

Planning Department
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
BN17 5LF

Tuesday, 19 September 2017

Dear Sir/Madam:

Re: Crunchy Cottage, Park Lane, Aldingbourne
Certificate of Lawfulness of Existing Use
Use of land adjacent to Oving Road as garden

Introduction

In summary the application seeks to establish that the use of the parcel of the land on the west side of the stream and adjacent to Oving Road has historically been in use as garden and as a result is now lawful due to the passage of time.

The application includes historically evidence that since at least 1994 the land has been in use as garden. This evidence covers the whole of the land west of the stream but the evidence also indicates that at some point an existing shed was used for the storage of electrical equipment. The position of the former shed is excluded from the red line due to the break in garden use for this specific parcel of land.

Accordingly, if it is agreed that this time frame is correct then the use as garden is now lawful by virtue of the provisions of Section 171B(3) which provides a time-bar of ten years for breach by way of a material change of use. The relevant part of the section states that *"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach....."*

STEPHEN JUPP

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CHARTERED TOWN PLANNER

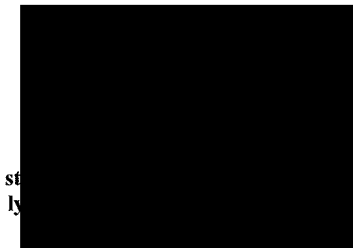
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The Relevant Test

It is accepted that the onus of proof is on the applicant, although as confirmed in *F W Gabbittas v SOS & Newham LB* [1985] JPL 630 an applicant's own evidence does not have to be corroborated by independent evidence.

Furthermore, if a local authority does not successfully contradict or challenge an applicant's own precise and unambiguous evidence, a Certificate should normally be granted.

Similarly, if the LPAs own records support the submissions of the applicant, a Certificate should normally be granted.

Planning History

AL/49/96 – Temporary storage of touring caravan

Refused 13-08-1996; Appeal dismissed

AL/55/00 – Outline planning application for one single storey dwelling

Refused 22-09-2000; Appeal dismissed 18-01-2001

AL/31/09 – CLA application for use of shed for commercial storage of electrical equipment

Permitted 30-10-2009

The Evidence

Much of the evidence in support of this application can be found in the officer delegated report for the CLE application AL/31/09/CLE.

Under the heading "Representations" the report notes a letter of objection – this being from Nigel Horwill.

The objection is summarised as:

*Have lived at Keymer Cottage since 1994 and am not aware of the land and shed at the rear of the garden being used for the storage of electrical equipment etc. **The site in question was used as a recreational garden until the death of Mr. Willard in approximately 2005. Since that date it has been left unattended and allowed to become overgrown.** It has only been in the last two to three months that any work has been carried out to clear the site. The stream/ drainage ditch which flows through my garden and then through the application site had become blocked due to the overgrown state of the site. I regularly mow the grass verge adjacent to Oving Road which includes the area where the entrance to the application site is and when I have not done it, it has become overgrown. I note supporting evidence includes two Statutory Declarations which contradict each other. One is from the John Herbert Willard which supports my observations.*
[my emphasis]

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Application AL/31/09 also contains a Statutory Declaration from John Herbert Willard and the officer report summarises this as follows:

*The land originally formed part of the area belonging to Greenacres, Hook Lane. In 1977 I purchased Keymer Cottage and an additional piece of land belonging to Greenacres boundary hedging. In 1987 a run down implement shed was replaced by the existing shed. The gate onto the main road (Oving Road) is an established access point. In the late 1980's the land was transferred to my son. **In 1994 I sold Keymer Cottage. I then took back the land in question to use as a private garden.** I cut the grass, trim the hedges, prune the trees and maintain the stream. The touring caravan on site is ideal for me to use as an ancillary facility. The declaration is signed 13th May 1997.*

[my emphasis]

Paragraph 2.2 of the officer delegated report on application AL/31/09 summarises evidence collaborated from the Council's records of two applications, and states:

Application AL/55/00 Outline Planning Application for one single storey dwelling was dismissed at Appeal. During the site visits of both the Planning Case Officer and the Planning Inspector, no evidence was observed of the electrical business, indeed the land was quite overgrown. This is further supported by the letter from the current owner of Keymer Cottage.

*Application AL/49/96 Temporary Storage of Touring Caravan, at this appeal the Inspector stated "**your case on grounds was that the caravan was ancillary to the lawful use of the land as a private garden**". He goes on to state that "He needs the caravan because he needs to be able to take intervals of rest. The shed would not serve the same purpose because it has no other facilities".*

Council Tax evidence is that there is no mention of the use of the whole or part of the land being assessed/used for anything other than domestic ancillary purposes.

[my emphasis]

Under 2.3 "other Evidence" the evidence notes that there was no evidence of outside storage.

Section 3 of the delegated officer report provides a detailed conclusion and the following salient statements can be drawn out from this section of the report:

A letter from the neighbour at Keymer Cottage corroborates with the evidence submitted by John Herbert Willard that the land has been used as recreational garden land since he purchased Keymer Cottage from John Willard in 1994.

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Both these pieces of evidence from the Council's own records, concur with the evidence of John Herbert Willard and is contrary to that of Paul John Willard.

The current neighbour at Keymer Cottage has stated that the land was used as recreational land until the death of John Herbert Willard, this concurs with the statement of John Herbert Willard.

The various site visits undertaken by officers of the Council have not found any evidence of storage on the land outside of the shed. Therefore on the balance of probability and for the reasons given above it is considered that the Application for a Certificate of Lawfulness for an Existing Use should be granted for the reasons stated below, for the shed only and not for the land surrounding the shed.

The current application submitted for a CLE for use as garden land excludes the area formerly occupied by the shed, since the storage use within that shed is clear evidence of a break in the use of garden land on that small parcel of land.

The current application also has a letter from Paul Willard dated 25th January 2016. He states that he lived at Keymer Cottage from 1977 to around 1995 and that the land was transferred to him by his father on 1989 and remained in his family's ownership until it was transferred to the current owner, Andrew Smith, in 2013.

Paul Willard is very clear in stating:

"The land had formed part of the garden to Keymer Cottage and had been used in this regard for many years. My father kept chickens which were housed in a chicken run on the land and during my ownership, the grass was cut and the boundary hedges & fences within the garden area were maintained by me, in a regular basis up to the date of the sale to Andrew Smith."

Conclusions

The evidence clearly demonstrates that the land has been historically used as garden land. A small parcel of land on the west boundary where there was previously a shed was used for B8 storage purposes and whilst such use ceased by 2013 there is not sufficient time to demonstrate the recommencement of the garden use in this small parcel of land is still lawful.

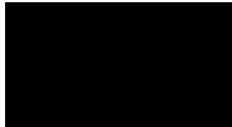
Between 2005 and 2013 it appears that the land became overgrown at times but there is no evidence that the historic use of it as garden land had ceased and Paul Willard confirms continued grass cutting and hedge maintenance, albeit on a less frequent basis. Moreover, council records from an application in 2009 – AL/31/09/CLE – indicate that its use as garden was considered to still exist.

Since the use of the land as garden commenced more than 10 years ago and has not been abandoned in any intervening period the use is considered to be immune from enforcement action by virtue of section 171(B)(1).

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Accordingly, a certificate should be issued on the basis that the land has been in use as garden for a period exceeding ten years preceding the date of this application.

Yours sincerely,



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Chartered Town Planner

