Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: **AB/76/17/CLE**

LOCATION: 3 Stewards Rise
Arundel

PROPOSAL: Application for Lawful Development Certificate for an existing development to change the two existing flat windows on the rear of the first floor dormer with two bay windows.

DESCRIPTION OF APPLICATION

The application is for a Lawful Development Certificate for an existing development - for the change in the style of the dormer windows and projection on the rear elevation from a flat elevation to a half hexagonal bay shape projecting 0.5m from the rear elevation of the dormer and comprising 3 vertical sections with a depth of 1.55m.

DESCRIPTION OF SITE AND SURROUNDINGS

Site Characteristics: Semi - detached bungalow with flat roofed extension to rear and flat roofed dormer in rear roof slope with 2 bay windows have a half hexagonal configuration. The property has mottled brickwork, a pan tiled roof with white window frames.

Character of Locality: Residential cul-de-sac comprising chalet and bungalows of various styles and designs

RELEVANT SITE HISTORY

AB/10/10/	Rear and side extension comprising of rear extension for living room, side extension for attached garage, kitchen and utility room. Also conversion of existing attic space into a bedroom with installation of front and rear velux type roof windows and installation of a new velux type roof window at rear over existing stairs.	ApproveConditionally 31-03-2010
AB/61/10/NMA	Application for a non-material amendment following a grant of planning permission AB/10/10/ for realignment of north kitchen wall in line with approved north garage wall, with additional/similar alignment of south kitchen wall (slight decrease in floor area of extension)	Approve 07-07-2010

TR/1/57	Detailed plans for pair of bungalows	Approve 13-05-1957
TR/5/85	Formation of two additional bedrooms and a shower room at first floor level and 2 dormer windows	ApproveConditionally 20-03-1985

The original flat fronted dormer windows were the subject of a building regulations submission ref TR/3/85/B.
AB/10/10 granted planning permission for a ground floor extension and included alterations to the size of the window openings in the dormer on the rear elevation at first floor. It did not include the installation of bay style windows or any restrictive conditions relating to changes to the windows or removal of permitted development rights.

REPRESENTATIONS

Representations received:

Arundel Town Council

No Objection
One objection - Living space in adjoining bungalow is overlooked. Film has been applied and the neighbours are grateful for its addition. It is requested that a condition is imposed to ensure privacy is maintained by ensuring the windows are permanently obscure glazed. It is understood that windows installed in 2010 can be enforced up to 10 years.

Comments on Representations received:

The impact of the windows on privacy is a material planning consideration, but it cannot be taken into account as part of this lawful development certificate which is a legal determination based on relevant evidence. The representations do not refute the assertion that the bay windows have existed for more than 4 years. A condition requiring permanent obscure glazing cannot be imposed on this lawful development certificate since it is not an application for planning permission.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor - I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

I rely on you to tell me of any evidence indicating otherwise.

In brief planning permissions refs TR/3/85/BR and AB/10/10 were obtained for works at the dwelling but additional works were added /executed when works commenced which weren't covered by that/those planning permissions
I haven't embarked on the necessary measurements but in any event the bay windows could be PD under the GPDO then in force in circa 2010

3.DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND NPPG GUIDANCE ON LAWFUL DEVELOPMENT CERTIFICATES[LDCs]

(1) Time: SS171 (1)-(3) and S191 TCPA 1990

The application is for operations so the time limit is 4 years under the above.
The time period is ie 4 years to date of the application.ie 26-5-13 to 26-5-17 with the works

being completed circa September 2010 -see application para 10

The evidence does satisfy this test.

I have at this date seen no contradictory evidence of this position. I explain why below.

(2) Sufficiency of Evidence: NPPG Guidance LDCs Part 3 Application and Determination

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 3 NPPG says that "..... if an LPA has no evidence itself ,nor any from others, to contradict or otherwise make the applicant's version less than probable , there is no good reason to refuse ....provided the applicant's evidence alone is sufficiently precise and unambiguous ..".

Para 3 in NPPG cited above and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity.

S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

There is no evidence of an extant enforceable Enforcement Notice issued and affecting the Land

The evidence analysis with comments is

Number Item of Evidence Comment
1 Application form This supplies information about chronology, events and works - it supplies enough information directly or by reference to enable a decision
2 Drawings
3 Estimates and invoices dated 1July 2010 I've seen the estimate on file but not the invoice also referred to on application para 8 so I suggest you seek a copy if there isn't an estimate supplied
Once received and it covers the point claimed then judged on balance of probability the claim is proved

In light of all the above and absent to any contradictory evidence judged on balance of probability the claim is proved

4.FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice .

5.TERMS

1. grant
2. identify precise land boundaries on plan for extent of use.

3. describe accommodation ie and works by reference to plans and drawings

Comments on Consultation responses:

Noted. The invoice is included in the application. It is dated 15-09-2017 and includes a hand written note saying 'paid' 17-09-2010.

LEGISLATIVE BACKGROUND

Principle
Section 191 to 195 Town & Country Planning Act 1990 and DOE Circular 10/97 Annex 8 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.
(i)What is judged on a balance of probability.
(ii)The onus of proof is on the applicant (and not the LPA) to adduce the evidence.
(iii)The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

Section 191 Town and Country Planning Act 1990 and Circular 10/97 Annexe 8
1.1 Time: SS171(1)-(3) and S191 Town and Country Planning Act 1990.

The relevant time period for this operation is 4 years. The time period is 28th June 2013 to 28th June 2017.

Assessment is based on site visit, plans, estimate and invoice from builder D.C.Hopkins & Sons.

CONCLUSIONS

The bay shaped dormer window openings were noted at the officer site visit. The application form states that the windows were installed in September 2010 and the invoice payment from the builder is dated 15-09-2010 which corroborates this assertion. Planning permission AB/10/10 included larger window dimensions in the existing dormer and was approved on 31-03-2010. It was subsequently amended by the change in flat window style approved under AB/61/10/NMA submitted on 03-06-2010 and subsequently approved in July 2010, which referred to new pvc double glazed flat windows. The development has been altered and was not constructed in accordance with rear elevation detailed and approved on that plan. The initial estimate reference 2707 was dated 19-05-2017 and the bay windows had a separate accepted estimate reference of 2733 dated 01-07-2010 which demonstrates that they were an additional consideration following the receipt of planning approval.
Based on the submitted drawings and evidence provided it is considered that on the balance of probability there is no contrary evidence to refuse the application. The development was carried out more than 4 years ago.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the 2 bay windows in the rear dormer had been installed for a continuous period of 4 years.

AB/76/17/CLE

FIRST SCHEDULE
As per the submitted Drawings :
Block and Location dated 27th June 2017
Site Plan Drawing No SR-7 REV 1 stamped SUBSTITUTE dated 25/2/2010
Original First Floor Plan dated 20-06-2017
As installed 2010 first floor dated 20-06-2017
Original rear elevation dated 20-06-2017
As installed 2010 rear elevation. dated 20-06-2017
2010 Elevations (sides) dated 27th June 2017
Original Elevations(sides) dated 27th June 2017

SECOND SCHEDULE
3 Stewards Rise, Arundel, West Sussex, BN18 9ER

EXTENT OF USE
Installation of 2 PVCu bay windows in rear dormer window serving a first floor bedroom which project 0.5m from the rear face of the dormer and comprise 3 vertical sections.



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