

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: **A/146/20/CLE**

LOCATION: Clayton
 The Avenals
 Angmering
 BN16 4AN

PROPOSAL: Lawful development certificate for existing use of land as residential curtilage.

DESCRIPTION OF APPLICATION

This Certificate of Lawfulness application seeks to regularise the use of the land to the north - east and west side of the residential property Clayton for use as garden land associated with the dwelling. The land has been used as garden land associated with Clayton for in excess of 10 years, from a base date of 25 August 2010.

The application seeks to assure that the land has been used as private amenity land for up to 10 years before the date of 10th September 2020.

SITE AND SURROUNDINGS

The 2 areas of land are located adjacent to Clayton and opposite adjacent to Meadow End.

Clayton comprises a detached bungalow which has red brick elevation walls and a tiled, Sussex hipped roof. There is a detached garage to the west.

The site is located at the end of a cul-de-sac which is lined by an informal layout of detached dwellings, the majority of which are bungalows. There is a single detached two storey dwelling at the point where the road turns east. There are paddocks to the immediate east of the site.

Access to the site is via the original driveway serving Clayton and shared gravel driveway located to the north of Clayton and shared with Meadow End. This leads round the garden area to the north-east of Clayton. This garden area is connected by a gateway from the extended garden area to the east of Clayton.

RELEVANT SITE HISTORY

REPRESENTATIONS

Representations Received:

None

Comments on Representations Received:

None

CONSULTATIONS

Consultations Responses Received:

None

Comments on Consultation Responses:

None

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.

The relevant time limit for this operation would be 10 years.

BACKGROUND

On 10th September 2020 the Council received an application for a CLEUD in respect of use of the land to the side 'Area B' and opposite the Property Clayton 'Area A' as garden. The application refers to the use commencing on 01-11-2009.

A supporting statement has been submitted which includes the following:

HA -Appendix 1: Sworn Statement Mr S Williams

HA -Appendix 2: Sworn Statement Rachel Dowson

HA - Appendix 3: Clayton Land Registry Plan and Title

HA - Appendix 4: Meadow End Land registry Plan and Title

HA -Appendix 5: Aerial Photographs

HA -Appendix 6: Photographs during construction of extension permitted under A/41/11, taken in 2011

The applicant has submitted sworn statements which support the claim that the areas were garden for a period of 10 years prior to 10th September 2020.

The first statement from the applicant Mr Williams, who is the owner of Clayton and Meadow End states he purchased the property in 11 September 2007 and remains the owner to date of the land edged in red and blue on 'Plan A' attached to his Declaration. This includes the property Meadow End, which he purchased on 15 December 2003.

- At the time of purchasing the property, the area of land to the east of the property Meadow End (as shown hatched red and marked 'garden area A' on 'Plan A') formed part of the extended garden of this property.
- Following the purchase of Clayton, the garden area to the east of Meadow End was then taken as part of garden serving Clayton, together with part of the paddock east of Clayton. The former paddock land was landscaped and used as garden land from November 2009.
- The applicant has since maintained both areas of land as garden land associated with the main residence, Clayton.
- It is confirmed that at no point since November 2009 has the land been used for any agricultural purposes, as defined in Section 336 of the Town and Country Planning Act 1990
- The majority of the site has been maintained as a lawn, flower and shrub beds, with domestic gardening equipment.
- Prior to the construction of extensions permitted under A/41/11, the garden land immediately east of Clayton had already been extended and the fence repositioned to form Garden Area B. Garden Area A was also in use for the benefit of Clayton at that time.
- The use of the land has been used as garden land for in excess of 10 years, from a base date of 25 August 2010.

The second sworn statement prepared by the Rachel Dowson, who is the occupant of Meadow End confirms:

- Rachel Dowson has rented Meadow End from Mr & Mrs Williams since November 2009.
- Prior to Mr & Mrs Williams purchasing Meadow End in 2003, Rachel Dowson kept horses on the paddocks at Meadow End and has continued to do so to date.
- The area of land to the east of the property Meadow End (as shown hatched green and marked 'garden area A' on 'Plan A') formed part of the extended garden of Meadow End, up until 2009, when Rachel Dowson moved in to Meadow End and Mr & Mrs Williams moved in to Clayton. Since then, Mr & Mrs Williams have used this garden as theirs and linked this directly with Clayton. Other than access to the stables and paddocks, the property Meadow End does not benefit from the use of this garden area and is separated by fencing and a mature hedgerow.
- Confirms that the former paddock land to the east of Clayton was also landscaped and used as garden land from November 2009.
- This area of garden land is shown hatched in purple and marked 'garden area B'. All works were undertaken by Mr & Mrs Williams.
- Since works to extend the garden, Mr & Mrs Williams have since maintained both areas of land as garden land associated with their main residence, Clayton.
- At no point since November 2009 has the land been used for any agricultural purposes, as defined in Section 336 of the Town and Country Planning Act 1990
- The majority of the site has been maintained as a lawn, flower and shrub beds, with domestic gardening equipment.
- The use of the land has been used as garden land for in excess of 10 years, from a base date of 25 August 2010

The submission is supported by the title plans associated with Meadow End and Clayton, produced at

HA-Appendix 3 and HA-Appendix 4. These confirm that both properties fall in the applicant's ownership. Meadow End was purchased by the applicants on 15/12/2003 and Clayton purchased in September 2007.

A number of photographs are produced at HA-Appendix 5 which show the extensions at Clayton under construction. Permission for these extensions were granted in March 2011 and Building Regulation approval approved in June 2011. From the photographs provided, it was clear that the area to the east of Clayton has already been laid to lawn and maintained as part of garden land associated with Clayton. This included the repositioning of the fence line further east.

The aerial photographs clearly identify the former garden land associated with Meadow End (Garden Area A) were established before December 2001 and from 2012, both Garden Area A and B are connected and have matured as gardens associated with Clayton⁹. I am of the opinion that the photograph showing 'before' shows vegetation that is more consistent with the description of the greenery as vegetated shingle rather than a cultivated, enclosed garden. The photographs are dated between December 2001 and April 2019.

For the reasons set out above it is considered that the sworn statement prepared by the applicant and long term tenant of Meadow End, together with the associated titles, photographs and aerial photographs show that Garden Area A and Garden Area B have been used continually as garden land associated with Clayton for in excess of 10 years.

CONCLUSION

Aerial imagery which the council has access to, substantiates that there is change to garden area for both sections of the application by 2010. In 2007 'A' appears to have domestic items stored within it and 'B' is still field. There is no information available which disputes the submitted evidence.

The application is judged on the evidence submitted which contains photographs and sworn statements which are precise and unambiguous and clearly demonstrate that the use of the site has been private amenity land on a continuous basis for at least 10 years.

It is considered that on the balance of probability, it has been proved that the site has been used as garden land for a continuous period of 10 years or more.

RECOMMENDATION

APPROVE

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 lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the areas of land had been in use as domestic curtilage associated with the residential use of Clayton for a continuous period of 10 years.

FIRST SCHEDULE

Use of 2 parcels of land 'A' and 'B' as residential curtilage as indicated on the location and block plan drawings received on 10-09-2020

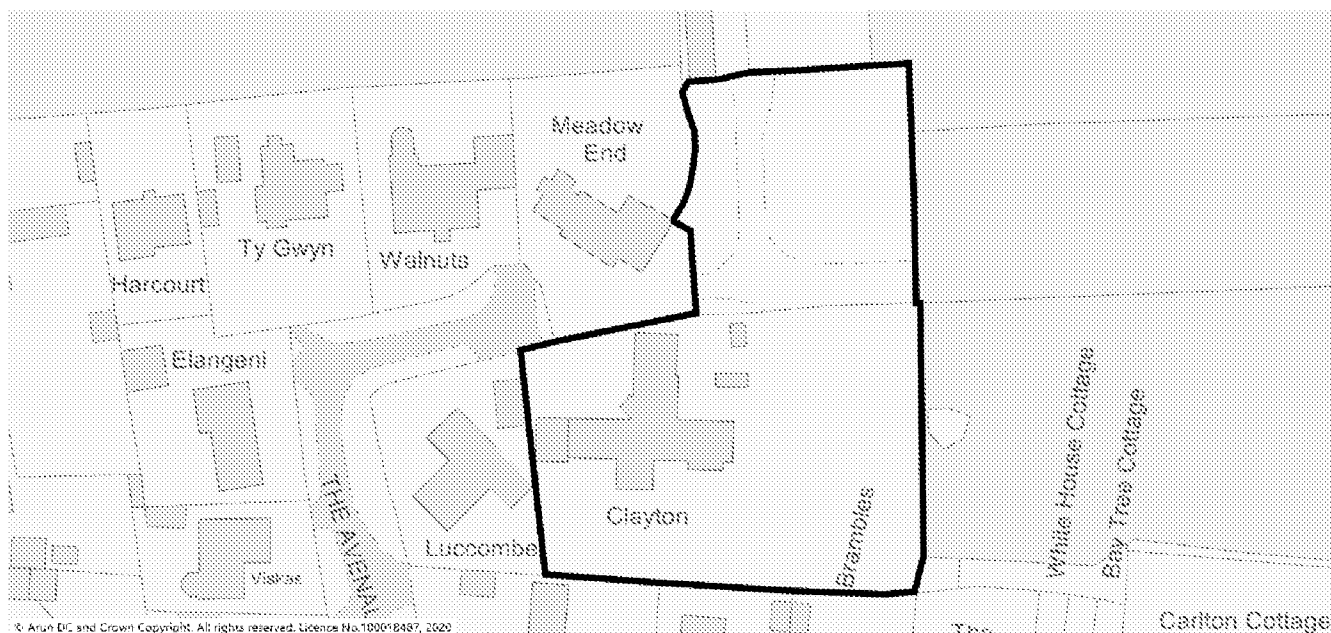
SECOND SCHEDULE

Land to the north - east and west side of the residential property Clayton, The Avenals, Angmering, BN16 4AN.

EXTENT OF USE

Use as garden land associated with the dwelling Clayton.

A/146/20/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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