

CM/20/13/CLE

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

REF NO: CM/20/13/CLE

LOCATION: Bairds Farm Shop Ltd
Crookthorn Lane
Climping

PROPOSAL: Application for Certificate of Lawfulness for use of land as a farm shop and for purposes ancillary to the farm shop

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for use of the land as a farm shop and for ancillary associated purposes which include car parking and storage.

DESCRIPTION OF SITE AND SURROUNDINGS

The site comprises an established farm shop with car parking adjacent to the road frontage. It is single storey with clad elevations. The area to the rear includes a poly tunnel and is separated from the adjacent field by close boarded fencing. The area to the side is gravelled and used for storage of packaging/trolleys/bins etc and is clearly defined by fencing. The area immediately to the east of the car park contains a raised bed planted with shrubs and enclosed by sleepers. The car park area is hard surfaced with spaces clearly defined and marked out.

RELEVANT SITE HISTORY

CM/34/95	Change of use of Bairds Farm Shop to include the sale of fresh meat and grocery items	Approved Cond + S106 22-07-1997
CM/28/01/	Lean-to temporary building (17 sq.m) for temporary period.	ApproveConditionally 14-11-2001
CM/31/02/	Renewal of temporary planning permission CM/28/01/ for lean-to building.	ApproveConditionally 18-12-2002
CM/13/12/	Installation of 1no. window	ApproveConditionally 05-11-2012
CM/17/13/CLE	Application for a Lawful Development Certificate for an Existing use or operation - erection of 2 No. buildings to the rear of Baird's farm Shop used as an office & laundry	Approve 20-12-2013

cleoffrep

CM/17/86

Car park

ApproveConditionally

08-09-1986

The site operates as a farm shop and has the benefit of both planning approvals and certificates of lawfulness which recognise and restrict this use. The use of the farm shop is not limited to set opening times and the number of staff are not restricted under CM/17/03/CLE.

REPRESENTATIONS

Representations received:

One letter of objection - This application falls within the judgement relating to Welwyn Hatfield BC 2011.

Comments on Representations received:

It is not considered that this case is relevant. It relates to concealed development and the commencement of the period to take enforcement commencing when the discovery of the breach occurs.

CONSULTATIONS

Solicitor - Legal Services

Consultations responses received:

Planning Solicitor

I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

I rely on you to tell me of any evidence indicating otherwise.

DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

(1) Time: SS171 (1)-(3) and S191 TCPA 1990

The application is for a material change of use so the time limit is 10 years under the above. The time period is ie 25/11/03 to 25/11/13 - 10 years to date of the application.

The evidence does satisfy this test.

(2) Sufficiency of Evidence: para 8.12-8.22

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 8.15 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.

The evidence analysed is :-

1 Alison Baird Shop manager 2008 to date

Known site since this time and fence erected to keep out burglars circa 2008. Clear and precise

2 John Baird Shop owner 1995 - 2008

Father owned site 1975 on so he knows site since then

cleoffrep

Shop manager 95/08

Paras 9 - 12 outline fence erection and extension in 2003 Exhibit JB is a bundle of invoices for the works.

The red edged land has been used since for farm shop use.

Clear and precise

3 Aerial photos 2001 and 2013 on Google Earth. Latest 2013 shots shows the new fencing works and extension of the site into countryside. Clear and precise

4 Ms Besser Objector suggests relevance of case of Welwyn Hatfield BC 2011 --"house behind the hay bales" case.

Offers no facts or other relevant information. The legal case is not relevant. It relates to concealed development and the commencement of the period to take enforcement commencing when the discovery of the breach occurs. This type of concealed breach is now addressed in SS171 BA TCPA 1990 as amended by Localism Act 2011.

5 Planning History. Several references to applications connected to farm shop.

On a balance of probability, and the lack of contrary evidence, I judge that the case to extend the red edge is proven and a CLEUD to that effect can be granted.

FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice.

TERMS

1. grant
2. identify precise land boundaries on plan for extent of use.

Comments on Consultation responses:

Agreed.

LEGISLATIVE BACKGROUND

Principle

Section 191 to 195 Town & Country Planning Act 1990 and DOE Circular 10/97 Annex 8 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.

(iii)The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

The relevant time limit for this operation is 10 years.

1. Principles

Section 191 Town and Country Planning Act 1990 and Circular 10/97 Annexe 8

1.1 Time: SS171(1)-(3) and S191 Town and Country Planning Act 1990.

2. Assessment

The evidence consists of:

Statement from Alison Baird dated 18-11-2013 and exhibit plan

Statement from James Baird dated 18-11-2013 and exhibits

Aerial photographs

cleoffrep

Copies of invoices

CONCLUSIONS

The application contains sufficient information to demonstrate that the use of the land as a farm shop and for purposes ancillary to this use has taken place continuously on the site for the last 10 years.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on 25-11-13 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 black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 for the following reason:

Evidence produced by the applicant shows that the use has operated for a period of more than 10 years. The period in which enforcement can be taken, as set out in section 171B of the Town & Country Planning Act 1990 (as amended) has therefore expired.

FIRST SCHEDULE

Use of the site as a farm shop and for purposes ancillary to the farm shop, Bairds Farm Shop, Crookthorn Lane, Clymping.

SECOND SCHEDULE

Land to rear of Bairds Farm shop, Crookthorn Lane, Clymping shown on the plan attached to this certificate, within the area edged boldly in black.

EXTENT OF USE

The extent of use is that defined on the submitted site plan which includes the shop unit, car parking area to the north and strips of land to the rear and east enclosing the farm shop which are used for ancillary purposes, including storage and are approximately 5 metres wide.

cleoffrep