

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development**REF NO:** A/129/19/CLP**LOCATION:** Broadlees
Dappers Lane
Angmering
BN16 4EN**PROPOSAL:** Lawful development certificate for the proposed development at Broadlees, Dappers Lane, Angmering as shown on drawing reference number 1877-HIA-ZZ-XX-DR-A-01002 Rev P5 comprising buildings 1 - 3 as authorised by permission A/27/16/PL (dated 7th February 2017) and the care home authorised by permission A/114/18/PL (dated 28th May 2019 as a replacement for building 4 authorised by permission A/27/16/PL.**DESCRIPTION OF APPLICATION**

Certificate of Lawfulness for the above site.

Planning permission was granted in 2017 for 53 care apartments (A/27/16/PL) through the erection of four separate buildings. In 2019 a 70 bed care home was approved (A/114/18/PL) to part of the site replacing one of the care apartment buildings. This Certificate of Lawfulness application seeks confirmation that it would be lawful to build out buildings 1-3 under the 2017 permission alongside the care home authorised under the 2019 permission.

The application comprises the following documents listed below:

- Application form
- Counsels Opinion
- Approved site layout plan Ref: 1877-HIA-ZZ-XX-DR-A-01002 Rev P5

RELEVANT SITE HISTORY

A/151/18/CLE	Application for a lawful development certificate following grant of planning permission A/27/16/PL for an existing development - confirmation that permission has been lawfully commenced	Approve 15-02-19
A/114/18/PL	Demolition & erection of 70 bed care home within Use Class C2 (replacing building 4 approved by A/27/16/PL), access, parking, landscaping and other associated works	App Cond with S106 28-05-19
A/27/16/PL	Erection of 53 care apartments within Class C2, parking, access, footpath, landscaping & other associated works.	App Cond with S106 09-02-17

Departure from the Development Plan.**REPRESENTATIONS****Representations Received:****CONSULTATIONS****Consultations Responses Received:****LEGISLATIVE BACKGROUND**

Section 192 of the Town and country Planning Act 1990 states:

(1) if any person wishes to ascertain whether -

- a. any proposed use of buildings or other land; or
- b. any operations proposed to be carried out in, on, over or under land would be lawful, the may make an application for the purpose to the Local Planning Authority specifying the land and describing the use or operations in question.

(2) 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.

3) A certificate under this section shall -

- a. specify the land to which it relates;
- b. describe the use or operations in question
- c. give the reasons for determining the use or operations to be lawful; and
- d. specify the date of the application for the certificate

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

The Planning Practice Guidance ("PPG") states:

What information must accompany an application for a lawful development certificate?

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. The application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee. Application forms can be obtained from the local planning authority and can be completed by the applicant or someone working on their behalf. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning information may be justified in refusing a certificate.

This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining the application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a Local Planning Authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

A Local Planning Authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

CONCLUSION

Planning History

In February 2017 planning permission A/27/16/PL was granted at the site for the "Erection of 53 care apartments within Class C2, parking, access, footpath, landscaping & other associated works". Implementation was required by 9th February 2019.

In order to implement the 2017 permission, the two pre-commencement conditions were discharged (7 - relating to the CMP and 19 relating to tree protection measures) and the development commenced by demolishing the buildings on site. To provide additional comfort that the permission was indeed lawfully implemented, a Certificate of Lawfulness was sought, by way of an application in November 2018. That Certificate was granted on 15th February 2019 (Ref: A/151/18/CLE).

In May 2019 planning permission was granted through application A/114/18/PL for "Demolition and erection of a 70 bed care home within Use Class C2 (replacing building 4 approved by A/27/16/PL), access, parking, landscaping and other associated works".

The Officer committee report for this application advised that it would not be possible to implement both the 2017 and 2019 schemes. However, no restrictive conditions or clauses within the s106 were included that relate to the implementation of the wider scheme.

The Officer report for A/114/18/PL referred to the legal advice obtained and stated "the application as

submitted can proceed to determination. However if approved the applicant is not legally entitled to implement both permissions as implementation of this latest application (if approved) would prevent full implementation of the existing permission and this application does not incorporate the existing permission."

The Report went on to state

"With regard to the legal advice it was suggested to the agent that this application was withdrawn and resubmitted with an amended scheme relating to the whole of the application site approved under A/114/18/PL. However they have not chosen to pursue this option. Therefore approval of this application will result in two permissions one of which can't be fully implemented. In addition this application requires a section 106 Agreement to secure contributions and these would be additional to those secured under planning permission A/14/18/PL."

Certificate of Lawfulness

The applicant's have obtained and included an Opinion of Robert Walton QC which confirms that the application approved in 2019 was made on the basis that the care home would replace building 4 approved under the 2017 permission.

The Certificate seeks confirmation that development of the 70 bed care home approved through application A/114/18/PL replaces building 4 approved by application A/27/16/PL and both permissions can be implemented on site. This is not considered to be a lawful position.

Relevant recent case law exists including that of Hillside Parks v Snowdonia NPA (2019) where the Court grappled with the correct interpretation of a series of planning permissions for residential development on a site, dating back to a masterplan for 401 dwellings permitted in 1967. The court decided that the development authorised by the original permission could no longer be built-out, as the intervening planning permissions on the site had made it physically impossible to complete the original development fully in accordance with the original permission.

Taking this and other case law into account and that the parts of A/27/16/PL that A/114/18/PL replaces are not severable, it is considered that the application should be refused. It would be physically impossible to complete the original development in accordance with the original permission.

The red edges to the application sites overlap.

CONCLUSION

The onus is on the applicant to provide sufficient information to support his application.

Since insufficient information has been submitted with the application to support the assertions made it is recommended for refusal on the basis of case law, in particular the cases of Staffordshire County Council v NGR Land Developments Ltd (2002), Singh v Secretary of State for Communities and Local Government and Hillside Parks v Snowdonia NPA (2019).

The Local Planning Authority considers that the applicant is not legally entitled to implement both permissions as implementation of the latest application would prevent full implementation of the earlier permission and the later application did not incorporate the earlier permission.

RECOMMENDATION

REFUSE

The Arun District Council hereby certify that on 27-09-2019 the development 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, would not be lawful within the meaning of section 192 of the Town & Country Planning Act 1990 on the basis of conflicting case law and that the planning permissions are not severable.

FIRST SCHEDULE

Lawful development certificate for the proposed development at Broadlees, Dappers Lane, Angmering as shown on drawing reference number 1877-HIA-ZZ-XX-DR-A-1002 Rev P5 comprising buildings 1 - 3 as authorised by permission A/27/16/PL (dated 7th February 2017) and the care home authorised by permission A/114/18/PL (dated 28th May 2019 as a replacement for building 4 authorised by permission A/27/16/PL.

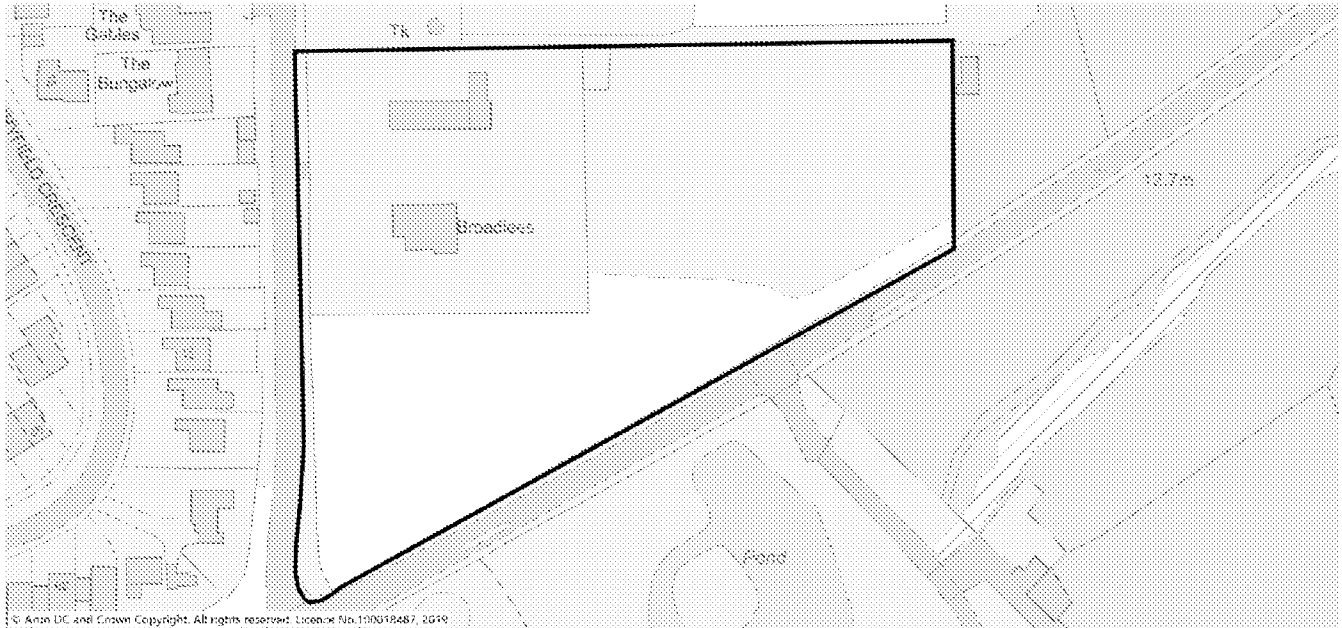
SECOND SCHEDULE

Broadlees, Dappers Lane, Angmering BN16 4EN

EXTENT OF USE

Implementation of both planning permissions A/114/18/PL and A/27/16/PL .

A/129/19/CLP - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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