

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/9/15/CLE

LOCATION: Hales Barn Farm
Arundel Road
Aldingbourne

PROPOSAL: Application for a Certificate of Lawfulness for an existing use or development -
Use of land for the stationing of a mobile home for the purposes of human habitation

DESCRIPTION OF APPLICATION

The application seeks a Certificate of Lawfulness for the use of land for the stationing of a mobile home for the purposes of independent residential occupation.

The application is accompanied by the following items of evidence:

(A) Planning Supporting Statement

This summarises the occupancy of the mobile home as follows (text copied from the statement):

- (1) That the caravan was moved into its present position in early 2000 but until 2003 its use was intermittent and there are no records of who occupied it.
- (2) It was first permanently occupied by Hannah Manderson and Lee Macrickus from February 2003 until March 2004.
- (3) From April 2004 until September 2005 the caravan was occupied by Gary Footman. For the next 3 months the unit was empty but available for occupation and the owners were actively seeking a new occupier.
- (4) From January 2006 until August 2007 the caravan was occupied by Barbara Warns.
- (5) The caravan was empty, but remained on site available for occupation, during September 2007 whilst a new tenant was sought.
- (6) From October 2007 until April 2010 the caravan was occupied by Tony Long.
- (7) From April 2010 until April 2011 the caravan was occupied by Gary Francis.
- (8) That since April 2011 the caravan has been occupied by Steven Rooke.

The statement then goes on to discuss the issue of gaps in occupation and with reference to an appeal decision and other case law, asserts that there was no break in residential occupation between September 2005 and February 2006.

(B) Statutory Declaration

A two page statutory declaration by one of the applicants, Mrs Shurey. This sets out the history of the residential occupation of the mobile home. It is accompanied by various material which support the declaration. These are as follows:

JS1 - Plan indicating mobile home and alleged garden area;

JS2 - Four items of post alleged to have been left by the first occupiers of the mobile home;
JS3 - One letter from an alleged occupier confirming occupancy between late Spring 2004 to late Summer 2005;
JS4 - A receipt alleged to relate to a deposit for occupancy dated 12.01.06 and a copy of a bank statement page indicating an alleged payment for a newspaper advertisement on 10.01.06. These are submitted in support of occupancy between January 2006 and August 2007;
JS5 - Undated letter confirming alleged occupancy from October 2007 to April 2010 and also confirming the alleged use of an undefined area of land surrounding the caravan for domestic pleasure purposes. Also included are webpage printouts seeking to confirm that the occupier used the mobile home as a business address. There is also a copy of an advertisement/item of post for an event with the alleged occupier's name and the mobile home as an address on it, the event is dated 20/10/14; and
JS6 - Details of the name of an alleged occupier from April 2010 until April 2011 and a copy of an advertisement alleged to have led to that occupancy.

Subsequently, on the 15th October 2015, the applicant also submitted copies of rent receipts for the mobile home. It is noted that not all of these are dated and in some cases the date is unclear.

DESCRIPTION OF SITE AND SURROUNDINGS

This application relates to a mobile home which is located to the south east of Hales Barn Farm and to the immediate east of a group of buildings which are themselves located to the east of Thatched Cottage. The closest building in the group is in use as stabling. The mobile home is located close to and almost adjoining a line of trees on the south side of an unmade element of the track which serves the 4 existing dwellings. The character of existing development is that of an isolated small group of buildings within the open countryside.

The existing mobile home is relatively large and in the absence of wheels & towing point, has a sense of permanence (although there is no suggestion that it is not mobile). At the time of the planning officer's site visit on the 19th February 2015, there was a white van parked adjacent to the mobile home. The immediately surrounding land was laid to grass with some typical garden features included planted areas.

RELEVANT SITE HISTORY

AL/15/05/CLE	Application for a Certificate of Lawfulness for an existing use of land for commercial/domestic storage and siting of residential mobile home	Refused 04-05-2005
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Application AL/15/05/CLE sought a Certificate for Application for an existing use of land for commercial/domestic storage and the siting of a residential mobile home. It was refused in May 2005 and the mobile home was then moved from its location adjacent to Thatched Cottage to its present site subject of the current (AL/9/15/CLE) application.

Following on from the refusal of this application in May 2005, the owner's then planning agent wrote to the Council on 6th October 2005. This letter stated that the previous independent residential use of the mobile home had ceased, that it would now be used for purposes ancillary to the dwelling and that

therefore lawful use for independent residential occupation could not now be claimed. This is corroborated by the Owner's Statutory Declaration of 29 January 2015 which states that Gary Footman was only in independent residential occupation of the Mobile Home until September 2005.

REPRESENTATIONS

Representations received:

Aldingbourne Parish Council

ALDINGBOURNE PARISH COUNCIL - Objection: "We are disappointed our local authority has failed to prevent an illegal caravan over the years, hereby inadvertently allowing development by default. Aldingbourne Parish Council Planning Committee oppose the change of use and urge Arun to do likewise"

An objection has also been received from a nearby residential occupier on the following grounds:

- (1) Impact on existing Woodland;
- (2) The land is protected by a covenant;
- (3) Impact on local drainage;
- (4) Not clear as to foul sewerage for the mobile home;
- (5) Visibility from a local footpath/impact on character of the area; and
- (6) Impact on movement of vehicles along the access road.

Comments on Representations received:

Neither the Parish Council nor the local resident provide any evidence in support or objection of the application. It is only possible to assess this application on the basis of the evidence. It is not possible under Town Planning Law to have regard to planning policy, the merits of a development or any other material considerations.

CONSULTATIONS

Southern Water Planning

Planning Solicitor

Consultations responses received:

SOUTHERN WATER - No objections.

Comments on Consultation responses:

Noted.

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states that:-

"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."

Sections 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 to planning policy or to the merits of the application.

- (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.

The application is for a material change of use i.e. siting of a caravan, so the time limit is 10 years under Sections 171 (1) - (3) and 191 of the Town & Country Planning Act 1990. The relevant time period would therefore be 03 February 2005 to 03 February 2015 (i.e. 10 years to the date of the application).

CONCLUSIONS

The Council has sought legal advice on this application which is legally privileged and cannot be disclosed to the public. The author of this advice has had access to the application itself, to previous application files and to previous enforcement files. In summary, the advice is that:

- * There was a break in the residential occupation of the home in September 2005 as confirmed by the owners previous planning agent;
- * As a result, the 10 year period started in early 2006 with the occupation of the home by Barbara Warne;
- * The Statutory Declaration (SD) states that Barabara Warne occupied the home in January 2006 but the rent receipts begin in February so it is not possible to say with any certainty that her occupation began in January and instead 01 February 2006 must be used as the start date;
- * The result of this is that the evidence demonstrates only 9 years of evidence until the date of the application;
- * The evidence is imprecise for the period April 2011 to September 2011 with a missing May 2011 rent receipt, two rent receipts for June 2011 but for different occupiers and with inconsistencies between the rent receipts and statements made previously by the owner and the tenants;
- * These issues with the evidence for this period may also suggest a break in continuity (which would then restart the 10 year period at September 2011);
- * There are also various other discrepancies and inconsistencies in the evidence which harms the quality of the evidence as supplied; and
- * The Owner's evidence is not sufficiently precise & unambiguous and contains a sufficient proportion of contradictions which casts doubt on the accuracy of the evidence.

It is considered that the applicant has failed to prove that the independent residential use of the mobile home has been ongoing for a continuous period of 10 years since 01 February 2006. Indeed, given the break in occupation between September 2005 and February 2006, the application would only be able to attempt to prove 9 years worth of independent residential occupation.

Further, although the evidence does suggest that there has been 9 years worth of occupation, there are numerous discrepancies and inconsistencies within the evidence and these cast doubt on the owners evidence such as in the Statutory Declaration.

Of particular note are the discrepancies in the submitted evidence for the period April to September 2011 which suggests that there may have been a 5 month break in residential occupation during this period.

The Council is also of the view that no particular evidence has been put forward to justify the extent of residential curtilage indicated on the submitted location & block plans.

On this basis it is recommended that the application be refused for the following reasons.

RECOMMENDATION

REFUSE

REASONS FOR REFUSAL OR INFORMATIVE(S)

- 1 The applicant has failed (as judged on a balance of probability) to prove that the independent residential use of the mobile home has been ongoing for a continuous period of 10 years at 03 February 2015 (the date of the application by reason of:
 - (a) In a letter dated 06 October 2005, the applicant's then planning agent stated that the residential use of the mobile home had ceased and that therefore no lawful use for its occupation prior to that could be claimed. As the next residential occupation did not commence until February 2006, the submitted application only covers a 9 year period;
 - (b) There are particular discrepancies in the submitted evidence for the period April to September 2011 and this evidence also lacks consistency with evidence from other sources such that there is a suggestion that there was a 5 month break in residential occupation during this period; and
 - (c) the submitted evidence is generally imprecise, ambiguous and is inconsistent with evidence gained from other sources including statements made previously by the applicants and tenants.
- 2 No particular evidence has been put forward by the applicants to justify the extent of the residential curtilage shown on the submitted plans as applied for.