

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/99/17/CLE

LOCATION: Land adjacent to Crunchy Cottage
Park Lane
Aldingbourne

PROPOSAL: Lawful development certificate for existing land to be retained as garden.

DESCRIPTION OF APPLICATION

To establish use of land to south east of site as private residential garden.

DESCRIPTION OF SITE AND SURROUNDINGS

Detached dwelling with large grounds in a countryside area with some detached neighbouring dwellings also in large plots.

RELEVANT SITE HISTORY

AL/12/15/HH	Demolition of existing summerhouse & stable. New detached garage/storage building. Re-submission following AL/63/14/HH	ApproveConditionally 01-04-2015
AL/36/15/DOC	Application for approval of matters reserved by condition imposed under AL/12/15/HH relating to condition No. 5 - Schedule of materials & samples.	DOC Approved 05-05-2015
AL/113/15/HH	Construction of informal pond in rear garden	Refused 01-02-2016
AL/11/16/PL	1 No. replacement dwelling.	ApproveConditionally 20-04-2016
AL/34/16/PL	Retention of pond & associated groundworks.	ApproveConditionally 10-08-2016

Current dwelling granted planning permission in 2016.

REPRESENTATIONS

Representations received:

None received.

Comments on Representations received:

N/A.

CONSULTATIONS

Planning Solicitor

Planning Solicitor

Consultations responses received:

Planning Solicitor

I suggest these questions be pursued :-

[a] will A Smith give a statement?

[b] where has he lived during 2013-17?

[c] what has he used the land for ?

[d] is the land too large for a garden use ?

[e] is there a house the land is used in connection with eg the plan on Mr Willard's statement shows Crunchy Cottage some distance away from the land and detached from it

[f] what specific areas of the land were used as garden - show on a plan

[g] what specific garden uses occurred - specify - eg flowers, domestic veg, quiet enjoyment, picnics, games, sunning etc -these garden uses usually are referred to in these CLEUDs applications for this use

Without adequate answers the evidence doesn't on balance of probability prove the claim

Planning Barrister (following further evidence submitted)

1. I am asked to advise Arun District Council ("the Council") on an application for a Certificate of Lawful Development in respect of land at the rear of Crunchy Cottage, Park Lane, Aldingbourne, West Sussex. PO20 3TJ.

2. The Application, dated 4th September, 2017, claims that the activity was begun on 1st January, 1994 and seeks a Lawful Development Certificate for "Use of Land adjacent to Hook Lane as garden".

3. The supporting evidence / comments are set out in:

- a. Planning Statement by Stephen Jupp, planning agent;
- b. Letter from Paul Willard (former owner) dated 25th January, 2016;
- c. Letter from Andrew Smith (current owner of land) dated 15th November, 2017.

4. Mr. A. Smith has provided a letter, dated 15th November, 2017, which states:

- a. that he bought Crunchy Cottage in 2013 and, shortly afterwards, in the same year, bought the area of land concerned;
- b. that it was used as a garden between 2013 and the present, although there were landscaping works being undertaken between 2013 and 2016;
- c. that it was planted with ornamental plants and regularly mown prior to his purchase;
- d. the land is not too large for a garden

5. The other evidence available is:

- a. Letter from Paul Willard, dated 25th January, 2016, which states that the land has been used as garden for many years, although chickens were kept on it by his father. His father transferred the land to him in 1989 and he has maintained it as a garden since that date;
- b. Planning statement, dated 19th September, 2017, by Stephen Jupp, states that the application includes historical evidence since 1994. He refers to planning application in 1996 (AL/49/96), 2000 (AL/55/00) and 2009 (AL/31/09) which refer to the land being used as garden, at least back to

1994.

Conclusion

6. Therefore, I am of the opinion that the Applicant has provided the Council with sufficient, reliable evidence on which it can come to a finding that there has been a material change of use of the land to that of garden.

Comments on Consultation responses:

Comments noted. Officer agrees evidence shows more than 4 years in use as residential garden.

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 to private residential garden to be exempt from planning control is 4 years.

CONCLUSIONS

The evidence submitted provides significant proof that the use of the land as private residential garden has been subsisting for more than 4 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 on 4th September 2017 exempt from enforcement action and is lawful by

the meaning of sections 171B and 191 of the Town & Country Planning Act 1990 by reason that at the date specified above the land had been in use as private residential garden for a continuous period of 4 years.

FIRST SCHEDULE

Existing land to be retained as private residential garden at Crunchy Cottage, Park Lane, Aldingbourne, West Sussex.

SECOND SCHEDULE

Crunchy Cottage, Park Lane, Aldingbourne, West Sussex PO20 3TJ

EXTENT OF USE

Existing land to be retained as private residential garden.



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