

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

REF NO: BR/109/19/CLE

LOCATION: 63A Queensway
Bognor Regis
PO21 1QL

PROPOSAL: Application for a Lawful Development Certificate for an existing use - 2 bed flat at 1st & 2nd level with access at ground floor

DESCRIPTION OF APPLICATION

Lawful Development Certificate for the existing use of the 1st & 2nd floor to be used as a 2 bed flat.

SITE AND SURROUNDINGS

The site is located within Bognor Town Centre. The building is a two storey end of terrace property with commercial premises to the ground floor and residential above.

RELEVANT SITE HISTORY

BR/72/19/PL	Change of use from photography shop (A1 Shops) to podiatry clinic (D1 Non-residential Institutions)..	ApproveConditionally 25-06-19
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Planning history noted. The premises had an application approved in June 2019 for the change of use for the ground floor from A1 to D1.

REPRESENTATIONS

Representations Received:

Bognor Regis Town Council
No objection.

Comments on Representations Received:

Comments noted.

CONSULTATIONS

Consultations Responses Received:

ADC Planning Solicitor

The application is for material change of use for the use of flats so the time limit is 4 years under the above. The time period is 4th April 2015 - 4th April 2019 - ie 4 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.

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

The evidence submitted in support of the application consists of

- A Letter from Mrs A Gardner dates 10th July 1998
- A statement from two persons stating that they have been tenants since 28th August 2014.
- A tenancy agreement renewal for a tenancy commencing 27th September 2017.

Para 3 NPPG says that "...if a 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.

In this case the Applicant has provided the Council with an inaccurate application form in that it indicates that it is not an application for a certificate of existing use (section 7) and that the use has been ongoing since 1900, which from the evidence provided in support is clearly not the case, as discussions were taking place with the Council over a change of use on 1998.

Therefore, the information provided by the applicant in the application form is unreliable and if that was the only evidence I would be of the opinion that the application should be refused on the basis that the applicant had failed to satisfy the Council that the change of use had taken place more than four years before the date of the application.

However, the applicant has also provided a signed statement from two tenants which states that they have been tenants of the flat since 28th August 2014, which is more than four years prior to the date of the application and they have produced a copy of a tenancy agreement renewal between themselves and the previous landlord which renewed the existing tenancy from 27th September 2017.

In addition, we have the evidence of the letter from Mrs. Gardner, in 1998, to confirm that the previous landlord was involved with the property at that time and was considering converting the first and second floors for residential use.

Therefore, I am of the opinion that the Applicant has provided the Council with sufficient, reliable evidence, namely the statement of the tenants and the tenancy agreement renewal, on which it can come to a finding that there has been a change of use of the property from office use to residential use, which took place more than four years prior to the making of the application.

Comments on Consultation Responses:

Comments noted.

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.

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.

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

CONCLUSION

Following the submission of evidence and from the advice of the Planning Solicitor it is clear that the evidence judged on a balance of probability is sufficient and is precise and unambiguous. The LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version less than probable. There is therefore no good reason to refuse the application.

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 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 property has been in use as a flat for a continuous period of 4 years.

FIRST SCHEDULE

Use of the 1st and 2nd floor as a 2No.bed flat with access from the ground floor as indicated on the plans
- Floor Plans, Site and Block Plan -2019/02/68/02

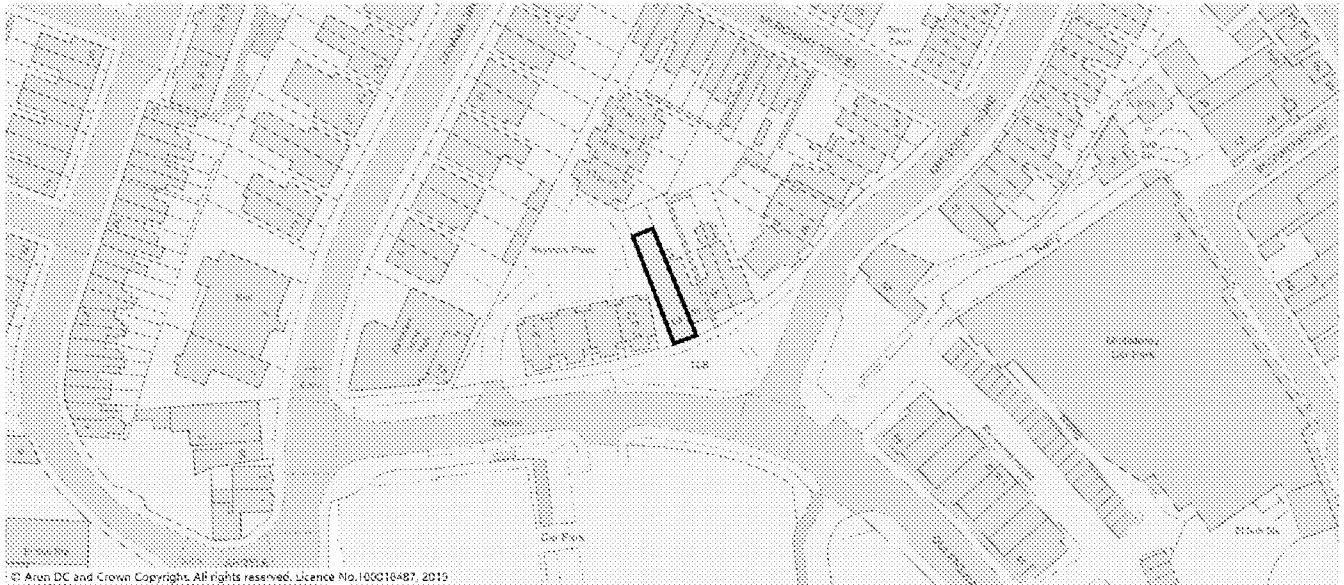
SECOND SCHEDULE

1st and 2nd Floor at 63A Queensway, Bognor Regis, West Sussex, PO21 1QL

EXTENT OF USE

Use of the 1st and 2nd floor as a 2No. bed flat with access from the ground floor.

BR/109/19/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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