

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

REF NO: BN/38/14/CLE

LOCATION: Land to the rear of The Flint Barn
Yapton Road
Barnham

PROPOSAL: Application for certificate of lawfulness for an existing use as residential garden ground

DESCRIPTION OF APPLICATION

This is an application for a Certificate of Lawfulness for the existing use of a parcel of land as additional residential garden to The Flint Barn. The applicant must provide evidence that the land has been used as garden for a continuous period of at least 10 years.

DESCRIPTION OF SITE AND SURROUNDINGS

The land appears as an extension of the residential curtilage to the Flint Barn. The land is bounded on two sides by 2m high close boarded fencing with a 2m hedge to the western boundary and a 4m mature hedge to the northern boundary. The site currently comprises of a grass lawn with a single storey low pitched summer house, a much smaller single storey flat roofed summer house and a telephone box. The site is flat and there are no trees to take account of.

The area is semi-rural in character being set back from the main road and bordering a caravan park and a small horticultural nursery site. The closest residential property, The Flint Barn, was as its name implies a barn conversion.

RELEVANT SITE HISTORY

BN/22/88	Conversion of redundant stone barn into one residential unit	ApproveConditionally 05-10-1988
BN/44/89	Conversion of existing barn in to dwelling house & 9 units for residential care	Approved Cond + S106 27-04-1990
BN/15/94	Conversion of existing barn into a single domestic dwelling	ApproveConditionally 23-09-1994
BN/6/99/	Internal alterations - omission of internal glazing and construction of ceiling to bathroom (amendment to BN/15/94).	ApproveConditionally 12-04-1999

BN/38/14/CLE

BN/27/03/	Ground floor infill to form a new study/games room adjoining existing building	ApproveConditionally 25-07-2003
BN/32/08/	New window to serve shower room	Approve 02-01-2009
BN/3/14/CLE	Application for a Lawful Development Certificate for existing use for the storage of caravans and undercover and open air ground storage.	Approve 06-03-2014

The land to the north was subject to a recent successful Certificate of Lawfulness for a caravan storage use. The officer notes from that application do not make any comment on the land to the south (i.e. the current application site).

REPRESENTATIONS

Representations received:

Barnham Parish Council

Barnham Parish Council - no objections

Comments on Representations received:

Comments noted.

CONSULTATIONS

Southern Water Planning

Planning Solicitor

Consultations responses received:

Southern Water - no objections.

ADC Solicitor - recommends grant:

"1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo dated 9 October now returned together with your file on which alone plus the authorities cited this is based.

2.GENERAL RECOMMENDATION

I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

I rely on you to tell me of any evidence indicating otherwise.

3.DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND NPPG GUIDANCE ON LAWFUL DEVELOPMENT CERTIFICATES[LDCs]

(1) Time: SS171 (1)-(3) and S191 TCPA 1990

The application is for material change of use so the time limit is 10 years under the above .

The time period is ie 16 September 2004 - 16 September 2014 --10 years to date of the application.

The evidence does satisfy this test.

I have at this date seen no contradictory evidence of this position. I explain why below.

(2) Sufficiency of Evidence: NPPG Guidance LDCs Part 3 Application and Determination

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 3 NPPG says that "... if an LPA has no evidence itself ,nor any from others, to contradict or otherwise make the applicant's version less than probable , there is no good reason to refuse provided the applicant's evidence alone is sufficiently precise and unambiguous".

Para 3 in NPPG cited above and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity.

S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

The evidence analysis with comments is:

- 1 - Application form signed by applicant D Waite who bought the house in April 2000 and used land as garden ever since - Probative -precise and timeous over 10 years;
- 2 - HMLR OCE ref WSX 241841 shows purchased land on 12 May 2000 - Probative -supports 1 above;
- 3 - Site plan on WSX 241841 - Probative - see certificate as to ownership;
- 4 - Covering Letter from D Waite 18 September 2014 - Shows same signature;
- 5 - Peter Beck letter 7 October 2014 states that owned the land up to 2000 and sold to D Waite as garden. Mr Beck is a neighbour who walks past the site every day and has observed the Waite's using the land as garden - Precise -probative; and
- 6 - Mr Waite letter dated 8 October 2014 which refers to a 2004 aerial photo (not supplied) and to the above letter from Mr Beck - Within 10 years 04/14 probative precise.

I have seen no contradictory evidence to cast doubt on the claims. On balance of probability the case is proven. The NPPG advice is to grant in such cases.

4.FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice.

5.TERMS

1. grant
2. identify precise land boundaries on plan for extent of use.
3. describe extent and uses"

Comments on Consultation responses:

Comments noted.

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states that:-

"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 DOE Circular 10/97 Annex 8 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.

Section S171(1)-(3) and S191 TCPA 1990. The change of use to a single dwelling is 4 years.

The relevant time limit for this material change of use of the land is 10 years from 16 September 2004 to 16 September 2014.

ASSESSMENT

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous. Para 3 of the NPPG says that "... if an LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version less than probable, there is no good reason to refuse provided the applicant's evidence alone is sufficiently precise and unambiguous". Para 3 in NPPG cited above and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity.

S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

The evidence consists of the following:

- 1 - Application form signed by applicant D Waite who bought the house in April 2000 and used land as garden ever since;
- 2 - HMLR OCE ref WSX 241841 shows purchased land on 12 May 2000;
- 3 - Site plan on WSX 241841;
- 4 - Covering Letter from D Waite 18 September 2014;
- 5 - Peter Beck letter 7 October 2014 states that owned the land up to 2000 and sold to D Waite as garden. Mr Beck is a neighbour who walks past the site every day and has observed the Waite's using the land as garden; and
- 6 - Mr Waite letter dated 8 October 2014 which refers to a 2004 aerial photo (not supplied) and to the above letter from Mr Beck.

The Council's aerial maps support this evidence. Aerial maps for 2001, 2007 & 2012 all appear to show the land in use as garden. In addition, site visits undertaken in August and October 2014 confirm the garden use.

CONCLUSIONS

The application is considered to contain sufficient information to demonstrate that this piece of land has been used as a residential garden for a continuous period of at least 10 years. The evidence consists of the application form, land registry title deed & plan, supporting letter from the applicant, supporting letter from the previous owner & current neighbour and aerial photography from 2001, 2007 & 2012. It is considered that on the balance of probability that consent should be granted. It is therefore recommended that the certificate is granted in accordance with the following terms.

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 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 land had been in use as residential garden for a continuous period of 10 years.

FIRST SCHEDULE

The Use of land for garden purposes including two existing summer houses.

SECOND SCHEDULE

Land to the rear of The Flint Barn, Yapton Road, Barnham, PO22 0AZ.

EXTENT OF USE

Use of land for garden at land to the rear of The Flint Barn, Yapton Road, Barnham which is shown on the plan edged boldly in black which is attached to this certificate.



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