

Recommendation Report

Application No. A/65/11/CLP

Committee ☐ - Date _____

Delegated ☒

	Date	Signature
Prepared by Case Officer	8/7/11	
Agreed by Team Leader	11/7/11	
Agreed by H.O.P.S. / P.C.M. (if required)		
O.S. Extract requested		

Comments:

Anita Gardner

From: Anita Gardner
Sent: 11 July 2011 11:45
To: [REDACTED]
Subject: FW: A/65/11/CLP - Land at Fallowdale, North Drive, Angmering

Marilyn,

I can confirm that since this application is a CLP and not a planning application or a CLE the Parish Council cannot make comments on it. The decision will be based on the evidence submitted and legal judgement, not the merits of the case.

I trust this information is of assistance.

Yours sincerely,

Anita Gardner
Principal Planner
Direct line 01903 737529

From: Angmering Parish Council [REDACTED]
Sent: 11 July 2011 11:14:15
To: Eve Hearsey
Cc: Anita Gardner
Subject: RE: A/65/11/CLP - Land at Fallowdale, North Drive, Angmering
Auto forwarded by a Rule

Hi Anita, further to our telephone conversation, can I please have your comments on the Eve's email advice and the voicemail received regarding the Parish Council making comments by this morning. Many thanks
Marilyn

From: Eve Hearsey [REDACTED]
Sent: 08 July 2011 16:14
To: Angmering Parish Council
Cc: Anita Gardner
Subject: RE: A/65/11/CLP - Land at Fallowdale, North Drive, Angmering

Dear Marilyn

I have picked up your email as Mrs Gardener is not in the office today.

I would like to advise you that the decisions for both Certificate of Lawfulness for a Proposed Use (CLP) and Certificate of Lawfulness for an Existing Use (CLE) applications are based on fact not merit. This means that what is being applied for is either permitted development (CLP) or immune from enforcement action (CLE).

With the case of the above application, the applicants chose to go via the CLP route, and have submitted evidence via copies of the relevant applications for reference. A letter from Hesketh Estates Limited who were the owners of the estate in the 1930's, has also been submitted with the application to explain the background to the building of the estate.

Due to an administrative error these documents were not put onto the correct planning reference, this has now been corrected and the documents are available to be viewed on line.

The evidence is assessed by both the Case Officer and the Councils Planning Solicitor, I believe the Solicitors response is also on line and thereby can be viewed by the public.

I repeat what I have said above in that the application will be judged on fact not merit, and because of this, CLP applications do not have an orange notice displayed on site, nor are they open for public comment.

I left a rushed message on your answer machine, and I hope the above offers a better explanation for you than the message, and as I said on the message, the application will be held until Monday in order for you to read

this email and the documents on line.

Mrs Gardner will be returning to the office on Monday 11th July for you to discuss the application further should you require.

Yours faithfully

Eve E Hearsey | Team Leader Development Control East, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

Internal: 37768 | External: +44 (0) 1903 737768 | E-mail: eve.hearsey@arun.gov.uk

Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: Angmering Parish Council [REDACTED]

Sent: 08 July 2011 12:02

To: Anita Gardner

Subject: A/65/11/CLP - Land at Fallowdale, North Drive, Angmering

Further to my conversation with you yesterday, I have been asked by the Chairman to our Planning Committee to contact you and obtain copies of the original outline planning application and plans, together with any available elevation/location plans which have been submitted by the applicant under the current application. Concerns have also been expressed as to why there is no public consultation at this important stage of the decision process.

On receipt of your reply, I will forward to our Members. Many thanks Marilyn Burt

Assistant Parish Clerk

Angmering Parish Council

The Corner House

The Square

Angmering

West Sussex BN16 4EA

Telephone: 01903 772124

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<http://www.arun.gov.uk>

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MEANING OF DEVELOPMENT

Laying out or constructing a road (subs.(4)(d))

A "road" within para.(d) is not defined by the Act, but has been held to include a private drive (*Spackman v Secretary of State for the Environment* [1977] 1 All E.R. 257), and a service yard (*Hillingdon London Borough Council v Secretary of State for the Environment* [1990] J.P.L. 575, where an area of around 720 square metres had been cleared to form the continuation of the access to the site from nearby land). Although in the *Malvern Hills* case the court held that the pegging out of a road was a material operation, the Secretary of State for Scotland in an appeal decision was not convinced that the same view could be taken of 10 garden canes placed on the site, at locations which did not accord with the approved plans and which were used only as a temporary indicator of the south west boundary of the site ([1989] J.P.L. 458).

In *R (Aerlink Leisure Ltd. (In Liquidation)) v First Secretary of State* [2004] EWHC 3198 (Admin) (Davis J.; December 21, 2004) it was held that a planning inspector had made three errors when considering whether works qualified for the purposes of para.(d). He had failed to consider whether the pegging out of a boundary road might qualify; he had erred in apparently believing that a degree of permanence was required; and he had failed correctly to consider whether certain excavation works might qualify.

Effect on remainder of permission of beginning development

Unless the planning permission is clearly severable, the beginning of part of the development is sufficient to lift the time limit under this section for all of it: *Salisbury District Council v Secretary of State for the Environment* [1982] J.P.L. 702 (a decision under Sch.24, para.19 to the 1971 Act), where one bungalow had been built, prior to the imposition of time limits in 1968, under a permission granted in 1961 for seven bungalows.

Minerals permissions

By virtue of the Town and Country Planning (Minerals) Regulations 1995 (SI 1995/2863), reg.3 and Sched., this section has effect subject to the modification that development consisting of mining operations is to be taken to be begun on the earliest date on which any of the mining operations to which the relevant grant of planning permission relates begins. In *Staffordshire County Council v Riley* [2002] PLCR 5 the Court of Appeal, applying that test in its earlier appearance in the Town and Country Planning (Minerals) Regulations 1971, reg.7, noted that the expression was not further defined in the legislation. It held that the removal of 12 inches of top soil, with no evidence as to whether this had made the marl available or accessible to be removed from the land, had effected a physical change in the land that had little relevance to the expression "winning and working". Although the removal of the topsoil was in accordance with the planning permission, and there could be no mining unless it occurred, it could not be seen as an unequivocal act pursuant to the planning permission. It had an ambivalence which distinguished it from the acts considered sufficient in the cases under general planning law to constitute development.

Implications for pre-1968 permissions

Every planning permission granted or deemed to have been granted before April 1, 1969 is, if the development to which it relates had not been begun before the beginning of 1968, deemed to have been granted subject to a condition that the development must be begun not later than the expiration of five years beginning with April 1, 1969 (or alternatively, in the case of an outline permission, within two years of the final approval).

Planning R.163: January 2009

2-3198/7

1 April 1969 + 5 = 1974 / 4/1
1 April 1969 + 2 from date of
approval of final R.A.?

TOWN AND COUNTRY PLANNING ACT 1990

of reserved matters), unless there was an express time-limiting condition imposed on the permission (1971 Act, Sch.24, paras 18 to 21; continued in force by the Planning (Consequential Provisions) Act 1990, Sch.3, para.3). The relevant provisions are reproduced in the commentary to s.91. Moreover in relation to development consisting of the winning and working of minerals, or involving the depositing of mineral waste, subss.(3) to (6) are to be omitted.

In *Platt (Daniel) Ltd v Secretary of State for the Environment* [1997] J.P.L. 349; [1997] 1 P.L.R. 73 planning permission had been granted for mining operations in 1947 under a general interim development order, and application had now been made under the Planning and Compensation Act 1991, s.22 and Sch.2, for its registration as an old mining permission. The Court of Appeal held that, under the 1947 permission, mining operations were not permitted on any part of the site pending the submission of satisfactory details. None had ever been submitted, and under the 10-year commencement rule introduced by the Town and Country Planning Act 1968, a permission under which development had not commenced within 10 years of its grant was deemed to have expired. Following the *F.G. Whitley* case, any operations on the land which contravened the conditions attached to the permission could not be taken to have commenced the development authorised by it. Hence the permission was no longer extant.

In *Agecrest Ltd v Gwynedd County Council* [1998] J.P.L. 325 the plaintiffs succeeded in their attempts to demonstrate that a permission granted in 1964 remained extant, on the ground that sufficient work had been carried out on the site in April 1967 to avoid liability to betterment levy, which was payable if development was begun on or after April 6, 1967. The developers had instructed that a "specified operation" should be carried out, and permission for the construction of a spur road had been granted on April 3, 1967. It seemed that some work had been done in time to avoid the levy, and that this work would be sufficient to constitute the commencement of development for the purposes of planning legislation.

However, the *Agecrest* line of reasoning should no longer be regarded as a discrete exception to the general principle that operations carried out in breach of a condition cannot be relied on as material operations capable of commencing a development, because any exceptions to that rule need now to be established in accordance with the principles discussed in *Powergen and Reprotech: Coghurst Wood Leisure Park Ltd v Secretary of State for Transport, Local Government and the Regions* [2004] J.P.L. 1286 (Admin) (Richards J; May 29, 2002).

The High Court in *Field v First Secretary of State* [2004] EWHC 147 (Admin); Sullivan J; January 23, 2004 was concerned with the effect of an outline planning permission granted in 1967. The permission had authorised the demolition of certain cottages and erection of a pair of bungalows with garages. The cottages had been demolished by November 1970, and the question was whether bungalows could even now be erected in reliance on the permission. The court held that the demolition had constituted development for the purposes of planning legislation, and that the development related to the permission; hence it had constituted the beginning of development for the purposes of the Town and Country Planning Act 1971, s.43. The court accepted that there might be exceptional cases where works are carried out, for example by third parties, which just happen to coincide with the description of the works in a planning permission. In such cases it might be argued that the permission could not have been implemented in such an accidental way. But that was a long way from the present facts. The court also rejected the Secretary of State's submission that development can be begun (for the purposes of what is now the Town and Country Planning Act 1971, Sch.24, para.21(b), kept alive by

Planning R.163: January 2009

2-3198/8

SCH. 24
S.I. 1970/1681

16. For the purposes of paragraph 1 of this Schedule, any order made or having effect as if made by virtue of subsection (3) of section 19 of the Act of 1962, being an order which was saved on the repeal of that subsection by the Secretary of State for the Environment Order 1970, shall be treated as having been made under provisions of the Act of 1962 corresponding to those of section 31 of this Act notwithstanding the omission from the said section 31 of provisions corresponding to those of the said section 19 which were repealed as aforesaid.

*Review of planning decisions and orders under
Part V of Act of 1954*

17. For the purposes of paragraph 1 of this Schedule, any direction given under section 45(3) or (4) of the Act of 1954, whether before or (by virtue of paragraph 79 of this Schedule) after the commencement of this Act, as well as any direction given under section 23 of that Act or section 25 of the Act of 1962, shall be treated as a direction which could have been given under provisions of the Act of 1962 corresponding to those of section 38 of this Act.

Duration of planning permission

18. Sections 41 and 42 of this Act do not apply to planning permissions granted or deemed to have been granted before 1st April 1969.

19.—(1) Subject to sub-paragraph (2) of this paragraph, every planning permission granted or deemed to have been granted before 1st April 1969 shall, if the development to which it relates had not been begun before the beginning of 1968, be deemed to have been granted subject to a condition that the development must be begun not later than the expiration of five years beginning with 1st April 1969.

(2) Sub-paragraph (1) of this paragraph does not apply—

(a) to any planning permission which was granted or deemed to be granted before 1st April 1969 subject to an express condition that the development to which it relates should be begun, or be completed, not later than a specified date or within a specified period; or

(b) to any such planning permission as is mentioned in section 41(3) of this Act.

20.—(1) Subject to sub-paragraph (2) of this paragraph, where before 1st April 1969 outline planning permission (as defined by section 42 of this Act) has been granted for development consisting in or including the carrying out of building or other operations, and the development has not been begun before the beginning of 1968, that planning permission shall be deemed to have been granted subject to conditions to the following effect—

(a) that, in the case of any reserved matter (as defined in that section), application for approval must be made not later than the expiration of three years beginning with 1st April 1969; and

SCH. 24

(b) that the development to which the permission relates must be begun not later than whichever is the later of the following dates—

- (i) the expiration of five years from 1st April 1969; or
- (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

(2) Sub-paragraph (1) of this paragraph does not apply to any planning permission granted before 1st April 1969 subject to an express condition that the development to which it relates should be begun, or be completed, or that application for approval of any reserved matter should be made, not later than a specified date or within a specified period.

21.—(1) In sections 30(3), 43(1), (5), (6) and (7), 44 and 46(6) of this Act references to section 41 and 42 of this Act shall respectively include references to paragraphs 19 and 20 of this Schedule.

(2) In sections 147(3), 169(7), 180(4) and 237(5) of this Act references to the conditions referred to in sections 41 and 42 of this Act shall include references to the conditions referred to in paragraphs 19 and 20 of this Schedule.

22. Until the coming into operation of the first regulations to be made for the purposes of paragraph (c) of section 43(3) of this Act (or the corresponding enactment previously in force), regulations made for the purposes of section 99(2) of the Land Commission Act 1967 shall have effect as if made also for the purposes of that paragraph. 1967 c. 1.

PART V

ADDITIONAL CONTROL IN SPECIAL CASES

Buildings of architectural or historic interest

23. Section 55(1) of this Act does not apply to any works executed or caused to be executed before 1st January 1969.

24.—(1) Where, before 1st January 1969, consent under a building preservation order was given, either by the local planning authority or by the Minister on appeal, for the execution of any works, the consent shall operate in respect of those works as listed building consent, subject to the same conditions (if any) as were attached to the consent under the building preservation order.

(2) In the case of demolition works for which consent was given under a building preservation order compliance with section 55(2)(b) of this Act shall not be required.

Replacement of trees

25. Section 59 of this Act does not apply in relation to planning permission granted before 28th August 1967.

 Anita Gardner

From: Anthony Greenwood 
Sent: 07 June 2011 11:59
To: Anita Gardner
Subject: A/65/11/CLP Fallowdale North Drive Angmering

Anita

Further to your e mail dated 06/06/11 sent to my colleague Dawn Appleton in connection with the above application we confirm that the description should be amended to refer to 3No plots and not 2No plots. We would therefore be grateful if the description could be amended accordingly.

Apologies for this error.

Regards

Anthony

Anita Gardner

From: Anita Gardner

Sent: 06 June 2011 10:26

To: 'Dawn Appleton'

Subject: A/65/11/CLP - Application for certificate of lawfulness for proposed use- Erection of 2 no. dwellings in accordance with the conditions imposed under planning permission A/2/57- Land at Fallowdale, North Drive Angmering

Dawn,

I have been speaking to a member of the public this morning who has questioned the number of plots referred to in the application. The description on the form relates to 2, but your letter dated 18-04-2011 refers to 3 dwellings and the submitted plans relate to plots 40, 44 and 45. Please can you clarify. If the proposal does relate to 3 plots I will need your permission to amend the description.

Regards

Anita Gardner
Principal Planner



Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
Planning & Building Control General Enquiries
Tel: (01903) 737756 Fax: (01903) 730442
Dx: 57406 Littlehampton
Minicom: 01903 732765
e-mail: planning@arun.gov.uk
website: www.arun.gov.uk/planning

Henry Adams Planning Limited
Rowan House
Baffins Lane
Chichester
West Sussex
PO19 1UA

Your Ref:
Our Ref : A/65/11/CLP
Please ask for:
Mrs A Gardner
Direct Dial: 01903 737529

1st June 2011

Dear Mr Greenwood

The Town and Country Planning Act 1990 (as amended)
Town and Country Planning Development Management Procedure Order 2010

Application for certificate of lawfulness an proposed use - Erection of 2 No. dwellings in accordance with the conditions imposed under planning permission A/2/57

Land at Fallowdale North Drive Angmering

Receipt No P86920 Amount: £ 335.00

VAT Number 193 5586 24

TOTAL PAID: £ 335.00

Thank you for your recent planning application, which was accepted as a valid application on 16th May 2011. It is being dealt with by Mrs A Gardner who will be able to help you by telephone, should you have any questions. However, I would point out that it will not be possible for you to meet with the case officer unless a prior appointment has been arranged.

If you have not received a decision by 11th July 2011 and have not agreed in writing to extend this time limit, or been advised that your application is invalid, you are entitled to appeal to the Secretary of State in accordance with the Town and Country Planning Act within 6 months from the date by which the decision should have been made (unless the application has been referred to the Secretary of State by this Council for decision). Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.

Please be aware that some of our correspondence including the Decision Notification will be sent by email if you have provided an email address on your forms. It is therefore important to inform us if your email address changes throughout the course of the application.

Please do not hesitate to contact us if you have any queries.

Yours sincerely

Karl Roberts
Assistant Director Planning Services &
Housing Strategy

Anita Gardner

From: Anita Gardner
Sent: 26 May 2011 08:54
To: Julie Grieves
Subject: FW: Land at Fallowdale, Angmering A/65/11/CLE

Julie,
 See Delwyn's comments below. Can you now process on CLP forms please. I believe agents have now forwarded plans.
 Thanks
 Anita

From: Delwyn Jones
Sent: 25 May 2011 16:53
To: Anita Gardner
Subject: RE: Land at Fallowdale, Angmering A/65/11/CLE

Anita ,

I refer to yours dated 13 May below .

I reply on the basis of the limited information available -and it may help to discuss and read the papers .

On the basis of the information supplied ,which is limited ,I agree with the agents ,that a CLP is the right process here ,because :-

1. the agents say "The forms for an existing use relates to activities or operations which have already taken place and have become lawful by virtue of the four or ten year rule. In this case, there is no existing use or development to be claimed.

In my view, the application is seeking confirmation that the proposed erection of two dwellings would be lawful under the terms of an extant permission. I therefore think that the application does relate to a proposed development."

all of which supports a CLP not a CLE

2. you say "It was submitted in March with the description 'Erection of 2 no. dwellings in accordance with the conditions imposed under planning permission A/2/57' as a CLP. "

3. 10/97 Annex 8 paras 8 . 23- et seq to 8.28 which you should read sets out the principles applicable to a CLP which may indeed involve the onus of proof but to a balance of probabilities being on the applicant.

Speak if more is required .Clearly I make no comment on the eventual result of this application.

I have answered all questions asked of me.

Delwyn Jones | Planning Solicitor, Legal Services, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

Internal: 37737 | External: +44 (0) 1903 737737 | E-mail: Delwyn.Jones@arun.gov.uk

Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: Anita Gardner
Sent: 13 May 2011 09:52

To: Delwyn Jones
Subject: FW: Land at Fallowdale, Angmering A/65/11/CLE

Delwyn,

The above application is on hold. It was submitted in March with the description 'Erection of 2 no. dwellings in accordance with the conditions imposed under planning permission A/2/57' as a CLP. I e-mailed the agent stating that the appropriate form would be a CLE since we are looking at the application in terms of the balance of probability, not assessing if they require permission in terms of the GDPO. I have received the attached e-mail in response. Please can you advise whether in your view an application to determine if the provision of 2 unimplemented plots on an earlier planning approval for 3 dwellings is lawful should be considered as a CLP or a CLE.

Thanks
Anita

From: Dawn Appleton [REDACTED]
Sent: 12 May 2011 13:41
To: Anita Gardner
Subject: Land at Fallowdale, Angmering A/65/11/CLE

Dear Ms. Gardner,

I refer to our telephone conversations of today's date.

As discussed, I maintain that the correct application forms for the submission of this application are those relating to a proposed use.

The forms for an existing use relates to activities or operations which have already taken place and have become lawful by virtue of the four or ten year rule. In this case, there is no existing use or development to be claimed.

In my view, the application is seeking confirmation that the proposed erection of two dwellings would be lawful under the terms of an extant permission. I therefore think that the application does relate to a proposed development.

As mentioned, we have dealt with similar cases in Chichester and have used the proposed development forms in those cases.

I look forward to your comments.

Regards

Dawn Appleton

Henry Adams Planning Ltd
Rowan House, Baffins Lane, Chichester,
West Sussex, PO19 1UA

HENRY ADAMS

For more information on Henry Adams visit
our [Website](#)



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HENRY ADAMS

ARUN DISTRICT COUNCIL

16 MAY 2011

RECEIVED

12/5/11

Town Planning and Development Consultants

A/65/11/CLF

Dear Mrs. Griener,

Please find enclosed a red edged location plan as requested.

The issue of the forms has been discussed with Anita Gardner.

With Compliments

Regards

Dawn Appleton.

 **Anita Gardner**

From: Anita Gardner
Sent: 13 May 2011 09:52
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Subject: FW: Land at Fallowdale, Angmering A/65/11/CLE

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 **Anita Gardner**

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Regards

Dawn Appleton

Henry Adams Planning Ltd
Rowan House, Baffins Lane, Chichester,
West Sussex, PO19 1UA



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Henry Adams Planning Limited
Rowan House
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West Sussex
PO19 1UA

Dear Mr Greenwood

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
Planning & Building Control General
Enquiries
Tel: (01903) 737756 Fax: (01903) 730442
Dx: 57406 Littlehampton
Minicom: 01903 732765
e-mail: planning@arun.gov.uk
website: www.arun.gov.uk/planning

Our Ref: A/65/11/CLE

Your Ref:

Please ask for:
Mrs J Grieves
Technical Support Unit Assistant
28th April 2011

The Town and Country Planning Act 1990 (as amended)
Town and Country Planning Development Management Procedure Order 2010 (as amended)

Application for certificate of lawfulness an existing use - Erection of 2 No. dwellings in accordance with the conditions imposed under planning permission A/2/57
Land at Fallowdale North Drive Angmering

Thank you for your recent application which I received on 20th April 2011. It is being dealt with by Mrs J Grieves who will be able to help you should you have any questions.

I regret that I am unable to accept your documents as a formal application until the following matters have been resolved :-

Please submit CLE forms as per email sent by Anita Gardner

Please submit 3 copies of a red edged location plan edging any other land owned in blue

For further guidance or to obtain the documents as required above please refer to our website:
<http://www.arun.gov.uk/cgi-bin/buildpage.pl?mysql=3390>

If you are unable to download the required guidance documents from the web site please contact the above officer who will arrange to post a paper copy to you.

Please provide the above by 12th May 2011. If this information is not received by this date, the application will be returned to you as incomplete and you will have to submit a fresh application.

Yours sincerely

Karl Roberts
Assistant Director Planning Services &
Housing Strategy

pmac42

Anita Gardner

From: Anita Gardner
Sent: 27 April 2011 09:22
To: 'Anthony Greenwood'
Subject: Fallowdale, Angmering

Anthony,

Julie Grieves in TSU has queried with me the use of the CLP forms relating to the above application. I have discussed this with Eve and in our view it would be more appropriate to submit a CLE since we are looking at the application in terms of the balance of probability, not assessing whether the dwellings require permission in relation to the GPDO.

If there is something we have overlooked please advise. If not can you complete one copy of the CLE forms and forward it to Julie Grieves.

Thanks

Anita