town / Parish Council

Clacton non-parished No comments / consultations required

2. Consultation Responses

None required

3. Planning History

None relevant to No. 108B and No. 108C Old Road.

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. Paragraph 78 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 5% to ensure choice and competition in the market for land, unless the Housing Delivery Test (HDT) demonstrates significant under delivery of housing over the previous 3 years - in which case a higher buffer is required.

On 12th December 2024 the Government published the Housing Delivery Test: 2023 measurement. Against a requirement for 1,466 homes for 2020-2023, the total number of homes delivered was 2,343. The Council's HDT 2023 measurement was therefore 160%, and a buffer of 5% is to be used when calculating the Council's five year land supply position.

The Council demonstrates its supply of specific deliverable sites within the 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. The SHLAA can be viewed on the Council's website: <https://www.tendringdc.gov.uk/content/monitoring-and-shlaa>

As a result, the 'titled 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>

At the time of writing, there are no draft or adopted neighbourhood plans relevant to this site.

6. Relevant Policies / Government Guidance

Not Applicable

7. Officer Appraisal (including Site Description and Proposal)

Application Site

The application site currently serves two residential flats located towards the east of Old Road, at the rear of No. 108 Old Road. The site falls within the settlement development boundary of Clacton on Sea. The site is also located within the Town centre of Clacton on Sea and is a priority area for regeneration.

Proposal

This application form confirms the application seeks the granting of a Lawful Development Certificate (LDC) to confirm the existing development of two one bedroom flats (108B and 108C) have been in use beginning within the last ten years. The exact date is unknown.

Main Considerations

The National Planning Practice Guidance explains the process for obtaining a lawful development certificate and how the application should be determined. The key points being;

- 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 (Paragraph:006 Reference ID: 17c-006-20140306)
- A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any

stage in this particular application or appeal process (Paragraph: 009 Reference ID: 17c-009-20140306).

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 Submission

The case being made is that the use of both flats (108B and 108C Old Road) began within the last 10 years, the applicant has purchased the properties without the knowledge nor information that neither flat has planning permission. The exact date the development / use of the flats began is unknown.

The supporting submission includes the following;

- Information provided within the application form
- Site plan
- Existing Floor Plans
- Existing Block Plan
- Flood Map

No information / evidence has been provided to show the date the use of the flats began, or that it began within the last 10 years as alleged, for example council tax letters and/or bills to the individual addresses covering the full time period, sworn statements of previous occupiers, receipts for work undertaken for the residential conversion etc. Nor does the application demonstrate the use / development of the flats was in continuous use for over four years before the 25th April 2024 (when the time period increased to ten years).

A further requirement for the issue of a Certificate is that the Local Planning Authority has not taken enforcement action against that use or uses within the 10/4 year period. There is no current outstanding enforcement notice on the property.

The application only relates to the use - it does not imply the original building has been extended or modified externally in any way to accommodate the two flats. Officers are therefore unable to use google earth imagery to suggest when the use of the flats began.

Officers have also been unable to gain any response from Tendring District Council's Council Tax department for evidence of payments which could assist in demonstrating the use of the two flats as residential accommodation over a certain time period.

There is no planning history relevant to the application site to further evidence when the change of use first occurred. Any history officers have found relating to the site, relates to. No.108 Old Road only, with no information in any submitted plans for the following applications showing the use of no. 108B and 108C;

90/00368/FUL	Approved	New Shop Front
91/00166/FUL	Approved	Change of use from first floor offices to flats
02/01164/FUL	Approved	Fitting of new Shop Front
04/00288/FUL	Approved	Change of use from Class A1 to A2
10/00744/FUL	Approved	Change of use of vacant shop Clacton Reinforced Paving to a tattoo shop.

Therefore, due to the lack of evidence to demonstrate the use of the two flats as residential properties for the required time period, it is recommended that a Lawful Use Certificate is refused.

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.

Representations

Clacton is non-parished and therefore no comments / consultations are required.

No other letters of representation have been received.

8. Recommendation

Lawful Use / Development Refused

9. Reasons for Refusal

1. The submitted information does not evidence the claimed use of the two flats (108B and 108C Old Road) has been for a continuous period of more than 10 years before the date of this application, or more than four years before the 25th April 2024.

Therefore, given the sparsity of the evidence provided to demonstrate an established existing use whereby it would be immune from enforcement action, the application is refused.

10. Informatives

N/A

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
Has there been a declaration of interest made on this application?		NO