

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/169/19/CLE

LOCATION: 5 Annandale Avenue
Bognor Regis
PO21 2ES

PROPOSAL: Lawful development certificate for use as existing house in multiple occupation (HMO)

DESCRIPTION OF APPLICATION

The application seeks a Certificate of Lawfulness for the use of an existing residential house as a House in Multiple Occupation (HMO).

SITE AND SURROUNDINGS

The site is occupied by a two storey dwelling. The area is predominately residential area with a mixture of houses and flats.

RELEVANT SITE HISTORY

BR/204/86	Change Of Use To Two Flats	ApproveConditionally 30-06-86
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Relevant site history noted.

REPRESENTATIONS

Representations Received:

Bognor Regis Town Council

No objection.

No representation received from nearby occupiers.

Comments on Representations Received:

Noted.

CONSULTATIONS

Environmental Health

Consultations Responses Received:

ADC Legal Response - I am of the opinion that the property has been in use as a HMO for at least 10 years. It is my opinion that the Certificate of Lawfulness should be granted.

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 HMO is 10 years.

CONCLUSION

The evidence submitted in support of the application consists of

- Emails from the HMO officer.
- HMO licences issued between 2012-2017 and 2017-2022.
- Statutory Declarations.
- Maintenance and Inspections Reports.

It is clear from the evidence submitted and from the advice of the Planning Solicitor 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 applicants version less than probably. 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 had been in use as a HMO for a continuous period of 10 years.

FIRST SCHEDULE

Use of the site as a HMO as indicated on the plans

- Ground Floor Plan -003
- First Floor Plan - 004
- Second Floor Plan - 005

SECOND SCHEDULE

5 Annandale Avenue, Bognor Regis, West Sussex, PO21 2ES which is shown on the plan to this certificate, within the area edged boldly in black.

EXTENT OF USE

The use of the property as a HMO with 7 bedrooms, 4 shower rooms and shared kitchen, diner.

BR/169/19/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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