

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/98/18/CLE

LOCATION: 1 & 5 Bedford Street
Bognor Regis

PROPOSAL: Lawful development certificate for an existing use as storage & sales of second hand white goods (A1 Shops).

DESCRIPTION OF APPLICATION

To establish the use of the building and hardstanding areas making up the curtilage of the building for use as an A1 shop.

DESCRIPTION OF SITE AND SURROUNDINGS

A semi detached two storey commercial 'shed' building on a large plot consisting of concrete hardstanding to the front and sides of the building. The hardstanding area is currently used for the external storage of white goods (fridges etc.). The site is located within the Bognor Regis Town Centre with mixed commercial uses and some residential uses on upper floors of surrounding properties.

RELEVANT SITE HISTORY

BR/54/93	Improvements and extension to existing car park including demolition of former bus station together with boundary enhancement and landscaping: covered walkway and service area Erection of 2 B1/B8 commercial units.	Approve Conditionally 19-05-1993
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BR/54/93 granted permission for the two units which became unit 1 and 2 , 5 Bedford Street. A condition was applied restricting the use to B1/B8 only and restricting external storage on the site however there has clearly been significant use of the site for internal and external sales of white goods. The question is whether or not this has been the continuous use for the past 10 years.

REPRESENTATIONS

Representations received:

Bognor Regis Town Council
BR TC no objection

Comments on Representations received:

Noted.

CONSULTATIONS

Consultations responses received:

1. I am asked to comment on an application for CLEUD at Unit 1, 5 Bedford Street, Bognor Regis, PO21 1SD ("the Premises")

BACKGROUND

2. On 3rd April 2018 the Council received an application for a CLEUD for existing use as storage and sales of second hand white goods as A1 Shops in Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

3. The application was validated on 24th April, 2018.

4. The application states that the description of the existing use is "Storage and sales of second hand white goods, i.e washing machines, fridge freezers, kitchen household appliances T.Vs".

5. Further, the application states that use began "more than 10 years before the date of the application"

6. The application is supported by letters from:

a) John Lawman of 'The Appliance Centre' which states that: "The property was bought from Mr Keith White in 2004 who was using the unit to repair and sale Televisions. As a domestic appliance retailer in the town the purpose of the unit was used for storing appliances although occasionally the customers would purchase machines directly from the storage facility. This continued until 2007/8 when larger storage premises were purchased.

Although there was an interim period of 2 years when a cleaning company used the premises for storage, Second Chance Domestic continued to trade from the premises selling second hand white goods"

b) Pam Knight, Accountant, dated 20th November 2018, states, in respect of 'Second Chance Domestic Unit 1, 5 Bedford Street, Bognor Regis PO21 1SD': "Mr Mears has been my client for the past seven years and has traded from the above address, selling second hand domestic appliance during the whole of the period mentioned."

c) Mr K A White dated 13th February 2018 states: "Regarding Units 1 & 2 Bedford Street. These units were commissioned by Ex Safeways Plc as replacements for demolished units in Bedford Street to make way for store extension. Unit 2 for Mr Johnston ex Johnstons Domestic as a storage unit and Unit 1 for myself ex K.W. Electrical Services to continue my business repairing T.Vs and Videos and Selling S/hand TVs etc. this is why shop front doors were fitted in construction.

I traded there from 1993 until selling to present owner in 2004."

d) Mr J Lawman, by email dated 14th February, I would like to confirm that Premier cleaning solutions only occupied the first floor of unit 1, 5 Bedford Street and the sell of white goods has been continuous from the ground floor and adjacent car park since 2004.

7. The only relevant planning permission for this property was BR/54/93 which was granted on 19th May 1993 and gave permission for two Class B1/B8 commercial units.

8. In the circumstances of this case the evidence shows:

a) 1993 Planning permission for B1 / B8 Use;

b) 1993 to 2004 used by Mr White for the repair and sale of televisions;

c) 2004 to 2018 used by Mr Lawman for the storage of white goods and occasional sale to the public;

d) 2007/8 to 2009/10 used by cleaning company for storage;

e) A cleaning business advertises as being based at the premises.

9. I am of the opinion that the Applicant has now shown that the Premises have been used for Class A1, retail sale of goods other than hot food and the display of goods for sale for the period of 10 years prior to the date of the Application in April 2018.

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.

PRINCIPLE

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 time period for a change of use of land to use for the storage and sales of second hand white goods (A1 shops) to be exempt from planning control is 10 years.

CONCLUSIONS

In order for a Certificate of Lawful Existing Use to be approved for the use of land it must be shown that the use has probably existed for at least the last ten years prior to the applications submission. In this case this would be from at least April 2008.

The applicant has provided evidence that:

- 1993 to 2004 used by Mr White for the repair and sale of televisions;
- 2004 to 2018 used by Mr Lawman for the storage of white goods and occasional sale to the public;
- 2007/8 to 2009/10 used by cleaning company for storage (first floor only);
- 2009/10 to 2018 used by Second Chance Domestic for the storage, repair and sale to the public of white goods

Given the evidence provided by the applicant it is considered that the use of the land and buildings for an A1 sales use has been demonstrated to be subsisting for more than 10 years within the site. Therefore the site is considered to have a lawful use for the A1 sales within the building and on the hardstanding outside of the building.

RECOMMENDATION

PP NOT REQUIRED

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 an A1 retail unit for a continuous period of 10 years.

FIRST SCHEDULE

Lawful development certificate for the existing use of the premises for A1 shops.

SECOND SCHEDULE

5, Bedford Street, Bognor Regis PO21 1SD

EXTENT OF USE

Use of the premises (building and forecourt) for A1 retail sale of goods other than hot food and the display of goods for sale.



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