

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development

REF NO: **A/80/22/CLP**

LOCATION: Rear of 40 and 88 Meadowside
Angmering
BN16 4BN

PROPOSAL: Lawful development certificate for the proposed erection of 11 No garages that was granted under A/32/64.

DESCRIPTION OF APPLICATION

This application seeks to establish that 11no. garages approved under A/32/64 on the western side of Meadowside are permissible to be built-out on the basis that the approval is extant.

RELEVANT SITE HISTORY

A/32/64	65 Terrace Houses And 65 Garages	ApproveConditionally 09-07-64
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REPRESENTATIONS

Representations Received:

CONSULTATIONS

Consultations Responses Received:

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.

CONCLUSION

Application A/32/64 received approval in 1964 for the erection of 65 houses and garages and was implemented in the 60's with the houses and most of the garages being built as approved.

As part of the permission condition 4 related to the provision of garages and stated:

'All garages shall be erected prior to the occupation of the dwellings to the satisfaction of the Local Planning Authority.'

It goes on to give the reason for the condition as being 'In order to comply with the policy of the Local Planning Authority relating to the off-street parking of vehicles and thus avoid obstruction to the free flow of traffic on surrounding roads.'

In this instance the development has been built for 50 years. However this block of garages was not built due to a lack of space and a lack of uptake to buy or rent them by the dwelling's original occupants. This application has been submitted on the basis that the permission is still extant.

This planning permission has been implemented and not abandoned. However, by reason of the breach, does the development have planning permission deemed or otherwise? No planning permission may exist for the site, and it has become lawful simply by "long user" i.e., it has an established/lawful use.

In response to the above the Agent for the Application gave comment (dated 27/06/22) that:

'Condition 4 of the previously approved application states 'All garages shall be erected prior to the occupation of the dwellings to the satisfaction of the Local Planning Authority'. This condition is not considered to go to the heart of the permission as stated by the Legal Department. The development description simply states that permission was granted for '65 terrace houses and garages'. This condition was applied for timing purposes rather than for fundamental reasons and has therefore not affected the delivery of the dwellings.

Condition 4 has clearly become void as a result of the non-compliance and therefore can be considered as ultra vires as the correct procedures by the LPA were not carried out. The LPA have not enforced against this matter since receiving consent in 1964.'

Operations carried out in breach of a condition cannot be relied on as a material operation capable of commencing the development. However, the condition in question must meet the two tests of conditions precedent. In this instance the condition relating to the provision of the garage does not go to the heart of the permission, as such it is agreed the development was lawfully commenced in the 1960's.

The garages were originally approved under application A/32/64, the description for which was for '65 terrace houses and garages - Plot Nos. 78-142.' As can be seen from the submitted plans the application was for a new section of residential estate which would have a use class of C3 with each of the garages being built benefitting from this use. The garages and properties are linked in use and none of the garages would have been provided on the basis that they were for a separate use or as individual units. There is no suggestion of this in the decision notice nor has evidence been submitted to the contrary.

On this application form the Applicant states that the use of the garages is intended to be B8 storage, and it is understood that the current owner of the land has fenced off the land. To erect the garages for an unrelated storage use separately from the residential dwellings will require planning permission as a

change of use, so it is not possible to grant a Certificate under the terms suggested by the Applicant.

SUMMARY

As the applicant wishes to erect garages within the C3 use class approved under A/32/64 for a B8 storage use the Certificate as requested cannot be approved, as such a full application for planning permission shall be required.

RECOMMENDATION

PP REQUIRED

The Arun District Council hereby certify that on 19th April 2022 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, was not lawful within the meaning of section 192 of the Town & Country Planning Act 1990 for the reason that the proposal would constitute an unauthorised change of use of the land.

FIRST SCHEDULE

The application has been determined based on the following documents;

- Planning Statement

SECOND SCHEDULE

Land to the rear of 40 and 38 Meadowside, Angmering.

EXTENT OF USE

Confirmation that A/32/64 is extant and allows the construction of 11no. garages.

A/80/22/CLP - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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