

Our Reference: [REDACTED]

Your Reference: [REDACTED]

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Mr Juan Baeza, Area 2 Leader
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 8LF

17 July 2014

Dear Sirs

Prior Approval Applications reference: CM/12/14/PD; CM/13/14/PD and CM/14/14/PD

We have been instructed by Miss Alison Baird to write to you in relation three Prior Approval Applications submitted by her on 20th May 2014 and considered by the Council under the following references; CM/12/14/PD; CM/13/14/PD and CM/14/14/PD.

These three applications were each submitted in accordance with Paragraph N of Schedule 2 Part 3 of the General Permitted Development Order 1995. By your Council's letters dated 30 May 2014 (in relation to application reference CM/12/14/PD) and 4 June 2014 (in relation to applications reference CM/13/14/PD and CM/14/14/PD) you accepted those applications as having been registered and validated on 20th May 2014.

We are aware that your Mr Baeza has written to our client advising her that the applications are each being returned to her and that the fees are being refunded as (in each case) a determination on prior approval was not made. The stated reason for this decision in relation to each of the three applications is exactly the same, namely:

"In processing your prior notification for the above received on 20 May 2014, it has become apparent from site visits and checking the planning history that the structure does not fall within the definitions of a building since it does not currently have a use, the previous use being abandoned some time ago."

However, having reviewed the applications and subsequent correspondence and having considered the contents of Mr Baeza's letter it is clear that:

- (a) valid applications for prior approval were submitted;
- (b) our client has satisfied the requirements of Paragraph N of Schedule 2 Part 3; and
- (c) the Council has failed to give our client notification within the 56 day period that either prior approval is given or refused.

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Accordingly the conditions within Class MB 2(2) and IA2 (1)(b) have been satisfied and our client is free to implement those permissions. Mr Baeza's letters seek to cast doubt upon that position and, out of prudence it is our client's intention to submit applications under s191 of the 1990 Act for lawful development certificates confirming the position.

In the meantime it is our view that Mr Baeza's letters are of no effect and our purpose in writing to you is to request that they should be withdrawn by the Council. This is for the following reasons:

- Firstly; the letters do not identify or purport to rely upon any provision within the General Permitted Development order which entitles the Local Planning Authority to decline to make a determination on a valid prior approval application.
- Secondly; the Local Planning Authority does not have the power to decline to determine these Prior Approval applications. The Local Planning Authority may only do one of the following; refuse the application, decide that prior approval is not required or decide that prior approval is required and either (a) refuse to grant prior approval or (b) grant prior approval (either with or without conditions). Mr Baeza's letter does none of those things.
- Thirdly; Mr Baeza's letter states in relation to each of the structures that it does not fall within the definition of a building because "*it does not currently have a use.*" However, this statement does not make sense and has no basis in planning law. There is nothing within the General Permitted Development Order nor within the 1990 Act which requires a structure to have a use for it to fall within the definition of a building. Further the concept of abandonment of the use is irrelevant in the context of permitted development rights which specifically use the phrase "*... if the building was not in use on that date, when it was last in use.*"

Please also note that it is not conceded that these letters amount to notification for the purposes of Paragraph N nor that they were effectively served on the applicant within the 56 day period allowed.

We would also query the timing of the letters from Mr Baeza. The Council received and validated these three applications and went through a full consultation process. That process did not reveal any grounds for refusing prior approval. The letters have the appearance of a last minute attempt by the Local Planning Authority to find some excuse for turning these applications away and of reaching a decision which could not be justified on appropriate planning grounds. In our view the decision to send those letters is susceptible to challenge on Judicial Review grounds.

We would therefore be grateful for your confirmation that the letters from Mr Baeza will be withdrawn. If they are not then our client will need to consider commencing Judicial Review proceedings regarding the letters. This would be in addition to the applications for Lawful Development Certificates currently being prepared.

Yours faithfully

