

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development**REF NO:** CM/22/14/CLP**LOCATION:** The Piggeries
The Street
Climping**PROPOSAL:** Application for a Lawful Development Certificate for a Proposed use or development - change of use of the building and its curtilage from use as a retail shop (Class A1 Shops) to a dwelling (Class C3 Dwellinghouses).**DESCRIPTION OF APPLICATION**

The proposal is to establish whether the change of use of the building and its curtilage from retail to residential use, comprising a single storey 1 bedroom dwelling, constitutes permitted development and therefore does not require the submission of an application for planning permission

DESCRIPTION OF SITE AND SURROUNDINGS

The site lies in rural location and is accessed off Climping Street. The building is in a poor state of repair, but is weather tight. It has flint and brick elevations and a corrugated roof. One door is blocked up and another opening is boarded over. The building is covered in part by ivy.

RELEVANT SITE HISTORY

CM/11/07/	Change of use from agriculture to fishing tackle shop	ApproveConditionally 15-08-2007
CM/1/08/	Change of use of Piggery (and building conversion works) from agriculture to offices, laundry, stores/archives, toilets & associated facilities. (Departure from the Development Plan)	ApproveConditionally 23-06-2008
CM/4/11/	Renewal of unimplemented planning permission CM/1/08 for change of use of Piggery (and building conversion works) from agriculture to offices, laundry, stores/archives, toilets & associated facilities. (Departure from the Development Plan)	ApproveConditionally 30-06-2011

CM/12/14/PD - Application returned. The structure did not fulfil the requirements to be considered and accepted under Class IA.

This application includes plans and additional information that did not form part of CM/12/14/PD

REPRESENTATIONS**Representations received:**

None

Comments on Representations received:

None

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor - Counsel's opinion sought and provided.

The need for planning permission is questionable. The shop use of the Piggeries results from planning permission CM/11/07. This was a retrospective grant of planning permission and the site visit at that time confirmed the use as a fishing tackle shop on or about February 2007. The application states it was last used on 29-02-2008 and the application form states that the site is 131.82sq m which is shown as the total area of car park and piggery building on plan OPFT 4 (the plan labelled as the 'area of let site for the fishing tackle shop application').

Permitted development rights were not removed when planning permission was granted. PD rights under Class IA are subject to a separate and additional condition that before beginning the development the developer must apply to the Council for a determination as to whether prior approval of the authority will be required. In addition, PD rights only permit limited alterations and building works to turn the building into a dwelling. Only building operations reasonably necessary to convert the building are permitted.

With regard to abandonment it is difficult to abandon a planning permission for operational development. Where a planning permission is granted and the operational development remains in existence, and capable of further use without further works requiring planning permission, then the original permission cannot be abandoned.

The NPPF does not apply to consideration of this application.

No PD rights apply to will apply where dwellinghouses are permitted under this new legislation.

Comments on Consultation responses:

None

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.

The Planning Practice Guidance (PPG) confirms that the burden of proof in applications under this section is firmly with the applicant. The relevant test is the 'balance of probability', and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

The determination of this application turns on the detailed text of the provisions of the Town and Country Planning (General Permitted Development) 1995 (as amended), Class IA of Part3.

- Class IA, which allows a shop to change to a residential use.

However these new PD rights do require the Local Planning Authority to consider a number of issues. In the case of Class IA they are:

- a) transport and highways impacts of the development
- b) contamination risks on the site.
- c) flooding risks on the site, or
- d) whether it is 'undesirable' for the building to change to a dwelling house use because of the impact of the change of use on the adequate provision of shop's services or sustainability of a key shopping area.

CONCLUSIONS

The site lies in a rural area outside the built up area boundary where residential use would be strictly controlled. However, the planning legislation does not require consideration of the Local plan or its policies (as s.38(6) of the PCA 2004 or s.70 of the TCPA 1990 apply) although its policies could be said to be material planning considerations in a very general sense.

The building is in a reasonable state of repair. The plans submitted with the application indicate that the roof profile will not be altered, no floors will be added, a window on the west elevation is to be removed and the window on the east elevation will be altered to a door. Internal subdivision would not be excessive. The number of alterations on the submitted plans indicate that they are not significant and rebuilding of the premises would not be necessary to facilitate the change of use.

The lawfulness of the proposed use is to be determined 'at the time of the application'. The GPDO now states (as amended by the 2014 Order) N(2A) the local planning authority may refuse an application where in the opinion of the authority-

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

The proposal has been supported with photographs of the implemented use, rate demands and exemption letters and a tenancy agreement and correspondence relating to unauthorised signage. This information demonstrates that the use was implemented. Since operational development remains in existence and it is capable of further use without further works requiring planning permission the original use cannot be abandoned.

RECOMMENDATION

PP NOT REQUIRED

The Arun District Council hereby certify that on 04-08 -2014 the development described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged black on the plan attached to this certificate, was lawful within the meaning of section 192 of the Town & Country Planning Act 1990 for the following reason

Permission was granted and implemented for use of the premises as a shop in 2007 (this

established operational development). The building has not been used for some time, but has a roof and windows and the use cannot therefore be considered to be abandoned. The amount of work required to change the use to a dwelling (which modestly includes a change to the roof material, no introduction of an additional first floor and the change from one window to a door) would not constitute rebuilding [but "conversion"] having due regard to the Inspector's Decision in ref APP/P1133/A/14/222350 (paragraph 6) in Little Leigh Farm Devon and the requirements and provisions of GDPO 1995 as amended Schedule 2 Class IA.

The development shall be carried out in accordance with the information that the developer provided to the local planning authority, unless the local planning authority and the developer agree otherwise in writing.

The development shall be completed on or before 21st January 2018 and the developer shall notify the local planning authority of the completion of the development as soon as reasonably practicable after completion, this notification shall be in writing and shall include (a) the name of the developer, (b) the address or location of the development, and (c) the date of completion.

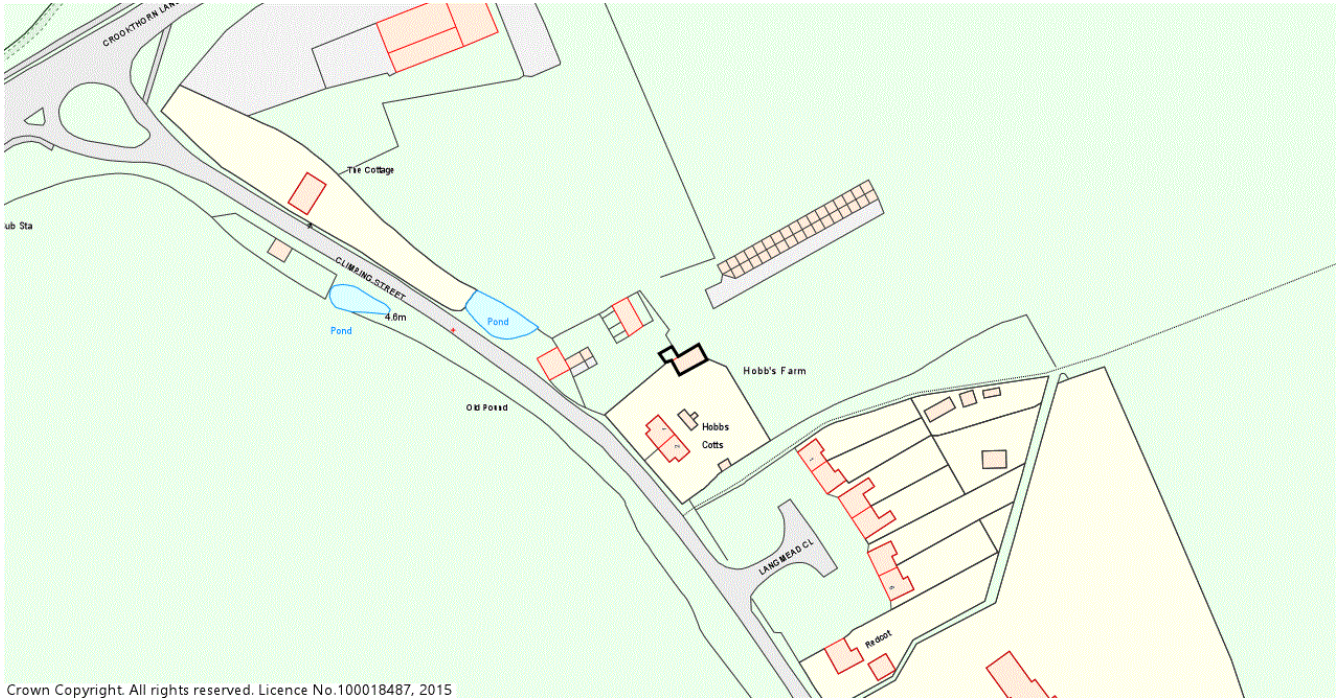
For the avoidance of doubt, the approved details comprise of the application form as signed and dated 01-08-2014 and Location plan Rev 01, Existing and Proposed roof plans 820/TP02 and Existing and Proposed elevations 820/TP03 all submitted with the application form.

FIRST SCHEDULE

Change of use applied under GDPO 1995 Schedule 2 Class IA for the building and its curtilage from use as an A1 shop to a one bedroom dwelling-house.

SECOND SCHEDULE

The Piggeries, The Street, Climping as shown edged black on the attached plan



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