

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/51/21/CLE

LOCATION: Parsonage Farm, Unit 2
Yapton Road
Barnham
PO22 0BD

PROPOSAL: Lawful development certificate for the existing use as Cafe supplying hot and cold food and drinks, with inside & outside 20 covers.

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for the existing use of the unit (Unit 2) as a cafe, supplying hot and cold food and drinks, with outside seating area. Two Site Location Plans have been provided; one showing the Unit 2 of the building itself edged in red and the other showing the outside seating area directly to the north of Unit 2 edged in red.

SITE AND SURROUNDINGS

The site consists of a single storey commercial unit in an old agricultural building with dual pitched corrugated metal roof, timber clad elevations and white timber and UPVC windows and doors. To the north of the building/unit is a gravelled seating area currently in use as a cafe seating area. The unit is in an array of other commercial units in the grounds of Parsonage Farm, off Yapton Road, on the outskirts of Barnham. Nearby there are various listed cottages and the Windmill.

RELEVANT SITE HISTORY

N/A

REPRESENTATIONS

Representations Received:

Barnham & Eastergate Parish Council
No representations received.

Comments on Representations Received:

This application is restricted to testing the legal merits of what is being applied for i.e. whether the Unit and outside area outlined have been in use as a cafe for a period of 10 years or more and is therefore

lawful by the passage of time.

CONSULTATIONS

Consultations Responses Received:

Barnham & Eastergate Parish Council -
No objection.

Council's Environmental Health -
No objection, suggest planning conditions.

Comments on Consultation Responses:

This application is restricted to testing the legal merits of what is being applied for i.e. whether the Unit and outside area outlined have been in use as a cafe for a period of 10 years or more and is therefore lawful by the passage of time.

LEGISLATIVE BACKGROUND

CERTIFICATE OF LAWFULNESS APPLICATIONS:

Section 191(1) of the Town & Country Planning Act 1990 states -

"Certificate of lawfulness of existing use or development

(1) If any person wishes to ascertain whether -

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."

INFORMATION/EVIDENCE:

Section 191 to 195 of the 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 information/evidence provided and not planning policy.

Section 191 (4) 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."

Paragraph 006 (Reference ID: 17c-006-20140306) of the Planning Practice Guidance (PPG) on LDCs states that:

"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 an 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."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG on LDCs points out that:

"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?"

MATERIAL DEVELOPMENT:

Section 55 of the Town & Country Planning Act 1990 states -

"Meaning of "development" and "new development".

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG on LDCs points out that:

"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."

If an LDC application refers to a material existing use or operation which has, based on the evidence and the balance of probability, been in use for a period of ten years after the date of the breach of planning control then no enforcement action may be taken, it becomes lawful with the passage of time and a Certificate of Lawfulness for said existing use/operation can be granted.

In relation to S171 (1-3) as above, in the case of this LDC application for existing use, the relevant time period for continuous use is April 2011 to April 2021, i.e. 10 years to the date of the application being made to the Council.

CONCLUSION

A range of information has been submitted which seeks to evidence the continuous use of the unit and outside area outlined as a cafe and seating area. This includes:

- Application form to ADC for the registration of a food business 'Cosy Corner Cafe' at the premises (dated Jan 2008).
- Letter from owner Mr Reynolds of Parsonage Farm (between 1975-Oct 2020) confirming seating outside Unit 2 was in place prior to 2010 and has been in situ since.
- Letter from current landlord confirming permission to use outside area at premises for seating.
- Financial information including bills for catering equipment, kitchen refit/refurb electricals and tax accounting related to the premises (dated 2012, 2013, 2014).
- Legal completion letter confirming purchase of Cosy Corner Cafe by Mr Austin (dated 2012)
- Insurance policy letter confirming business type as 'cafe' (dated 2013 and refers to 2012)
- A Statement of Goodwill between Mr Austin and Mrs Rees (dated 2017) in relation to 'Willow Tea Room'
- Photos showing premises and signage 'Willow Tea Room'.

The evidence presented by the applicants indicates the premises was first used as a cafe, known as 'Cosy Corner Cafe', in 2008. By 2017, it appears the name of the cafe changed to 'Willow Tea Room', and remains in use as such under the same business name today, as indicated by the photos and Planning Officer site visit (May 2021).

The LPA are not aware of any contradictory evidence which either the Council or other parties hold and none has been presented to it by other parties.

In conclusion, sufficient information has been submitted in support of the application, and in the absence of any contradictory information, it is considered on the balance of probability that the evidence indicates that the premises and outside seating area has been in continuous use for a period of at least 10 years. As such, in accordance with Section 171 of the Town & Country Planning Act, the use is considered immune from planning enforcement and lawful by virtue of the passage of time. Accordingly a Certificate of Lawfulness can be granted.

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, is immune from planning enforcement and lawful within the meaning of Section 171 of the Town & Country Planning Act (1990, as amended) by virtue of the passage of time.

FIRST SCHEDULE:

Use of Unit 2, Parsonage Farm, and outside area to north as cafe serving hot and cold food and drinks and provision of outside seating area.

SECOND SCHEDULE:

Unit 2 (and outside area directly to the north), Parsonage Farm, Yapton Road.

EXTENT OF USE:

The extent of the use is defined in the submitted Site Location Plan (Plan Reference Number: TQRQM21125150225819, received 05/05/2021) and the Site Location Plan (Land Registry Title Plan: WSX287339, received 27/06/2021).

