

SUBMISSIONS relating to a s192 TCPA 1990 application relating to an outbuilding at 79 Lincoln Avenue, Rose Green, Bognor Regis PO21 3EW

1. 79 Lincoln Avenue is a semidetached property acquired in 2002 by the joint applicant Susan Clinton ("Sue") and her now late husband Steven. Steven used it as his "man-cave". A declaration filed with the application explains that [REDACTED]

[REDACTED] her sister-in-law Sam Thackray ("Sam") has been very supportive and they wish to live together, Sam, her husband and family, but there is insufficient space, so for family harmony they have decided to convert the outbuilding (approved under an LDC) into an annexe for Sam and her family to occupy, Sue continuing in the main house.

2. It is possible to access the rear garden by a side path but that is the position now so there will be no change. Nor will there be any external change to the size scale and appearance of the outbuilding. All modifications will be internal only.

3. The law provides that a material change of use will not occur if there are no operations, and the planning unit will remain unchanged i.e. a single family occupation with some interdependence. Sam spends a lot of time at the property with Sue and they intend to continue communing together on a regular basis including cooking meals in the main house kitchen, although the annexe will have its own cooking facilities. The interdependence is crucial to Sue's health and well-being and that of this close family.

4. Sue will continue to own the property. There will be no means of enclosure between the outbuilding/annexe and the rear of the house. All utilities and council tax will continue to be paid as a single house by Sue with single meters/supplies. All post and all deliveries will be to the continue to be to the front door of the house. The annexe would be physically and functionally linked to the main dwelling and, as a consequence, would be put to a use which is already taking place within the planning unit, as a matter of fact and degree.

5. The leading judicial authority remains Uttlesford¹. The judge considered that, even if the accommodation provided facilities for independent day-to-day living it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. In that case the accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. A fact and degree judgment has to be made on the specific circumstances of the case. It is clear that here, there will be a close family and functional link between the uses with the land also remaining in single ownership and control. Use of the annexe in the manner described would not involve physical or functional separation of the land from the remainder of the property. The character of the use would be

¹ Uttlesford DC v SSE & White [1992] JPL 171

unchanged. Thus, the use described would form part and parcel of the residential use within the same planning unit. Only if operational development which is not permitted development is carried out or if a new residential planning unit is created, will there be development. From the application, neither scenario is proposed. Accordingly, the proposal would not require a separate planning permission.

6. The Council cannot argue that the annexe is highly likely to be capable of independent occupation. The application must be assessed on the basis of the stated purpose and not what might potentially occur. An LDC can only certify the use applied for. If the annexe is not used in association with the dwelling, as described, and the functional link is severed, then it would not benefit from the LDC. The issue requiring consideration is not whether there would be an incidental use, rather, the crux of the matter is whether or not the proposal would involve a material change of use of land and thus amount to “development” within the meaning of section 55(1) of the Act. Just because the proposed use goes beyond what would ordinarily be regarded as an ‘incidental use’ does not mean there is a material change of use. For instance, a “granny” annexe, even in a separate building in the curtilage of the “main” dwellinghouse, would normally be regarded as part and parcel of the main dwellinghouse use. If there is no material change of use of the land then there can be no development requiring planning permission.

7. Consequently a certificate should be given.