

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/79/17/CLE

LOCATION: Unit A
The Paddock
Northfields Lane Aldingbourne

PROPOSAL: Application for Certificate of Lawfulness for an Existing Use - Use of building as a dwellinghouse

DESCRIPTION OF APPLICATION

This is a Certificate of Lawfulness application which seeks to confirm that the unit in question is a building and not a mobile home and following a period of 4 years continuous residential use, now has full lawful residential status.

DESCRIPTION OF SITE AND SURROUNDINGS

The dwelling in question is located in the northern part of this existing gypsy/traveller site which comprises of 6 units of residential accommodation, 5 of which either were or are mobile homes (the other 1 a converted stable building), and some other non-domestic buildings. The building in question has predominantly cream rough rendered walls but with one wall timber clad. The roof is tiled and there are brick skirts partly obscured on the northern side by decking. There is garden to the west and north with a large area of hardstanding beyond.

The wider gypsy/traveller site is flat and entirely enclosed by either 3m high Leylandii hedging or 2m high fencing. This is a rural location with some housing along Level Mare Lane and towards the southern end of Northfields Lane. The eastern side of Northfields Lane is predominantly in occupation by gypsies or travellers.

RELEVANT SITE HISTORY

AL/23/08/	Use of land as a private gypsy caravan site for a single family group.	ApproveConditionally 11-06-2008
AL/67/10/	Change of use of land to a private gypsy and traveller caravan site consisting of 3 no. mobile homes (2 of which have extensions), and associated works - This application is a departure from the development plan	ApproveConditionally 19-08-2010
AL/32/11/	Use of land as a private gypsy and traveller caravan site consisting of 4No. mobile homes (2 of which have extensions) and associated works. This application is a departure from the Development Plan	Refused 08-09-2011

AL/79/17/CLE

AL/94/11/	Use of land as a private gypsy and traveller caravan site consisting of 4 no. mobile homes (2 of which have extensions) and associated works - Resubmission of AL/32/11 - This application is a Departure from the Development Plan	ApproveConditionally 05-01-2012
AL/4/12/	Single storey extension	ApproveConditionally 20-03-2012
AL/19/12/	Erection of a timber building to be used as utility & storage	Withdrawn 17-05-2012
AL/85/12/	Application for variation of conditions 6 & 7 of planning approval AL/94/11/ relating to position of mobile home & tree planting	ApproveConditionally 11-02-2013
AL/25/13/	Application for the variation of condition 4 (residential units) following the grant of planning permission AL/94/11 to replace the word 'four' with the word 'five'. Departure from the Development Plan.	ApproveConditionally 12-06-2013
AL/48/16/PL	Variation of condition 4 imposed under AL/25/13/ relating to permanent gypsy traveller use & removal of name 'Mrs Sarah Keet'.	ApproveConditionally 02-11-2016
AL/123/16/CLE	Lawful Development Certificate for an Existing use as a single dwelling house.	Approve 31-03-2017

This particular dwelling was granted temporary planning permission as a mobile home under ref AL/23/08/ alongside two other mobile homes, a touring caravan, retention of existing converted stables as an amenity/utility building and for the conversion of the other stables for similar purposes. At this time, the dwelling was located in the south western part of the site (current location of unit G). This permission was renewed by application AL/67/10 with the dwelling still shown in the south western part.

Application AW/67/10 noted that two of the three homes had been extended and these were said to be in the southern part of the site. The plans submitted with AL/67/10 show that units B and G had been extended but that the footprint of A had not changed. Page 4 of the officers report for application AL/67/10/ states that:

"The Council's planning solicitor confirms that the two extended mobile homes by virtue of their size can no longer be defined as caravans as per the Caravans Act 1960. However, this does not take away the applicant's gypsy status and the need to consider the application in line with national gypsy guidance."

Application AL/94/11 then allowed unit A to be relocated onto the northern part of the site (where it is currently located). The submitted plans showed that the footprint was the same as originally approved (i.e. not yet extended).

Application AL/4/12 allowed unit A to be extended on its eastern and northern side. The extensions would have a height of 4 metres, width of 6 metres and depth of 8.3 metres. This resulted in the dwelling having

AL/79/17/CLE

an 'L' shaped footprint with a gable on the north elevation. The footprint increased from 55m² to 105m².

Application AL/19/12 related solely to unit D2 but it is noted that the approved plan (dated February 2012) shows that unit A had been extended as per AL/4/12.

Application AL/85/12 related solely to the position of Unit F but it is noted that the approved plan (dated January 2012) shows that unit A had been extended as per AL/4/12.

Application AL/25/13 allowed the siting of an addition mobile home, unit G in the position at the south western corner of the site where A had originally been. The approved plan (dated April 2010) shows unit A with its original unextended footprint although this is due to the plan being not current.

Application AL/48/16 concerned the occupation of unit G. The approved plan (dated April 2010) shows unit A with its original unextended footprint although again this is due to the plan being not current.

Application AL/123/16/CLE concerned the occupation of unit B. The approved plan (dated January 2010) shows unit A with its original unextended footprint although again this is due to the plan not being up to date.

At some point in time, the dwelling was also extended, without planning permission, on its southern side.

REPRESENTATIONS

Representations received:

Aldingbourne Parish Council

"The Parish Council objects to the evidence provided. These are not dwellings they are mobile homes. and the applicant has not demonstrated that they are anything other than mobile homes."

Comments on Representations received:

Comments noted.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

ADC SOLICITOR -

"GENERAL RECOMMENDATION

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

The "4 years rule" applies to establish use as a dwelling.

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

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 material change of use from a building to a dwelling so the time limit is 4 years under the above.

The time period is 7-7-13 to 7-7-17 i.e. 4 years to date of the application.

The evidence does satisfy this test. See commentary and invoices for builders works.

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

(1) Application - used began 1 May 2013.

Comment - This satisfies the 4 year rule for use as a dwelling.

(2) Receipts 11 Feb 2013 GMS Electrical labour and materials consumer unit installation rewire property extension addressed to 2 The Paddock Mr and Mrs Gibbs - £900.

Comment - Actual documentary and contemporary evidence of building work to create a dwelling are contained in all these receipts listed below. Highly probative. All suggest permanent and not mobile structure.

(3) G&K Plastering dated 25-3-13 to Gibbs at The Paddock re plastering 3 bedrooms, lounge, hallway - £1000.

Comment - Actual documentary and contemporary evidence of building work to create a dwelling are contained in all these receipts listed below. Highly probative. All suggest permanent and not mobile structure.

(4) P Fairhead April 2013 £1706 for plumbing and heating work total £2600 addressed to Gibbs at Paddock.

(5) Email Dr Murdock to Planning ADC. Dated 10 July 2017. Explains 3 applications being sent.

Doesn't explain absence of Searle statement. Doesn't explain personal knowledge. 2013 building substantially complete as dwelling. 3 invoices. Refers to previous grant of CLEUD ref AL/123/16/CLE. Present dwelling exceeds dimensions for caravan.

Comment - Does Angus have personal knowledge of site and its history. Shouldn't he get - at least an affirmation from the applicant - Mr and Mrs Searle - of his hearsay statement? Your site visit will assess these claims.

(6) 2nd statement by A Murdock - This appears to be a duplicate of the previous statement and appears to present nothing new.

(7) AL/123/16/CLE - decision to grant CLEUD for dwelling on same plot but different dwelling/different site on same large plot - see plan for AL/123/16/CLE for "plot 1". This is referred to - for consistency of the LPA with its previous advice.

Comment - The sole significance of this appears to be to refer the LPA to previous legal advice to ensure consistency by reference to extensions meaning the mobile home exceeds the size and siting and mobility requirements to make it stay a mobile home. Once these factors are exceeded it isn't a mobile home anymore.

I have seen no evidence of "deceit" or "fraud" or covert breach with "blatant misrepresentation" such as could invoke the late issue of an enforcement notice under the Fidler Principle.

Backed up by the invoices, showing works and a site visit and absence of any contradictory evidence, seen by me, I recommend you can grant this application, judging the evidence on balance of probability.

Your site visit will enable you to measure dimensions and "annexation" of the building to the land. Statements by the Searles might be expected - but in light of the above - would only be corroborative - of what has been supplied so far and/or can readily be assessed by a site visit.

I am happy to look and comment on further evidence from the Searles as residents of the building since 2013, if obtained/produced to give final confirmation of the claim.

FURTHER EVIDENCE

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

TERMS

1. grant
2. identify precise land boundaries on plan for extent of use.
3. describe accommodation ie number of rooms etc
4. describe any car parks or other curtilage uses/space and capacity as to number of cars/other vehicles."

Comments on Consultation responses:

Following the receipt of the above response, the applicant was requested to provide a statutory declaration along with supporting evidence to demonstrate consistent occupation. This was received on 26 September 2017. Further comments from the Council's solicitor have been sought but no further advice has been received.

The submitted statutory declaration is by Mr Darren Searle who owns the whole site and who lives in unit B (the subject of AL/123/16/CLE). In respect of unit A, Mr Searle states that the building was substantially complete by May 2013 and has been in continuous residential occupation by his daughter and son-in-law, Mr and Mrs Gibbs ever since.

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.

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 legal definition of a caravan was established in the Caravan Sites and Control of Development Act 1960 (Section 29(1)). This was then modified in 1968 to include twin-unit mobile homes (Section 13(1) of the Caravan Sites Act 1968 (as amended)) and then again in 2006 (Statutory Instrument 2006:2374) when the maximum dimensions were increased.

Section 29 (1) of the Caravan Sites and Control of Development Act 1960 defined a caravan as:

"...Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...."

Section 13 (1) of the Caravan Sites Act 1968, which deals with twin-unit caravans provides that a 'caravan' is:

"A structure designed or adapted for human habitation which:

- (i) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps and other devices; and
- (ii) is, when assembled, physically capable of being moved by road from one place to another (whether being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or have been) a caravan within the means of Part 1 of the Caravan Sites Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when

assembled".

The 2006 Statutory Instrument increased the maximum dimensions to a length of 20m, a width of 6.8m and an overall height (measured internally from the lowest floor to the highest ceiling) of 3.05m.

This property was extended in part with planning permission and in part without. However, the approved extensions to the eastern end of the unit and projecting northwards increased the width of the home from 6.096m beyond the permitted width of 6.8m to approximately 8.5m. Therefore, even without the unauthorised southern projection (which increased the width to 11.49m, the act of granting planning permission resulted in the unit exceeding the maximum dimensions of a mobile home. Furthermore, the act of adding the extension has altered the appearance of the property such that it now appears as a bungalow rather than a mobile home. It is therefore considered that the unit no longer falls within the definition of a caravan and should be regarded instead as a built dwelling.

The application states that the extensions were complete by May 2013 and this is supported by evidence of works (plastering, wiring, heating) undertaken between February and April 2013. The next question therefore is whether the building had been continuously lived in for a period of 4 years.

Mr Searle's Statutory Declaration states that unit A was substantially complete by May 2013 and has been in continuous residential occupation by his daughter and son-in-law, Mr and Mrs Gibbs ever since. This is the only piece of evidence referring continued use and on its own is not considered to be sufficient. However, the Councils Enforcement Officer has been dealing with this site throughout this 4 year period and her anecdotal evidence corroborates Mr Searle's statement.

On the basis of the above, it is considered that the property is no longer a mobile home/caravan and is in fact now a building. It has also been continuously occupied for residential purposes for at least 4 years. It is therefore considered that on the balance of probability that consent should be granted and that the certificate should be granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on 10/07/17, 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 black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 (as amended) by reason that at the date specified above, the property had been in use as a private dwelling and not a mobile home for a continuous period of 4 years.

FIRST SCHEDULE

Use of the building and associated land as a residential dwelling by Mr and Mrs Gibbs and

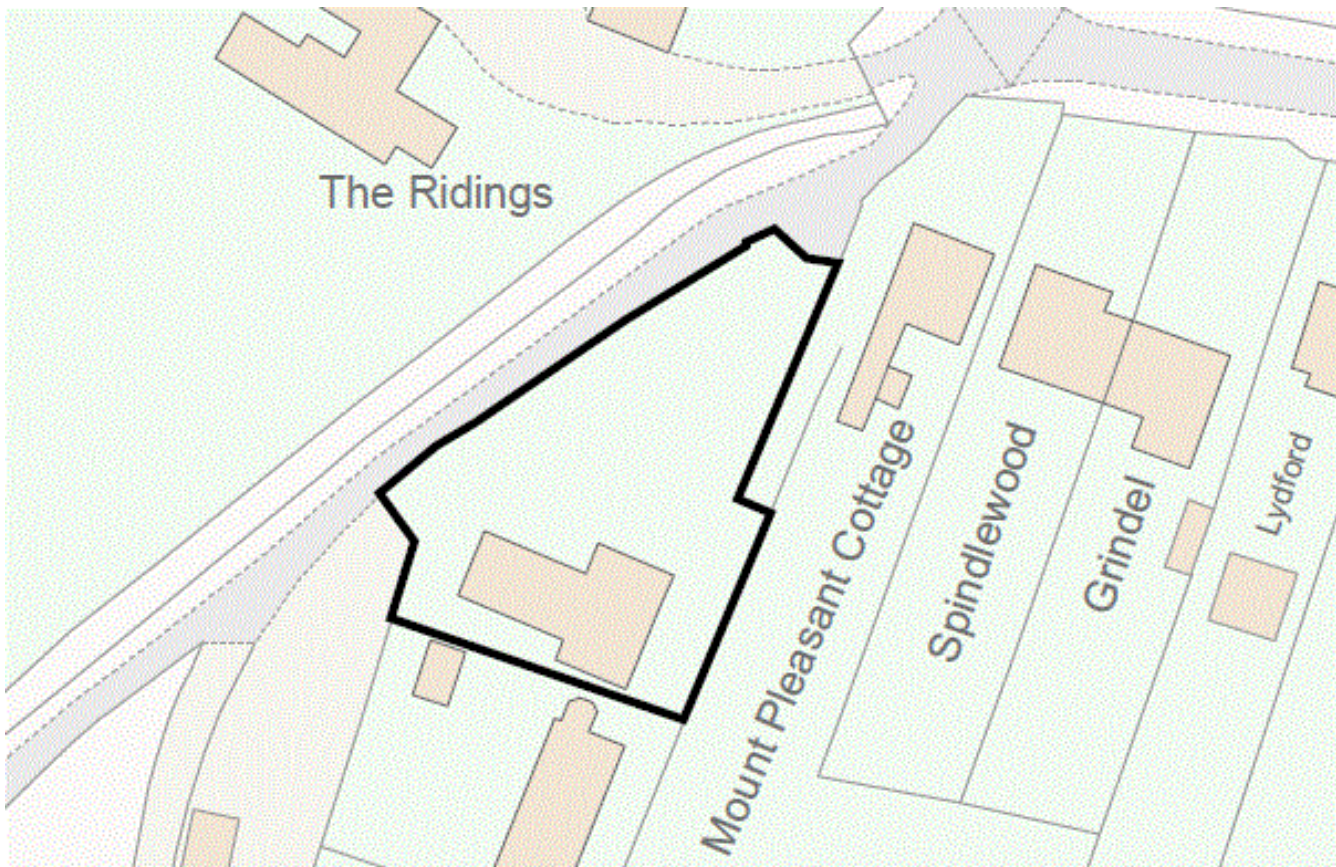
their dependants under Class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

SECOND SCHEDULE

The residential property known as Unit A/2 The Paddocks, Northfields Lane, Westergate, Chichester, West Sussex, PO21 3UH.

EXTENT OF USE

Use of the property Unit A/2 The Paddocks which consists of the original section measuring 10.97m by 6.096m together with the extension on the eastern side which measures 6.035m by 11.49m and comprises of a living room, kitchen, bathroom, lounge and 4 bedrooms all used for residential purposes. Externally, there is garden to the west and north with a large area of hardstanding beyond.



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