

CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT REPORT**REF NO:** EG/36/11/CLE**LOCATION:** 17 Elm Grove South
Barnham**PROPOSAL:** Application for certificate of lawfulness for an existing use as a detached bungalow**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	This is an application for a Certificate of Lawfulness for an existing use as a residential dwelling. The applicant must provide evidence that the use has been established for four continuous years.
SITE AREA	N/A
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat
TREES	Large conifer on the side boundary with the school.
BOUNDARY TREATMENT	Metal railings to the front and side painted in maroon delineating the school boundary.
SITE CHARACTERISTICS	Brick built bungalow enclosed within the school site. The building has been used as part of the school, either as a caretaker's dwelling or as offices. To the front of the site are no stopping road markings as this is the entrance to the school. To the rear of the site are school buildings and school paths.
CHARACTER OF LOCALITY	The site is within the St. Philip Howard Catholic High School. There is a public footpath to the side and rear of the building.

RELEVANT SITE HISTORY

EG/8/57/A	School keepers bungalow	Approve Cond 18-02-1959
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REPRESENTATIONS**Representations received:**

Awaited

Comments on Representations received:

None

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor

I recommend you refuse for the reasons that follow, subject to your finding any contradictory evidence.

Tests under SS191 TCPA 1990 and Circular 10/97 Annex 8.

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

The application is for material change of use so the time limit is four years under the above as this is a residential claim.

The time period is 22nd June 2007 - 22nd June 2011 - four years to the date of the application.

The evidence does not satisfy this test having been used since 2002 for the purposes of teaching i.e. D1 (E) use class according to the statement of E Bedford which accompanies the application.

(2) Sufficiency of Evidence Para 8.12-8.22

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

Para 8.15 and the case of Gabbittass v SSE and Newham LBC 1985 JPL630 referred to there established 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 uncorroborated evidence and unsworn evidence via letters is sufficient of these purposes.

The evidence is insubstantial but shows no dwelling house use in the four years period (See E Bedford evidence)

Comments on Consultation responses:

Comments noted

DEVELOPMENT PLAN AND/OR 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.

1. 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.

1.1 The relevant time limit for the material change of use of the land from four years from 22nd June 2007 to 22nd June 2011 is four years a residential use.

2. Assessment

2.1 The submitted evidences consist of:

Application

(i) Shows use as school caretakers hours connected with St. Philip Howard Catholic High School from 1959 - this is a D1 use and is not an independent C3 dwelling but is connected to and ancillary to the school and cannot be used separately without Planning Permission - See Planning History EG/8/57A.

Council Tax

(i) email dated 21st April 2011 Council Tax paid on dwelling from 1992 - 2002. This does not prove a case. Council Tax is paid by any home occupier irrespective of the planning status of the dwelling. Indeed none has been paid since 2002, no Council Tax is paid by any occupier after the building became used for teaching.

Statement - (i) E Bedford dated 16th June 2011-09-12

This supports a refusal. It contradicts the claim for a dwelling use and at Para. 2 confirms this use ceased in 2002.

Licence

(i) Licence to Occupy as School Caretaker WSCC & Marsh.

This confirms it was never used as an independent dwelling. It was used as ancillary to a school - just as a caretakers residence then for teaching.

The only way that this could be made into an independent dwelling would be via a Planning Application. The use is D1(e) - School, education use.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

The evidence shows that the use of the bungalow was originally for a school caretakers dwelling. Since 2002 it has been used for school purposes and has never been used as a separate unit of accommodation. The use continues to be D1(e) ancillary to the school use. The applicant was advised by email on 4th May 2011 that the site was "part of the school unit and any proposed use, other than in association with the school would require a change of use application"

Therefore, recommend refuse as the evidence is not sufficient to prove four years use as a separate dwelling house during the past four years judged on a balance of probability.

RECOMMENDATION

REFUSE

- 1 The applicant has failed to show on the balance of probability, the caretakers bungalow has been separated from the school and used as a separate dwelling house for the qualifying 4 years 22nd June 2007 and 22 June 2011 to satisfy the issue of Certificate of Lawfulness under Section 171 (1-3) and Section 191 of the Town and Country Planning Act 1990.
- 2 The applicant has failed to show with the evidence produced, judged on the balance of probability that the caretakers bungalow has been used as a separate dwelling house independent of the school for the 4 years required to satisfy the issue of Certificate of Lawfulness under Section 171 (1-3) and Section 191 of the Town and Country Planning Act 1990.
- 3 The evidence submitted is insufficient, imprecise and ambiguous and fails the test in Circular 10/97 Annex 8 Para 8.12-8.16.