

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

REF NO: AL/117/17/CLE

LOCATION: Two Trees
Little Heath Road
Fontwell

PROPOSAL: Application for a Lawful Development Certificate for an existing use - 1No. dwelling.

DESCRIPTION OF APPLICATION

This application relates to a Nissan hut type structure which, as stated above, is located in the north west corner of the application site at the junction of Littleheath Road and Duke's Road. This measures approximately 9.5m in length and 3.5m in width and has a curved roof as is common to nissan type buildings. Vertical walls are 2.6m in height and overall height is 4m. The building has 3 windows and also a rear door.

Evidence in support of this application is as set out in the Conclusions section of this report.

DESCRIPTION OF SITE AND SURROUNDINGS

The application building is a Nissan hut type building which is located in the north west corner of the application site at the junction of Littleheath Road and Duke's Road. It is close to and parallel with Littleheath Road. The site is screened on the west and north east boundaries by wooden panel fencing of approximately 2m in height. This, together with planting outside the site boundary significantly screens the building, although glimpses of the upper part of it are seen from Littleheath Road. Externally, the building has a run down and semi-derelict appearance. The building has a metal roof and walls. Internally, there are 3 areas which the application advises are used as 2 bedrooms and a kitchen.

To the south of the application building is a 3 bedroom single storey dwelling. To the south east is a further dwelling. The application building is located on the northwest fringe of the application site as edged red in the application. This is a semi-rural location to the north of the A27. There are residential plots in the locality, but generally, development is low density and low key.

RELEVANT SITE HISTORY

AL/51/95	Resiting of entrance door from rear to front elevation also additional accommodation	ApproveConditionally 06-10-1995
AL/22/50	Outline application for bungalow	Approve 18-10-1950
AL/22/50/A	Bungalow and garage	Approve

		07-01-1953
AL/22/50/C	Amended block plan for bungalow and garage	Approve 04-03-1953
AL/22/50/D	Amended roof plan for bungalow under construction	Approve 14-10-1953

Noted.

REPRESENTATIONS

Representations received:

2 separate objections have been received from occupiers in the locality as follows:

1 - I have lived adjacent to the applicants' property (Sundown) since 2001. For the sake of clarity, my understanding is the building in question was formerly erected solely as temporary accommodation several decades ago(it was I believe a Nissen hut). I have never been aware that this hut has been used as formal accommodation fit for use as a permanent domestic dwelling. Also, I have never been aware of the name 'Two Trees', as referred to by the applicants', and therefore surmise it is not on the Council Tax register as a recognised individual dwelling. To my knowledge the hut is not serviced by a sewerage system or cesspit and has no provision for domestic heating. Also, I believe it is lacking its own mains water supply. Portsmouth Water and Southern Water should be able to provide details to verify this. It is on these grounds that I hereby formally object to this application.

2 - Our garden backs onto the land belonging to the applicant. Since we have lived here as far as we knew the building in question was just an old out building which the applicant quite often burns his garden waste near. Hence we thought it was just a workshop/shed? The postman and neighbours had no knowledge of any property by the name of "2 trees" when we asked. Is the property to be converted for permanent use? The plans provided seem to suggest that this surely cannot be. Is this a stepping stone for the applicant to develop the site or Dell which our property overlooks? For a sudden application notice to appear we have to object with the information provided.

Comments on Representations received:

Objections noted and these are taken into account in considering this application and reaching a conclusion.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Aldingbourne Parish Council has been consulted but no comments have been received during the period for representations to be received..

Comments on Consultation responses:

Noted.

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.

PRINCIPLE

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's 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; and
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

Section S171(1)-(3) and S191 TCPA 1990. The change of use to a single dwelling is 4 years.

CONCLUSIONS

THE APPLICATION/EVIDENCE

The application as submitted includes the following:

1. A Conveyance dated 12 July 1957 for land which includes to application site and the Nissan type hut. A plan attached to this indicates the outline of a building in the same location as the Nissan hut although is not specific as to what the building is or what its use is.
2. A copy of an amended site and block plan for AL/22/50A for the existing bungalow and garage, this indicates the outline of a building in the same location as the Nissan hut although is not specific as to what the building is or what its use is.
3. Copies of the planning application for and decision notice for AL/22/50A for the existing bungalow and garage. Section 6 of the application form refers to the purpose for which the land/or buildings are now used (at the time of application) as being 'Part of existing dwelling house'.
4. A drawing indicating the application building.
5. A site location plan with red edge.

The form for this current application advises that the building has been a, 'Residential Nissan hut dwelling on site since before 1953'. It also advises that, 'The existing site use is for a residential dwellings first used prior to 1953 on a large site in Fontwell. The building is currently used alongside the new dwelling that was built alongside it in 1953. It has its own electrical supply. The access to it is from the driveway of the property Sundown in Littleheath Road.

The application form states that the reason why and LDC ought to be granted is. 'Because this was referred to as a dwelling on a planning application for a new dwelling on the site in 1953'.

The application is not accompanied by evidence in the form of affidavits, Council Tax/Rating records, Utility Bills or any other material.

CONCLUSION(S)

The application is not accompanied by supporting material that demonstrates continuous residential occupancy of the nissan hut to which the application relates during the period since the erection and occupancy the new dwelling permitted under AL/22/50A.

In addition, there is nothing in the supporting application material to indicate an intention to erect the new dwelling under AL/22/50/A as something in addition to the nissan hut. The reasonable expectation would be that the intention was to cease use of the nissan hut as a dwelling and to occupy the new dwelling.

No proof has been submitted that occupancy as a dwelling was not abandoned in favour of occupancy of the new dwelling. There is no supporting evidence of continued occupancy of the nissan hut as a dwelling and it has every appearance of having become run down and not having been unoccupied as a dwelling, due to its appearance and condition. The mere existence of electrical connection is not proof of occupancy as a dwelling.

There is a complete absence of supporting application material in the form in the form of affidavits, Council Tax/Rating records, Utility Bills or any other material.

There is also no evidence of occupancy as a dwelling for a continuous period of 4 years or more.

The balance of probability that the nissan hut has been used continuously for a period of 4 or more years and that the use as a dwelling was not abandoned has not been proven.

The Certificate is therefore recommended for refusal.

RECOMMENDATION

REFUSE

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 not lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the use of the property as a private dwelling had not demonstrated not to have been abandoned, nor had the use of the property as a dwelling been demonstrated to have been continuous for a period of not less than 4 years.

FIRST SCHEDULE

Use of nissan hut type building as residential dwelling at site referred to as Two Trees, Littleheath Road, Fontwell, West Sussex BN18 0SR

SECOND SCHEDULE

Nissan hut type building known as Two Trees, Little Heath Road, Fontwell BN18 0SR

EXTENT OF USE

The existing single storey nissan hut type building located in the north west corner of the application site at the junction of Littleheath Road and Duke's Road, Fontwell.



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