

ACTION SHEET

APPLICATION NUMBER EG/26/11/CLE

OFFICER NAME Susan LEEON

SUBSTITUTE PLANS/FORMS YES/NO DATE RECEIVED

SUPERSEDE PREVIOUS PLANS (please give details e.g. plan number or type)

Please scan + return to SAC

MINOR AMENDMENT YES/NO DATE RECEIVED

SUPPLEMENTARY PLANS YES/NO DATE RECEIVED

ADDITIONAL PLANS YES/NO DATE RECEIVED

LANDSCAPING YES/NO DATE RECEIVED

RE-ADVERTISEMENT YES/NO

If YES, reason for re-advertisement

LIST No.

correspondence between County Solicitor

+ Case Officer

CHANGE DESCRIPTION/ADDRESS TO READ:

NOTIFY PARISH COUNCIL YES/NO

NOTIFY REPS YES/NO if yes, No. of days to reply

SIGNED DATED 24/10/12

ACTIONED: SIGNED DATED

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex, BN17 5LF
Tel: (01903) 737500
Fax: (01903) 716019
DX: 57406 Littlehampton
Minicom: (01903) 732765
e-mail: planning@arun.gov.uk



Mr. Mustafa Khan,
Asst. Solicitor Planning & Highways,
West Sussex County Council,
County Hall,
CHICHESTER,
West Sussex.

28th November 2011

DX 157410 CHICHESTER 8

Your Ref:

Our Ref: EG/36/11/CLE/SL

Please ask for:
Mrs. S. Leeson
Planning Department
Direct Line: (01903) 737529

Dear Mr. Khan,

Land at St. Philip Catholic High School and 17 Elm Grove South, Barnham

Further to your letter of 4th October 2011, I have discussed the matter with our Planning Solicitor and can respond to your points as follows:-

Firstly, it was not clear from your application from (which is an Application for a Lawful Development Certificate for an Existing use or operation or activity including those in breach of a Planning Condition) that you were seeking anything other than a CLE for use as a bungalow. This was clear on the description of the application and the confirmation letter which was sent to you on 26th July 2011 (copy attached).

Indeed, numerous discussions had taken place between WSCC and the Local Planning Authority regarding the residential use of the bungalow (copy e-mail attached).

Secondly, as we have previously discussed the planning unit is a D1 Educational use as a school. It is considered that the use of the site (the bungalow in question) has been, and can be used for any purposes ancillary to the school. This could include adult education or general training.

I understand from previous conversations that you are seeking to sell the bungalow for as a separate unit. We have considered the Winton - v - Secretary of State case, and are of the opinion that the judgement is on the facts. A significant material consideration is the juxtaposition of the unit and the school entrance. The site is in a no stopping zone to the front of the site. Car parking is provided on the school site and because of the no stopping zone it is unlikely that permission would be granted to create a new access in order to provide car parking.

Cont'd

Cont'd

It should be noted that the site is also adjacent to a right of way. With regard to fees, it should be noted that a free go only applies to an application which is not significantly different from the original. Therefore, if you wish to apply for a D1 separate unit a fee will be required.

Therefore in summary, the site can be used for any D1 ancillary use in association with the school. Any application to separate the bungalow as a separate unit is likely to be recommended for refusal due to the constraints of the site with regard to car parking. I trust this answers your questions but please do not hesitate to contact me if you wish.

Yours sincerely,

Susan Leeson
Principal Planner

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Your Ref:

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Please ask for:
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Planning Department
Direct Line: (01903) 737529

Dear Mr. Khan,

Land at St. Philip Catholic High School

Further to our various conversations, I am enclosing a copy of the original planning approval EG/8/57 which shows the extent of the site. Included with this application was the caretaker's bungalow.

I trust this is the confirmation that you were requiring. If you require any further information please do not hesitate to contact me.

Yours sincerely,

Susan Leeson
Principal Planner

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Arun Civic Centre
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28th November 2011

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Mrs. S. Leeson
Planning Department
Direct Line: (01903) 737529

Dear Mr. Khan,

Land at St. Philip Catholic High School

Further to our various conversations, I am enclosing a copy of the original planning approval EG/8/57 which shows the extent of the site. Included with this application was the caretaker's bungalow.

I trust this is the confirmation that you were requiring. If you require any further information please do not hesitate to contact me.

Yours sincerely,

Susan Leeson
Principal Planner

Application No. EG/8/57'A'
Date received 5th January 1959.

TOWN AND COUNTRY PLANNING ACT, 1947
TOWN AND COUNTRY PLANNING (General Development) ORDER, 1930
ADMINISTRATIVE COUNTY OF WEST SUSSEX
CHICHESTER RURAL DISTRICT COUNCIL

Permission for Development of Land
Subject to Conditions

To The Roman Catholic Diocese of Southwark and the W.S.C.C.
c/o Messrs. Clayton, Black & David,
16, Dartmouth Street,
LONDON, S.W.1.

Proposal Schoolkeepers Bungalow - Elm Grove South, Barnham.

The Chichester Rural District Council, in pursuance of the powers delegated to them by the West Sussex County Council under the above Act and Order, hereby permit the development proposed by you in your application as quoted above, and shown on the plans submitted therewith.

This permission is granted subject to:-

- (a) due compliance with the byelaws and general statutory provisions in force in the district;
- (b) the proposed development being carried out strictly in accordance with the detailed drawings and written particulars approved by the Council;
- (c) any departure from the approved proposals being made the subject of a fresh application, and
- (d) the conditions as stated on page 3.

I return herewith your copy of the application.

Dated this 18th day of February, 1959.

Pallant House,
Chichester,
Form P.D.2.

Clerk of the Council.

N.B. It is important that you read the notes on the back of this Form.

CHICHESTER RURAL DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT, 1947

SCHEDULE OF CONDITIONS ATTACHED TO APPLICATION No. 22/8/57.11

Development permission is granted to the above application subject to the following conditions:-

- (1) This consent must not be construed as implying permission to obstruct or divert the claimed right of way, diverted by Order dated December 1958, which passes to the east and north of the proposed development.

The above condition is imposed in order to preserve rights of way.

ELM

ELM GROVE SOUTH

||
SITE OF SEWAGE
PLANT.

18 FEB 1

CHICHESTER
BUIL
Examined
Approved

Railway



Application No. EG/8/57

Date received 25th March 1957.

TOWN AND COUNTRY PLANNING ACT, 1947
TOWN AND COUNTRY PLANNING (General Development) ORDER, 1950
ADMINISTRATIVE COUNTY OF WEST SUSSEX
CHICHESTER RURAL DISTRICT COUNCIL

Permission for Development of Land
Subject to Conditions

To Southwark Diocesan Schools' Commission,
2, Mitcham Lane,
Streatham,
London, S.W. 16.

Proposal Arundel Doonery Roman Catholic School,
Elm Grove South, Barmham.

The Chichester Rural District Council, in pursuance of the powers delegated to them by the West Sussex County Council under the above Act and Order, hereby permit the development proposed by you in your application as quoted above, and shown on the plans submitted therewith.

This permission is granted subject to:-

- (a) due compliance with the byelaws and general statutory provisions in force in the district;
- (b) the proposed development being carried out strictly in accordance with the detailed drawings and written particulars approved by the Council;
- (c) any departure from the approved proposals being made the subject of a fresh application, and
- (d) the conditions as stated on page 3.

I return herewith your copy of the application.

Dated this 15th day of April, 1957.

Pallant House,
Chichester,
Form P.D.2.

Clerk of the Council.

N.B. It is important that you read the notes on the back of this Form.
1.

CHICHESTER RURAL DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT, 1947

SCHEDULE OF CONDITIONS ATTACHED TO APPLICATION No. EG/8/57

Development permission is granted to the above application subject to the following conditions:-

- (1) This consent shall not be construed as implying permission to obstruct or divert the claimed right-of-way which crosses the site.

The above condition is imposed in order to preserve rights-of-way.

Pallant House,
Chichester
Form P.D.2a.

FORM C.P.1

ADMINISTRATIVE COUNTY OF WEST SUSSEX

TOWN AND COUNTRY PLANNING ACTS 1947 TO 1954
PUBLIC HEALTH ACT, 1936
AND BYELAWS FOR BUILDINGS AND NEW STREETS

Application for Permission to Develop Land and/or to carry out Building Works (3 Copies required)

For Official Use Only	
Plan Register No.	<u>22/8/57A</u>
Date Received	<u>5 JAN 1959</u>
Reference to Previous Decision	
Date when Applicant Informed	

PART I—APPLICATION (To be filled in by all Applicants)

I/WE hereby apply for permission to carry out the development described in this application and on the attached plans and drawings.
All notices under the above Acts affecting the property described in this application shall be served on me until further notice.

(Signed) [Redacted]

If signed by an Agent: Name of Agent Graydon, Black & Daviel,
Profession Chartered Architects,
Address 16, Dartmouth Street, S.W.1.
London, S. W. 1.

Tel. No. 2241450 Date 19th December, 1958.

PART II—GENERAL (To be filled in by all Applicants) (In this part the word "land" includes any buildings thereon)

(1) Name and address of applicant in BLOCK LETTERS (i.e. the person for whom development will be carried out).
Surname (state whether Mr., Mrs., Miss) Roman Catholic Diocese of Southwark and
Other names Local Education Authority, (W.S.C.C.)
Postal Address County Hall, Chichester.

(2) Address or location of the land to be developed. Please give enough detail for it to be easily identified (e.g. in the case of undeveloped land give name or classification number of adjoining roads and quote Ordnance field parcel number).	<u>Site of New School off South End of Elm Grove South</u>
(3) Particulars of the applicant's interest in the land (e.g. owner, lessee, prospective purchaser, etc.).	<u>Owners</u>
(4) Particulars of the proposed development, including the purpose for which the land and/or buildings are to be used. If for more than one purpose, give details. See note (a) below.	<u>Schoolkeepers Bungalow</u>
(5) Area of the land to which the application relates.	<u>5400 sq. ft.</u>
(6) Purpose for which the land and/or buildings are now used, and if used for more than one purpose, give details.	<u>Arable till building of School commenced.</u>
(7) (a) Does the application involve any new access to a road or any alteration of an existing access? (b) State the purpose for which it is required (e.g. 'vehicle access to new garage', 'pedestrian access' or 'New Road Junction').	(a) <u>Yes, to private road.</u> (b) <u>Pedestrian only.</u>
(8) Particulars of the exact position at which new or altered access is required and short details of any works (e.g. 'Piping and crossing ditch', 'Crossing Footway', or 'Crossing grass margin'). N.B.—This must be indicated on one of the plans.	<u>Crossing unkept margin.</u>

(*) If the application relates to the erection of an industrial building which will have an aggregate floor space exceeding 5,000 sq. ft., the applicant must attach a certificate issued by the Board of Trade (whose address is London and South Eastern Regional office, Grosvenor House, Dean Stacey Street, London, S.W.1. Telephone: Tate Gallery 4115) certifying that the proposed development can be carried out consistently with the proper distribution of industry.

(3 Copies required)		Plan No.	Date
(9) Is the site within an area of a layout plan for which permission has been granted by a Local Planning Authority? If so, state the plan number and date of permission.			
(10) Distance from the face of the building to centre of highway Width of the existing Highway (See note (b) below).			Feet Feet
(11) Open space at the rear and sides of building, exclusively belonging to the building. (a) Area of open space at the rear of the building (b) Distance from rear main wall to back boundary fence (c) Distance between buildings and side boundary fence	3370 80 8		sq. ft. ft. ft.
(12) Level of lowest floor above or below crown of road.	Above Below	feet feet	ins. ins.
(13) Damp-proof course—particulars of materials	AS JOS		
(14) External Walls— (a) Method of construction (b) Type and colour of facing brick to be used (c) Colour of pointing (d) If rendered or rough-cast, state finish and colour.	11" Cavity Multi-coloured Stocks Buff	)))	To match School.
(15) Roof— (a) Materials (b) Colour (c) Gauge of tiles or slates (d) Projection of eaves—distance of fascia from wall	Gaelic Interlocking Clay Roofing Tile. 9"		inches
(16) Drainage— (a) Description and size of pipes (b) Materials (c) Quality (d) Method of jointing (e) Description of outlet of drains (sewer or cesspool) (f) If cesspool, state:— (i) Method of construction (ii) Effective Capacity (iii) Distance from nearest building or well (g) Method of surface water drainage (e.g. soakaway, or surface water sewer)	Soil Pipes - 4" Salt Glazed Stoneware first Gaskin and Cement Awaiting decision of R.D.C. Soakaway		feet ins.
(17) Estimated Cost of Building Works (as required by the Statistics of Trade Act, 1947)	£ 2,250.		
(18) (a) Is any proposed building within 200 feet of any overhead electricity grid line, i.e. of 33,000 volts or higher. (b) If so, have the South-Eastern Division of the British Electricity Authority, British Electricity House, Lower Ham Road, Kingston-upon-Thames, Surrey, been informed.	(a) No. (b) No.		
(19) Means of storage of house refuse, i.e. number of dustbins	1		
(20) Means of Water Supply.	Companies Main		

(b) In Rural Areas the highway may be assumed for this purpose to extend from hedge to hedge.

ADMINISTRATIVE COUNTY OF WEST SUSSEX

TOWN AND COUNTRY PLANNING ACT, 1947, &
BYELAWS FOR BUILDINGS AND NEW STREETS.

APPLICATION FOR PERMISSION TO DEVELOP
LAND AND/OR TO CARRY OUT BUILDING
OPERATIONS
(3 COPIES REQUIRED)

NOTES FOR GUIDANCE IN COMPLETING AN APPLICATION
ON FORM C.P.1

(1) Subject to the provisions of Section 12 of the Town & Country Planning Act, 1947, and the Town & Country Planning (Use Classes) Order, 1950, 'development' includes the making of any material change in the use of any buildings or other land.

(2) This application is for planning and/or bye-law permission only and should be submitted in triplicate.

(3) If your application is for an industrial building you should fill in parts I and II of this form (and Part III if appropriate) and should also submit additional information on a Part IV form which you can get from the Council Office.

(4) If your application is for approval to the winning or working of surface or underground minerals you should fill in parts I and II of this form and should also submit additional information on a part V form which you can get from the Council Office.

(5) If you wish to make any deviation from the approved plans while the work is in progress you must submit THREE copies of any drawings or particulars necessary to explain the proposed deviations and get them approved before the work is carried out.

NOTES ON THE PLANS TO BE SENT WITH FORM C.P.1

(3 COPIES OF EACH PLAN REQUIRED)

(1) Plans must be clearly drawn or reproduced on durable material and must be signed on every sheet by the applicant or his agent. All duplicates must be true copies of the original plan or set of plans. They will usually consist of one or more of the following:-

I. Site Plan

A site plan containing sufficient information for the Local Planning Authority to identify the exact location of the land must be attached to all applications, unless a layout plan showing all the necessary information is submitted.

It should normally be drawn to a scale of 25" = 1 mile (1/2500) but in special cases a smaller scale may be accepted. It should show the land to which the application relates coloured pink and any adjoining land in the same ownership coloured blue.

II. Layout plan

A layout plan must be attached to all applications for permission for building development unless either -
(a) the proposed development is a single building on an isolated site, surrounded by undeveloped land which will remain undeveloped, or
(b) the layout of the site is completely determined by existing and adjoining development.

Where a layout plan is submitted it must be drawn to a scale of not less than 1/2500 and must show -
(a) the boundaries of the land to which the application relates and the existing and proposed layout thereof, including any proposed division of the land into plots;
(b) the position of all existing and proposed buildings, roads, and public rights of way thereon (distinguishing existing from proposed), indicating for proposed buildings the maximum height for each building, and the levels and width of any proposed roads, carriage ways and footpaths;
(c) the proposed use of each building and any land not built on;
(d) the land surface contours at 5 feet vertical intervals. (Note: It is unnecessary to supply this information where the land is, to all intents and purposes, flat.)
(e) particulars of proposed water supply pipes and of drains and sewers (both foul and surface water) giving sizes and gradients with reference to existing services.
(f) the situation of the land in relation to the nearest public road;
(g) all existing trees and natural features, indicating those which will be preserved.

III. Block and Building Plans.

Block and building plans must be attached to all applications for the erection, rebuilding or alteration of a building. The block plan should be drawn to a scale of not less than 1/500 and the building plan to a scale of not less than 1/2" = 1' except for large buildings, where after consultation with this Council a scale of not less than 1/16" = 1' may be used.

Block plans must show -

- (a) the boundaries of the plot;
- (b) the position of existing and proposed buildings;
- (c) the position of buildings, cesspools and wells adjoining plots;
- (d) the position and width of existing and proposed means of access;
- (e) existing and proposed drains, manholes, septic tanks, cesspools or wells, indicating the size, depth and inclination of any drains and means of ventilation, and distinguishing in all cases existing from proposed works.

Building plans must show -

- (a) Detailed plans and sections of each floor.
- (b) Elevations of the several sides of the new buildings/works/alterations or extension giving size type and position of window, ventilators etc.
- (c) Positions, form and dimensions of the foundations, walls, floors, roofs and chimneys of the building and any outbuildings, cesspool, well, etc.
- (d) In certain buildings, means of escape from fire as required by Section 60 of the Public Health Act, 1936.
- (e) In the case of new shop fronts full details as to materials and colours should be stated and preferably a plan to a scale of 1/2" to 1" submitted.
- (f) The colouring of plans and elevations and the casting of shadows is not insisted upon but this additional information is most desirable, especially where it will assist in understanding the drawings and making the applicant's intentions clearer.

FROM:

Delwyn Jones
Planning Solicitor
Resources Department
Tel Ext 37737

TO:

S Leeson Planning Officer
Dated 15 November 2011

REF:EG/36/11CLE/CONSULTATION

**ADDRESS : NO 17 ELM GROVE SOUTH BARNHAM –PART OF ST PHILIP
HOWARDS SCHOOL**

NATURE OF USE :USE AS DWELLINGHOUSE --- FURTHER ADVICE

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your further questions about this.

The applicant has also clarified his position in conversations with Solicitor from WSCC Mustafa Khan on 14 November 2011.

I have highlighted the issues which remain to be addressed according to Mr Khan as follows:-

**1. The Nature of what is Applied for --- not a C3 dwelling but a CLE for Class D1
Educational Use of Former Caretakers Bungalow**

Mr Khan says that the file description -----“ existing use as detached bungalow “ ----- on the sticker on the front page of the file and the front page of the application form is wrong.

What, in fact, is applied for is a D1 [c] education use.

He points to :-

Application Page 2 para 7 – “description is detached bungalow”

Application Page 2 para 8 – “.....it is the officer’s view that the building forms part of St Phillip Howard School a D1 non residential use and the building is ancillary to this”

So he explains that the application is for a CLEUD to establish NOT a C3 dwelling but a D1 education use.

I note D1 covers numerous types of “non residential institution “ but I think the applicant just wants education use. I cannot explain how this misunderstanding arose. I suggest that the new application have a letter which explains this clearly, ,which states the application is for “D1 EDUCATION USE “ to avoid future doubts or misunderstanding. Strangely nothing on the application makes this clear.

2. An Observation on the Evidence from E Bedford and on the Winton Case

We will no doubt await the fresh evidence before coping to any conclusions.

For now I note that para 2 of this statement from E Bedford refers to the property being used " from 2002 till being declared surplus to requirements , for purposes of teaching". This means that the 10 years to establish education use must run from 2002. Also the physical connection between school and dwelling isnt clearly referred to in evidence though may become clear from a site visit/fresh evidence .

I have enclosed a copy of the Winton case 1984 JPL 188 which Mr Khan refers to to say that a subdivision isn't automatically a change of use. But this is to be judged on the facts. Possibly a new application should address this via eg any tenancy agreement, terms of occupation, repairs responsibility to establish the nature of the occupation and use ----ie was it C3 independent dwelling or ancillary accommodation linked to the school .

3.Fee ---is there a free go?

Mr Khan alleges that if the applicant re applies then on the second application there is no fee to pay. No authority is referred to for this.

Yes a free go does apply under 10A T&CP Fees for Applications etc 1989 as amended provided that certain conditions set out there are met ----it is made after a refusal ,within 12 months of that refusal , relates to the same site and the same use or operation, no other exemptions apply , the earlier fee was paid.

4. Next Steps

I am sure you will now tell the applicant the position and leave them to reapply in a way that makes clear what they were seeking and filling in any gaps in the evidence about the building always having been part of the school use even when a caretakers dwelling.

ref/lgdr/lprec/pl/cleudetcmodelemem

ref

Mustafa Khan
Legal Services
Legal and Democratic Services
01243 777194(direct)
01243 777721 (Fax)
mustafa.khan@westsussex.gov.uk
www.westsussex.gov.uk

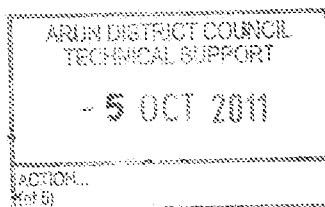
County Hall
Chichester
West Sussex
PO19 1RQ
DX 157410 Chichester 8
(01243) 777100



Service of Documents accepted by E Mail at
legal.services@westsussex.gov.uk

04 October 2011

Mrs S Leeson
Planning and Building Control
Arun District Council
Arun Civic Centre
Littlehampton
West Sussex BN17 5LF



Dear Mrs Leeson,

Land at 17 Elm Grove South, Barnham, West Sussex
Certificate of Lawful Use Application
Your Reference: EG/36/11/CLE

I refer to the above matter and in particular our application for a Certificate of Lawful Use which was refused on 20 September 2011. The reasons for the refusal made reference to the fact that our application was for a C3 Dwellinghouse usage, and we had failed to provide the required evidence. We are unsure as to how you came to the conclusion that our application was for C3 usage. In our application, we make it clear at part 8 of the form that we are seeking a certificate for D1 Usage. In the circumstances, we believe that an error has occurred when considering our application, and also understand that a decision made cannot be revoked. However, in order to move things forward, the County Council are willing to lodge a further application provided that no fees are charged.

Secondly, the County Council are wishing to dispose of the property, and you have advised that a division of the site will create a new planning unit. I refer to the well known case of *Winton v Secretary of State for the Environment* [1984] (JPL page 188), where the High Court held that the sub-division of a planning unit did not in itself amount to development. In the circumstances, I cannot see how a subdivision would amount to a material change of use.

I await receiving your response.

Yours sincerely,


Mustafa Khan
Assistant Solicitor - Planning and Highways

Delwyn Jones

From: [REDACTED]
Sent: 28 October 2011 09:33
To: Delwyn Jones
Cc: Susan Leeson Juan Baeza; [REDACTED]
Subject: RE: Elm Grove South Certificate of Lawful Use Application

Delwyn,

Have you had a chance to look at this.

Regards,

Mustafa

Mustafa Khan Assistant Solicitor, <u>West Sussex County Council</u> Location: Legal and Democratic Services, West Sussex County Council

Think sustainably. Do you have to print? Can you double side? Do you need colour?

Juan Baeza <Juan.Baeza@arun.gov.uk>

24/10/2011 08:37

To: [REDACTED]
cc Susan Leeson <Susan.Leeson@arun.gov.uk>, Delwyn Jones
<Delwyn.Jones@arun.gov.uk>
Subject RE: Elm Grove South Certificate of Lawful Use Application

Mustafa,

Susan Leeson has contacted me to advise me that your letter to her of 4th October is been actioned viz a viz Delwyn Jones. I would therefore ask you to await her response.

Regards

<u>Juan Baeza</u> Team Leader - Planning Appeals, Planning Department, <u>Arun District Council</u> Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF Internal: 37765 External: +44 (0) 1903 737765 E-mail: juan.baeza@arun.gov.uk Visit Arun's web site at www.arun.gov.uk  Save the environment - think before you print.
--

From: [REDACTED] [mailto:[REDACTED]]
Sent: 20 October 2011 15:43
To: Juan Baeza
Cc: [REDACTED]
Subject: Re: Elm Grove South Certificate of Lawful Use Application

Dear Juan,

Many thanks for your prompt response. However, I will have to disagree with your conclusion. With

31/10/2011

regards to the error, our application at Part 7 clearly sets out that this is an application for D1 use. In our application, there is no reference to C3 or use as a dwellinghouse. The description in your acknowledgement letter is therefore clearly incorrect, as it makes no reference to D1 use. This was clearly an administrative error by ADC. It is generally good practice for an authority to forgo the fees if the error had been their own. On the legal point, the rules are set out by the Town and Country Planning (Fees for Applications ETC) Regulations of 1989. I would ask you to look at Paragraph 8 which states clearly that if a second application has been made within 12 months and relates to the same issue, then fees are exempted. On that basis, I cannot see how ADC can ask for fees, when there is clearly no legal basis.

Ideally, we would like to resolve this matter without taking it to appeal by simply submitting a fresh application. Could you please confirm that no fees will be charged and hopefully we can resolve this matter.

I look forward to hearing from you.

Regards,

Mustafa

Mustafa Khan Assistant Solicitor, West Sussex County Council Location: Legal and Democratic Services, West Sussex County Council
--

Think sustainably. Do you have to print? Can you double side? Do you need colour?

Juan Baeza <Juan.Baeza@arun.gov.uk>

13/10/2011 10:09

To: [REDACTED]

cc: Susan Leeson <Susan.Leeson@arun.gov.uk>

Subject

Dear Mustafa,

Thank you for your e-mail attaching your letter to Mrs Leeson dated 4th October 2011. I have inspected the file EG/36/11/CLE and consulted my colleagues in registration.

It appears that because the application was described as an "Application for a certificate of lawfulness for an existing use as a detached bungalow" it was duly refused as there was no evidence to support a C3 use. It was unfortunate that once WSCC received its acknowledgement letter dated 26th July they did not request that that description be amended.

However, you have made it clear in your letter that the aim is to get a D1 use established for the former caretakers bungalow and I agree that the best way is to resubmit the CLE. My registration colleagues have inspected the fees regulations (I attach relevant section) and it is clear that there is no provision for waving a fee for a resubmission as is the case for an application for planning permission where there is the provision of a "free go" following refusal. I know this will appear disappointing to you.

Regards

31/10/2011

Juan Baeza | Team Leader - Planning Appeals, Planning Department, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF
Internal: 37765 | External: +44 (0) 1903 737765 | E-mail: juan.baeza@arun.gov.uk

Visit Arun's web site at www.arun.gov.uk P Save the environment - think before you print.

-----Original Message-----

From: NRG_Planning1 [mailto:nrg_planning1@arun.gov.uk]
Sent: 13 October 2011 08:15
To: Juan Baeza
Subject:

This E-mail was sent from "NRG-Planning1" (Aficio MP 5000).

Scan Date: 13.10.2011 09:14:34 (+0200)
Queries to: helpdesk@arun.gov.uk

<http://www.arun.gov.uk>
NLPG UPRN 100062237016
DX 57406 Littlehampton

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Delwyn Jones

From: [REDACTED]
Sent: 14 November 2011 13:00
To: Delwyn Jones
Cc: [REDACTED]
Subject: Re: EG/36/11/CLE 17 Elm Grove South --Use of bungalow as part of School for D1 Education Use and Fee Question for resubmission.

Thanks Delwyn, much appreciated.

Catharine Ireland | Valuation and Estate Management, West Sussex County Council | Location: Capital and Asset Management, The Tannery, Westgate, Chichester, West Sussex PO19 3RJ
[REDACTED]



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Delwyn Jones <Delwyn.Jones@arun.gov.uk>

To [REDACTED]

CC <[REDACTED]>

14/11/2011 12:47

Subject EG/36/11/CLE 17 Elm Grove South --Use of bungalow as part of School for D1 Education Use and Fee Question for resubmission.

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Thanks for your various contacts about this. Mustafa and I spoke today and I understand the issue to be as summarised in the title of this e mail.

I confirm that as my diary has now freed up I will ,in course of this week, provide the Planning Officer with advice.

Thanks for your patience.

Delwyn Jones | Planning Solicitor, Legal Services, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

Internal: 37737 | External: +44 (0) 1903 737737 | E-mail: Delwyn.Jones@arun.gov.uk

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I00062237016

DX 57406 Littlehampton

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14/11/2011

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Delwyn Jones

From: Delwyn Jones

Sent: 14 November 2011 12:48

To: [REDACTED]

Cc: [REDACTED]

Subject: EG/36/11/CLE 17 Elm Grove South --Use of bungalow as part of School for D1 Education Use and Fee Question for resubmission.

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Save the environment - think before you print.

FROM:

Delwyn Jones
Planning Solicitor
Resources Department
Tel Ext 37737

TO:

S Leeson Planning Officer
Dated 15 November 2011

REF:EG/36/11CLE/CONSULTATION

**ADDRESS : NO 17 ELM GROVE SOUTH BARNHAM –PART OF ST PHILIP
HOWARDS SCHOOL**

NATURE OF USE :USE AS DWELLINGHOUSE --- FURTHER ADVICE

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your further questions about this.

The applicant has also clarified his position in conversations with Solicitor from WSCC Mustafa Khan on 14 November 2011.

I have highlighted the issues which remain to be addressed according to Mr Khan as follows:-

**1. The Nature of what is Applied for --- not a C3 dwelling but a CLE for Class D1
Educational Use of Former Caretakers Bungalow**

Mr Khan says that the file description -----“ existing use as detached bungalow “ ----- on the sticker on the front page of the file and the front page of the application form is wrong.

What, in fact, is applied for is a D1 [c] education use.

He points to :-

Application Page 2 para 7 – “description is detached bungalow”

Application Page 2 para 8 – “.....it is the officer's view that the building forms part of St Phillip Howard School a D1 non residential use and the building is ancillary to this”

So he explains that the application is for a CLEUD to establish NOT a C3 dwelling but a D1 education use.

I note D1 covers numerous types of “non residential institution “ but I think the applicant just wants education use. I cannot explain how this misunderstanding arose. I suggest that the new application have a letter which explains this clearly, which states the application is for “D1 EDUCATION USE “ to avoid future doubts or misunderstanding. Strangely nothing on the application makes this clear.

2. An Observation on the Evidence from E Bedford and on the Winton Case

We will no doubt await the fresh evidence before coping to any conclusions.

For now I note that para 2 of this statement from E Bedford refers to the property being used " from 2002 till being declared surplus to requirements , for purposes of teaching". This means that the 10 years to establish education use must run from 2002. Also the physical connection between school and dwelling isnt clearly referred to in evidence though may become clear from a site visit/fresh evidence .

I have enclosed a copy of the Winton case 1984 JPL 188 which Mr Khan refers to to say that a subdivision isn't automatically a change of use. But this is to be judged on the facts. Possibly a new application should address this via eg any tenancy agreement, terms of occupation, repairs responsibility to establish the nature of the occupation and use ----ie was it C3 independent dwelling or ancillary accommodation linked to the school .

3.Fee ---is there a free go?

Mr Khan alleges that if the applicant re applies then on the second application there is no fee to pay. No authority is referred to for this.

Yes a free go does apply under 10A T&CP Fees for Applications etc 1989 as amended provided that certain conditions set out there are met ----it is made after a refusal ,within 12 months of that refusal , relates to the same site and the same use or operation, no other exemptions apply , the earlier fee was paid.

4. Next Steps

I am sure you will now tell the applicant the position and leave them to reapply in a way that makes clear what they were seeking and filling in any gaps in the evidence about the building always having been part of the school use even when a caretakers dwelling.

ref/lgdr/lprec/pl/cleudetcmodelemem

ref

FROM:

Delwyn Jones
Planning Solicitor
Resources Department
Tel Ext 37737

TO:

S Leeson Planning Officer
Dated 17 August 2011

REF:EG/36/11CLE/CONSULTATION

**ADDRESS : NO 17 ELM GROVE SOUTH BARNHAM –PART OF ST PHILIP
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ref/lgdr/lprec/pl/cleudetcmodeImem

ref

but that is no more ascertainable and would presumably be equally invalid. It is now too late to rewrite all the permissions which have been granted subject to such a condition; but what of the future? One possibility would be to drop the word "locally" altogether. Not many farm workers commute long distances to work and so will inevitably live reasonably close to their place of work. The objection to this is that the standard condition includes persons "last employed" in agriculture and so the house in question could be occupied by retired farmworkers who had no connection with the locality. The next logical step would be to drop the reference to "last employed" but this would mean that once a farm worker ceased to be employed, he would be in breach of planning control; such a condition might be considered unreasonable and unfair. So, the obvious answer would seem to be to pin down the area, where the persons had to be or have been employed, by reference to the parish or the district. For example a recent ministerial decision concerned a condition that "the occupation be limited to a person solely or mainly employed or last employed in the Knutsford District Plan area in agriculture . . ."; see [1983] J.P.L. 839.

The problem illustrates the difficulty of balancing a general policy of not allowing housing development with the need to sustain a viable agricultural industry. The fact that once houses are built they are often occupied by persons not connected with agriculture, might suggest that the need for housing farm workers adjacent to farms is exaggerated. It could be that a better policy might be to refuse applications, unless there can be proved a need for the occupant to be close to the particular farming unit but this still leaves the problem of how to draft such a condition.

Postscript. Since writing the above the Court of Appeal have reversed Webster J.'s decision; see *The Times*, February 17, 1984.

Building formerly used to make breeze-blocks was divided in two—one part used for metal working and the other for car conversions—enforcement notices served alleging material change of use without permission—the appellants appealed—after an inquiry the Secretary of State held there was a material change of use but quashed the notices on the basis that the appellants should be granted limited planning permission—the appellants appealed to the High Court—held (1) the mere sub-division of a planning unit did not of itself amount to development—whether a material change of use had taken place was a matter of fact and degree; (2) although the breeze-block making and the

subsequent uses fell within Class IV of the Schedule to the Town and Country Planning (Use Classes) Order 1972 section 22(2)(f) of the 1971 Act and Article 3(1) of the Order did not cover the division of a unit into sub-units—appeal dismissed.

Winton and Others v. Secretary of State for the Environment and Another (Queen's Bench Division, Woolf J., January 27, 1982)⁷

Winton's Yard, had a commercial use extending over 100 years. The nature of the commercial use varied at different times, but for the major part of the period the most important use was that of breeze-block making. In 1949, a temporary permission was granted in respect of that land and the buildings that were on it for the manufacture of breeze-blocks, and that permission was renewed periodically for some 25 years until it expired in December 1974, by which time the block-making use had been discontinued in 1972/73.

Prior to that date an application had been made, first of all, in 1954 for planning permission to erect a building. The application described the proposed use as "for breeze-block making" and stated that that was the purpose for which the land and/or existing buildings were being used. Permission was given that stated that it was to be for the erection of a store building. Subsequently, that building, having been erected, was extended following the grant of planning permission in July 1962 for "extension to a slab-drying shed."

Before the breeze-block making use ceased in 1972/73, the building and the extension were used in connection with that activity. Subsequently, up to 1977, the building was taken over by a firm of vehicle body manufacturers. After they had ceased to use the building (in 1977/78), it was divided to form two separate buildings when the present occupants took over those parts and they continued to occupy them.

Enforcement notices alleged that there had been a material change of use of the land and building shown as edged red on the plan, which in fact was one of the parts into

⁷ D. Widdicombe, Q.C. and S. Widdup (Gregory Rowcliffe & Co.); C. Lockhart-Mummery (D. Watts). Reported (1983) 46 P. & C.R. 205.

which the building had been sub-divided, by using that part for sheet- and solid metal working, including the finishing of castings.

The other relevant enforcement notice alleged that there had been the making of a material change of use of the land and building shown edged red on plan "B" by using the other part of the building that had been so divided for the conversion of motor-cars from left-hand to right-hand drive.

There was no dispute that the two parts were being separately used for those purposes, and there was no dispute that those two parts were separate planning units.

The appellants appealed, and an inquiry was held. The Secretary of State, disagreeing with his inspector, concluded "that when those uses were instituted in the building there was as a matter of fact and degree in each case a material change of use from the permitted use (which, . . . , was a use incidental to, or a part of, the breeze-block making use) to an independent industrial use, for which planning permission was required. . . ." He quashed the notices, however, on the ground that, on the merits, the appellants should be granted limited planning permission. The appellants appealed under section 246 of the Town and Country Planning Act 1971.

WOOLF J. said that the appeal raised two points of considerable interest. One was whether the mere sub-division of a planning unit into two planning units in itself amounted to development that required planning permission, or whether that result only occurred if the division of a planning unit into two planning units had some effect that was material from the planning point of view.

The second point was as to whether the sub-division of a planning unit could ever amount to development that required planning permission if the units into which the planning unit was sub-divided fell within the same class under the Use Classes Order as the planning unit prior to its being sub-divided.

The first of the points involved no more than interpreting the effect of a decision of the Court of Appeal. The second point was one on which there was no previous authority.

Although it was not entirely clear, he (WoOLF J.) was satisfied that the approach of the Secretary of State to the problem was as follows. First of all, he took the view that what had happened prior to the grant of the new planning permissions and the building of the structure against which the enforcement notice was served was not relevant for the purposes of deciding what the permitted use of the building was. He concluded that what the permitted use of the building was was decided by the planning permissions that had been granted. His conclusion as to what those two planning permissions granted was that they were for the erection of the building and the extension—this is the important part—to be used for the purposes of storage and slab-drying in connection with the manufacture of breeze-blocks. Then, having come to that conclusion, he went on to consider as against that permitted use the effect of the division of the building into separate planning units and the uses to which they were put and concluded from that that there had been a change of use that amounted to a breach of planning control.

Mr. Widdicombe submitted that the mere sub-division of a planning unit did not in itself amount to development.

Mr. Lockhart-Mummery on behalf of the respondent planning authority contended as an alternative submission that the result of the Court of Appeal's decision in *Wakelin v. Secretary of State for the Environment* [1979] 77 L.G.R. 101 was authority for the proposition that such a sub-division did amount to development that required planning permission.

Wakelin concerned the division of a large house and a building within the curtilage of the large house into separate occupation and separate planning units. In giving the first judgment Lord Denning M.R. referred to the fact that the inspector had visited the site and had come to the conclusion that the use of a lodge within the curtilage of the building as one of two separate buildings would be out of keeping with the character of the area. He also referred to the fact that the inspector took the view that the lodge would be detrimental to the amenities of adjoining residents.

Having cited further conclusions of the inspector, Lord Denning M.R. went on to say:

The essential point in this case, as I said at the beginning, is whether it is right to permit this large planning unit to be divided into two separate units. It seems to me beyond question that a change of this kind is a material change of use within the statute.

Section 22 of the Town and Country Planning Act 1971 does not define what "material change of use" means, but section 22(3)(a) declares: "... the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part thereof which is so used; ..." That would apply to large London houses. They used to be occupied as single dwelling-houses. If they are now turned into separate dwellings for two or three families (although the buildings have not been altered at all), that is a material change of use. In keeping with this line of thought, if a large house and grounds are divided into two units, as was done here, that is a material change of use. It is often done. A large house remains one unit. There is a separate garage block or stable turned into a separate unit altogether. It is conveyed to a separate family to use as they please. That is a material change of use of the whole unit. If it is to be divided into two separate units, permission is needed for that development. It is a proper matter for the council to consider and it is a proper matter for the inspector to consider.

Lawton L.J. dealt with the matter in this way:

The inspector was entitled to ask himself this question: "What is the fundamental issue in this case?" He came to the conclusion, as is clear from the decision letter, that the issue was whether changing from one single unit of accommodation to two was a material change of use. He decided that it was. Having come to that conclusion, it was in fact unnecessary for him, as Mr. Boydell pointed out in his submission on behalf of the Secretary of State, to go on to ask himself whether the condition was necessary in all the circumstances of the case. Having decided, as he did, that the change from one unit of accommodation to another was a material change of use that was not in accordance with good planning policy having regard to the surrounding circumstances, he

did not apply his mind specifically, as Forbes J. found, to the problem of the condition. In my judgment, however, it was unnecessary for him to do so; ... For those reasons, and for those given by Lord Denning M.R., I too would allow the appeal.

Brown L.J., who also took the view that the appeal should be allowed, did say: "I do not think that it is necessary to decide, and I do not decide, whether the creation of a new planning unit out of an existing planning unit would *always* amount to a material change of use. I have no doubt that in this particular case it clearly did involve a change of use because of the nature of the permitted use under the 1965 permission, including the condition."

The decision of the Court of Appeal in *Wakelin* undoubtedly broke new ground, and since that time it had been the subject of a certain amount of academic discussion. It was apparent from the above passage from the judgment of Browne L.J. that he, at any rate, was expressly leaving open the question that was raised by the first point to be considered.

Mr. Lockhart-Mummery submitted that Lord Denning M.R. was in fact expressing a view that the sub-division of the planning unit in itself amounted to a material change of use.

He (Woolf J.) did not agree with that view of Lord Denning M.R.'s judgment. He regarded Lord Denning M.R. as having been dealing with the particular case that was before him and saying that in the circumstances of that case he took the view that it was beyond question that there was a material change of use. Such an approach would be in accord with the general approach to the question as to what amounted to development that required planning permission. It was only material changes of use—and he emphasised the word "material"—that amounted to development that required planning permission. If the division of a single planning unit into two separate planning units had no planning consequences, then it would be surprising if that amounted to development that required planning permission.

To take an example referred to by one academic writer, namely, Mr. J. E. Alder, and his article entitled "The Planning Unit—Uses

and Abuses" [1981] J.P.L. 848, if a large agricultural unit were divided into two units it might have no planning consequences, the only change being the identity of the person carrying on the farming activity. Whether the division of the planning unit into two planning units had the effect of amounting to a material change of use was a matter of fact and degree, which in the normal circumstances on an appeal to him will be a matter exclusively for the Secretary of State.

In this case, the Secretary of State looked at the permitted use of the building and indicated his view as to what the permission amounted to. Mr. Widdicombe did not quarrel with his interpretation of the permission. He then went on to compare that use with what had happened subsequently and concluded that, when the two uses that were being enforced against had been instituted in the building, there had been as a matter of fact and degree in each case a material change of use from the permitted use to an independent industrial use.

The Secretary of State having approached the matter in that way, it did not seem that this court could interfere with his decision. He was asking himself the very question that should be posed by him. It was, on the facts before him, not necessary to consider the use that was interposed between the permitted use and the uses that were alleged to amount to the breach of planning control because the intervening use had ceased by the time when the two uses commenced.

However, that was not the end of this case, because Mr. Widdicombe submitted that the use for which planning permission was given was a use falling within Class IV of the uses set out in the Town and Country Planning (Use Classes) Order 1972 and the uses that were carried on after the building had been sub-divided fell within the same class.

Mr. Lockhart-Mummery had not in his submissions contended that the two sets of uses did not fall within the same class.

Section 22(2)(f) of the Act of 1971 dealt with the effect of the application of the Use Classes Order. It provided: "The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land, that is to say— . . . (f) in the case of buildings or other land which are used for a purpose of any class

specified in an order made by the Secretary of State under this section, the use thereof for any other purpose of the same class."

The words "building" and "land" were defined in section 290 of the Act, in the case of "building" as including "any structure or erection, and any part of a building, as so defined, . . ." and in the case of "land" as "any corporeal hereditament, including a building, . . ."

Mr. Widdicombe contended that, bearing in mind those definitions, the Use Classes Order could apply to the situation that results from a planning unit being divided into sub-units.

The Order itself in article 3 said: "(1) Where a building or other land is used for a purpose of any class specified in the Schedule to this Order, the use of such building or other land for any other purpose of the same class shall not be deemed for the purposes of the Act to involve development of the land."

Mr. Widdicombe submitted that the reference to "building" and "land" in this paragraph of the Order should be interpreted in the same way as it would be interpreted in the principal Act. This submission he accepted.

However, notwithstanding Mr. Widdicombe's argument, he did not regard the proper interpretation of section 22(2)(f) and article 3(1) of the Order as covering the division of a unit into sub-units. If Mr. Widdicombe's interpretation was right, then the principle enunciated in *Wakelin v. Secretary of State for the Environment* would never apply to a situation to which the Use Classes Order applied. The consequence would be that, if one had a large factory covering a considerable area of land, if that were used for a multiplicity of separate uses all within the same use class as the permission that had been granted for the whole, no development would be involved. That would be inconsistent with the approach to development control indicated in *Wakelin*.

The reason, as a matter of interpretation, why he took this view was that in the case of both the Order and the Act there was a requirement that like had to be compared with like. Even though one interpreted "building" as including "part of a building," before the Use Classes Order could be of assistance there had to be a change of use

of the same part, the use of the part both before and after being within the same class. This interpretation was probably clearer in the case of the Order than it was in the case of the section because the Order in article 3(1) referred to "the use of such building" where "building" was mentioned the second time. If one had a case where there was a unit that was part of a building, then one read the opening words as being: "Where a part of a building or other land is used for a purpose of any class specified in the Schedule to this Order," and then one went on to "the use of such part of a building or other land for any other purpose of the same class shall not be deemed for the purposes of the Act to involve development of the land." It seemed that this was a sensible interpretation of this provision and led to a consequence that the Order would have intended.

If he was right on this interpretation, it meant that the Use Classes Order could have no application to this case. If he was wrong in this interpretation, then the matter would have to be remitted to the Secretary of State because he never considered, as far as one could tell from his decision letter, the question of the application of the Use Classes Order. If he had been required to consider that Order, then it seemed likely that he would inevitably have come to the conclusion that in this case there was no development requiring planning permission because the permitted use and the present uses were all uses that appeared to fall within Class IV.

On his interpretation, therefore, he dismissed this appeal but he recognised that if his interpretation were wrong his decision would be otherwise.

Comment. For some reason this decision has only recently been reported, although it was decided by Woolf J. in January 1982 and raises two important points of planning law.

The first issue is the most straightforward and concerns that old favourite of planning lawyers; the planning unit. The term planning unit does not appear in the legislation and was created by the Secretary of State and approved by the courts, as a guide or aid to the determination of the question of whether a material change of use has taken place. The objective is to ensure, that in posing the question of whether the changes that have occurred are material, you are focusing on the correct area of land. Neither the Secretary of State nor the courts have been particularly successful in their

attempts to explain how to determine the correct planning unit and how planning units can change. From the present authorities, it would seem that it turns on (1) who is occupying a particular site; i.e. the unit of occupation, (2) the exact relationship between the particular activities on or around that site and (3) geographical or physical features. Where, because of changes in such factors, a planning unit subdivides into two planning units or increases in size, these changes may also indicate that a material change of use has also taken place but many of these factors only indirectly relate to uses of land, and so a change in the planning unit can take place without there automatically being a material change of use.

To take the present case as an example, if the building had continued to be used for the manufacture of breeze-blocks, although it was now physically divided and occupied by different firms, it is hard to see how it could be argued that a material change had taken place, even though presumably the site would be regarded as containing two separate planning units. If a change in the planning unit were to automatically mean that a material change had occurred, it would mean that tests which had been constructed for one purpose, were being subverted for a very different purpose. Similarly in *Jennings Motors v. Secretary of State for the Environment* [1982] 1 All E.R. 471, the majority in the Court of Appeal seemed to be suggesting that a change in the planning unit could have the affect of extinguishing established user rights; though it is submitted that it would be more consistent to argue that certain radical changes can amount to a special kind of abandonment. So, this decision of Woolf J. is welcome in so far as it gets back to first principles by holding that the final question must always be whether a material change has taken place.

On the other hand it is significant that, as in the *Wakelin* case, the courts appear unwilling to require from the Secretary of State a reasoned argument as to why a particular change is material; and as long as he recites the magic formula that as "a matter of fact and degree" it so appears to him, that is sufficient to make the decision invulnerable to judicial review in all but the most extreme circumstances.

The second issue decided by this decision concerns the application of the Use Classes Order and is more difficult to unravel. The problem is that the new activities in the separate planning units kept within the same overall class as the original use, which had applied to the larger planning unit. Section 22(2)(f) states, where "buildings or other land . . . are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use thereof for any other purpose of the same class" shall not be taken to involve development. It therefore would seem to

follow that as in this case the changes were to a purpose within the same class, those changes were taken out of the definition of development, even if the changes were considered to be material. Woolf J. took the contrary view for two main reasons. His first reason is primarily a policy consideration. He argued that, otherwise, the principle in *Wakelin* could never apply to a situation where the Use Classes Order applied and that large factories could be broken up into small units with impunity. The objection that can be made to this approach is that *Wakelin* was only concerned with the question of whether a material change had occurred and the whole point of the Use Classes Order is that it covers material changes of use. A good example is the Court of Appeal decision in *Brooks & Burton v. Secretary of State for the Environment* [1977] 1 W.L.R. 1294, where although the Court was prepared to accept that a material change by intensification had occurred, nevertheless the change was protected by the Use Classes Order. As material change by intensification seems very similar to the principle enunciated in the *Wakelin* case, *Brooks and Burton* would seem clear authority that the Use Classes Order cannot be thrust aside in this way. Woolf J.'s second, and with respect, stronger reason turned on the detailed wording of Article

3(1) of the Use Classes Order itself. His argument is that for the material change to be protected, the particular change must remain within the whole of the original building because Article 3 refers to "the use of *such* a building." One answer to this is that the area covered by the original planning unit had continued overall to be used for a purpose of the same class, albeit that there were now two distinct activities. This approach involves accepting that even though use A divides into uses C and D, the overall purpose remains the same if all three uses come within the same class. Where use A divides into two separate A uses, it seems very artificial to hold that because Article 3(1) refers to purpose and not purposes, the change falls outside the Use Classes Order. There is also the point that "use of such a building" could be interpreted as including "use of part of such a building" and that this is consistent with the actual wording of the parent Act.

The issue is an important one and combined with the recent decision in *Lydcare* [1984] J.P.L. 39 reveals a trend to dilute the effect of the Uses Classes Order. It would therefore be useful if the opportunity arose for the Court of Appeal to give an authoritative statement of the scope of the Use Classes Order.

Delwyn Jones

From: [REDACTED]
Sent: 28 October 2011 09:33
To: Delwyn Jones
Cc: Susan Leeson Juan Baeza; [REDACTED]
Subject: RE: Elm Grove South Certificate of Lawful Use Application

Delwyn,

Have you had a chance to look at this.

Regards,

Mustafa

Mustafa Khan Assistant Solicitor, <u>West Sussex County Council</u> Location: Legal and Democratic Services, West Sussex County Council
[REDACTED]

Think sustainably. Do you have to print? Can you double side? Do you need colour?

Juan Baeza <Juan.Baeza@arun.gov.uk>

24/10/2011 08:37

To: [REDACTED]
cc Susan Leeson <Susan.Leeson@arun.gov.uk>, Delwyn Jones
<Delwyn.Jones@arun.gov.uk>
Subject RE: Elm Grove South Certificate of Lawful Use Application

Mustafa,

Susan Leeson has contacted me to advise me that your letter to her of 4th October is been actioned viz a viz Delwyn Jones. I would therefore ask you to await her response.

Regards

<u>Juan Baeza</u> Team Leader - Planning Appeals, Planning Department, <u>Arun District Council</u> Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF Internal: 37765 External: +44 (0) 1903 737765 E-mail: juan.baeza@arun.gov.uk Visit Arun's web site at www.arun.gov.uk  Save the environment - think before you print.
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From: [REDACTED]
Sent: 20 October 2011 15:43
To: Juan Baeza
Cc: [REDACTED]
Subject: Re: Elm Grove South Certificate of Lawful Use Application

Dear Juan,

Many thanks for your prompt response. However, I will have to disagree with your conclusion. With

14/11/2011

regards to the error, our application at Part 7 clearly sets out that this is an application for D1 use. In our application, there is no reference to C3 or use as a dwellinghouse. The description in your acknowledgement letter is therefore clearly incorrect, as it makes no reference to D1 use. This was clearly an administrative error by ADC. It is generally good practice for an authority to forgo the fees if the error had been their own. On the legal point, the rules are set out by the Town and Country Planning (Fees for Applications ETC) Regulations of 1989. I would ask you to look at Paragraph 8 which states clearly that if a second application has been made within 12 months and relates to the same issue, then fees are exempted. On that basis, I cannot see how ADC can ask for fees, when there is clearly no legal basis.

Ideally, we would like to resolve this matter without taking it to appeal by simply submitting a fresh application. Could you please confirm that no fees will be charged and hopefully we can resolve this matter.

I look forward to hearing from you.

Regards,

Mustafa

Mustafa Khan	Assistant Solicitor, <u>West Sussex County Council</u>	Location: Legal and Democratic Services, West Sussex County Council
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Juan Baeza <Juan.Baeza@arun.gov.uk>

13/10/2011 10:09

To

cc Susan Leeson <Susan.Leeson@arun.gov.uk>

Subject

Dear Mustafa,

Thank you for your e-mail attaching your letter to Mrs Leeson dated 4th October 2011. I have inspected the file EG/36/11/CLE and consulted my colleagues in registration.

It appears that because the application was described as an "Application for a certificate of lawfulness for an existing use as a detached bungalow" it was duly refused as there was no evidence to support a C3 use. It was unfortunate that once WSCC received its acknowledgement letter dated 26th July they did not request that that description be amended.

However, you have made it clear in your letter that the aim is to get a D1 use established for the former caretakers bungalow and I agree that the best way is to resubmit the CLE. My registration colleagues have inspected the fees regulations (I attach relevant section) and it is clear that there is no provision for waving a fee for a resubmission as is the case for an application for planning permission where there is the provision of a "free go" following refusal. I know this will appear disappointing to you.

Regards

14/11/2011

Juan Baeza | Team Leader - Planning Appeals, Planning Department, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF
Internal: 37765 | External: +44 (0) 1903 737765 | E-mail: juan.baeza@arun.gov.uk

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-----Original Message-----

From: NRG_Planning1 [mailto:nrg_planning1@arun.gov.uk]
Sent: 13 October 2011 08:15
To: Juan Baeza
Subject:

This E-mail was sent from "NRG-Planning1" (Aficio MP 5000).

Scan Date: 13.10.2011 09:14:34 (+0200)
Queries to: helpdesk@arun.gov.uk

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Delwyn Jones

From: [REDACTED]
Sent: 11 November 2011 13:14
To: Delwyn Jones
Subject: Fw: 17 Elm Grove South Lawful Use Application

Delwyn,

I have just left a message on your answering phone regarding this property. I understand that you may be busy but I feel it is only courtesy that you respond to my colleague's emails and phone calls. This is really a simple matter that can be rectified quite easily and I would therefore urge you to please take the time to look into it.

I would appreciate a call to Mustafa next week.

Regards,

Catharine

Catharine Ireland Valuation and Estate Management, West Sussex County Council Location: Capital and Asset Management, The Tannery, Westgate, Chichester, West Sussex PO19 3RJ

[REDACTED]



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----- Forwarded by Catharine Ireland/BID/WSCC on 11/11/2011 13:00 -----

[REDACTED]

To

cc [REDACTED]

11/11/2011 10:50

Subject: 17 Elm Grove South Lawful Use Application

Dear Delwyn,

Further to our recent telephone conversation, have you had a chance to look into this matter. The County are keen to progress matters, and hope this can be resolved without the need of a costly appeal.

I await hearing from you.

Regards,

Mustafa

Mustafa Khan Assistant Solicitor, West Sussex County Council Location: Legal and Democratic Services, West Sussex County Council
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[REDACTED]

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14/11/2011

Delwyn Jones

From: [REDACTED]
Sent: 11 November 2011 10:50
To: Delwyn Jones
Cc: Catharine.Ireland@westsussex.gov.uk
Subject: 17 Elm Grove South Lawful Use Application

Dear Delwyn,

Further to our recent telephone conversation, have you had a chance to look into this matter. The County are keen to progress matters, and hope this can be resolved without the need of a costly appeal.

I await hearing from you.

Regards,

Mustafa

Mustafa Khan Assistant Solicitor, <u>West Sussex County Council</u> Location: Legal and Democratic Services, West Sussex County Council
[REDACTED]

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