

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation**REF NO:** AL/10/12/CLE**LOCATION:** Evergreens
Level Mare Lane
Eastergate**PROPOSAL:** Application for a Lawful Development Certificate for an existing use - occupation by persons not employed in agriculture or forestry (non-compliance with condition 3 of application ref AL/65/91)**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	This is an application for a Certificate of Lawfulness for an existing use as a single dwelling house with persons not employed in agriculture. The applicant must provide evidence that the use has been established for ten continuous years.
SITE AREA	N/A
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	1m brick wall to the front with approximately 2 - 5m hedging above. Wrought iron gates. Fencing between house and access.
SITE CHARACTERISTICS	Large detached house to the front of the site. Drive through the centre of the site. Far side is a barn with hardstanding. Access goes through to a field gate where horses are kept.
CHARACTER OF LOCALITY	Some linear housing along Level Mare Lane. Close to the race course.

RELEVANT SITE HISTORY

AL/52/89	Temporary placement of a mobile home to serve horticultural holding	Approve Cond 22-11-1989
AL/83/90	Outline Application for agricultural dwelling to serve Evergreens Nursery horticultural holding	Refused 12-11-1990 Appeal: Withdrawn 14 02 1991

AL/30/91	Outline Application for agricultural dwelling to serve Evergreens Nursery agricultural holding.	Refused 12-08-1991
AL/65/91	Outline Application for agricultural dwelling (Resubmission following AL/30/91)	Approve Cond 15-01-1992
AL/39/92	Approval of reserved matters following AL/65/91 for proposed agricultural dwelling	Approve Cond 14-08-1992
AL/57/93	Approval of reserved matters following AL/65/91 for proposed agricultural dwelling	Approve 11-08-1993
AL/50/00/	First floor extension (over existing garage) to provide two bedrooms and a shower room	Approve Cond 03-08-2000

REPRESENTATIONS

Representations received:

Aldingbourne Parish Council

Whilst the Parish has no information to dispute the evidence provided by the applicant it has an objection to removal of the agricultural workers condition. It is important that the whole site and buildings upon it are only permitted in recognition of it being designated for agriculture or horticultural purposes.

Comments on Representations received:

This is not a planning application but a certificate of lawfulness of an existing use, therefore we have no powers to retain the restriction, if it is proved on the balance of probability, that the dwelling has been used by persons not employed or last employed in agriculture. The red edge is tight around the house and not the whole site.

CONSULTATIONS

Planning Solicitor

Parks and Landscapes

Consultations responses received:

Planning Solicitor:

Recommend Grant. The time period is 11th January 2002 - 11th January 2012. That is a period of ten years for a change of use to residential and operational works. The evidence satisfies the test - and there is no contradictory evidence. The evidence judged on a balance of probability and the tests of SS191 Town & Country Planning Act 1990 and Circular 10/97 Annex 8 time SS171 (1) - (3) Town and Country Planning Act 1990 is sufficient, precise and unambiguous.

Comments on Consultation responses:

Planning Solicitor:

Recommend Grant. The time period is 11th January 2002 - 11th January 2012. That is a period of ten years for a change of use to residential and operational works. The evidence satisfies the test - and there is no contradictory evidence. The evidence judged on a balance of probability and the tests of SS191 Town & Country Planning Act 1990 and Circular 10/97 Annex 8 time SS171 (1) - (3) Town and Country Planning Act 1990 is sufficient, precise and unambiguous.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

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.

- (i) which 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.

1. Assessment

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

Principles

Section 191 to 195 Town & Country Planning Act 1990 and Circular 10/97 Annex 8 SS171 (1) - (3) and S191:

The relevant time limit for this operation is ten years (11th January 2002 - 11th January 2012).

Evidence is judged on a balance of probability Para 8.12 - 8.22 is considered to be sufficient.

Evidence:

1. Statutory Declaration of Tracey Phyllis Gwynn Hodgkin declares that she owned the site between 1989 and August 2005 and constructed the house in 1994. Between February 2004 and August 2005, the house was rented out to the Managing Director of Rolls Royce. The nursery business run on the two hectares of land ceased trading in 1996, and she became self employed in property letting G & T Properties.

2. Statutory Declaration of Ian John Stent who has resided at the property since 30th August 2005. He is the Director of Ultrastone International Limited which imports and sells pet and aquatic products. Beverley Stent, his wife is also a Director of the Company. At no point since taking up residence in the house has either Mr. or Mrs. Stent been employed in agriculture. The only other occupants that have resided at the house are the couple's children, one of whom took over Directorship of the Company when the applicant became seriously ill. The only son still living at home is in full-time education.

3. District Council Evidence - the records show that a temporary agricultural workers dwelling was approved AL/52/89 and a permanent dwelling approved AL/65/91. It is clear from the site visit that the horticultural business has ceased, glass houses have been removed.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

The applicant has provided precise and clear evidence that the dwelling has been used without any residents being employed or formerly employed in agriculture for ten years continuously. It is therefore, recommended that consent is granted.

RECOMMENDATION

APPROVE

- 1 The Arun District Council hereby certify that on the 11th January 2012 the use hereby described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged boldly on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use as a single dwelling house has been continuous in excess of ten years in non compliance with the restrictive condition that the residents shall be employed or last employed in agriculture.

- 2 Use of the dwelling show hatched on the attached plan at Evergreens, Level Mare Lane, Eastergate, as a single dwelling house without compliance with condition number 3 of planning permission reference AL/65/91.
- 3 The extent of the use is as a single dwelling house.
- 4 Evergreens, Level Mare Lane, Eastergate which is shown on the plan to this certificate as hatched within the area edged bodily in black.