

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/11/18/CLE

LOCATION: Jacamar
Sack Lane
Aldingbourne

PROPOSAL: Continuance of use without compliance with condition 3 imposed under AL/40/88/ relating to occupancy.

DESCRIPTION OF APPLICATION

Continuance of use without compliance with condition 3 imposed under AL/40/88/ relating to occupancy.

DESCRIPTION OF SITE AND SURROUNDINGS

Detached dwelling in the countryside.

RELEVANT SITE HISTORY

Agricultural occupancy condition attached to approval for dwelling under conditional approval of AL/40/88.

REPRESENTATIONS

Representations received:

Aldingbourne Parish Council

No objection.

Whilst the Parish Council does not have any objection it would like to be advised of any similar tied agricultural dwellings in the Parish so that these could be protected for the community in future.

Comments on Representations received:

Comments noted.

The planning department does not have the resources to carry out the wishes of the Parish. Details of which properties are agricultural dwellings are publicly available.

CONSULTATIONS

Consultations responses received:

Legal

Am satisfied of the lawfulness at the time of the application of the use taking into account the facts of the case and relevant planning law.

I confirm that the evidence of the annual tenancy agreements from 2007 -2018, together with the declarations from the owner and tenant, verify the information included in the application

and show no concealment of the breach.

Comments on Consultation responses:

Comments 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 of the land and house to private residence not in compliance with the agricultural condition to be exempt from planning control is 10 years.

CONCLUSIONS

The evidence submitted provides significant proof that the use of the land and building as a private dwellinghouse and garden not inhabited by persons working in agricultural in line with the agricultural condition of AL/40/88 has been subsisting for more than 10 years and the LPA can no longer take enforcement action against the development in line with section 171B of the Town and Country Planning Act. 1990 (as amended).

The certificate is recommended for approval.

RECOMMENDATION

PP NOT REQUIRED

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 site has been used as a private dwelling house and garden not inhabited by persons working in agricultural in line with the agricultural condition of AL/40/88 for a continuous period of 10 years.

FIRST SCHEDULE

Continuance of use of Jacamar, Sack Lane, Aldingbourne PO22 9PE without compliance with condition 3 imposed under AL/40/88/ relating to occupancy.

SECOND SCHEDULE

Jacamar, Sack Lane, Aldingbourne PO22 9PE

EXTENT OF USE

Continuance of use without compliance with condition 3 imposed under AL/40/88/ stating that:

'The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in section 290(1) of the Town and Country Planning Act 1971, or in forestry, including any dependants of such a person residing with him or her, or a widow or widower of such a person.'



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