

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

REF NO: FG/140/21/CLE

LOCATION: The Ladydell site
Hangleton Lane
Ferring
BN12 6PP

PROPOSAL: Lawful development certificate the existing use as a single residential unit.

DESCRIPTION OF APPLICATION

This application seeks to regularise the residential use of the building. The building is said to consist of Hall, Lounge 2 Bedrooms, Kitchen and Bathroom.

SITE AND SURROUNDINGS

The site, a converted flat roofed structure, is part of a larger building of commercial premises to the east of Hangleton Lane. The whole structure, residential and commercial premises forms a 'U' shape around a central courtyard and there are various detached garages/stores running behind along the eastern boundary of the site. It is surrounded by commercial premises and there are a few residential units (some converted at previous points in the past and others purpose built) scattered up Hangleton Lane. The site falls outside of the Built up Area Boundary and is located in a semi rural location.

RELEVANT SITE HISTORY

FG/139/21/CLE	Lawful development certificate for the existing use of unit being used as workshops and stores (Class B1, B2 and B8).	
FG/172/12/CLE	Application for a Certificate of Lawfulness for an existing use as motorbike sales (B1 Business) and storage B8 (storage or distribution) and ancillary offices.	Approve 05-03-13
FG/98/12/CLE	Application for a Certificate of Lawfulness for an Existing use as a joinery workshop with ancillary buildings B1 (Light Industry) and B8 (Storage)	Inc Docs Ret'nd 17-09-12

FG/98/70	Change Of Use Of Garage And Stores To Building Managers General Office With Toilets & New Access To Rear Land	ApproveConditionally 09-10-70
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Permission was granted in 1970 for the conversion of this part of the building to a managers office and toilets under FG-98-70.

This application has been submitted alongside FG/139/21/CLE which aims to regularise commercial uses on site. Another application has been submitted as evidence for this application, that being FG/172/12/CLE.

REPRESENTATIONS

Representations Received:

Ferring Parish Council - Objection

- No official documentation or evidence supplied that a residential use has been established on site.
- Although much data has been provided for the commercial uses no evidence of rents paid, nor any bills, have been provided in support of residential use.

Ferring Conservation Group - Objection.

- Outside the built up area and part of the Angmering Worthing Gap
- Council should adhere to Local Plan and not make a precedent for a home within the 'Gap'

Comments on Representations Received:

The application submitted cannot be determined on planning merit, there is no fall back onto the Local Plan. It can only be determined on whether the evidence submitted is sufficient to demonstrate the use applied for, has existed for the last 4 years on the balance of probability. Although the Local Plan does not support new dwellings within the Gap, this will not form a consideration for this application.

CONSULTATIONS

Consultations Responses Received:

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.

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's have the effect of requiring these applications to be determined having regard only to the evidence adduced and not

planning policy.

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Paragraph 006 (Reference ID: 17c-006-20140306) of the Planning Practice Guidance (PPG) states that:

"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG points out that:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

Section S171(1)-(3) and S191 TCPA 1990. The relevant time period is 7th January 2018 to 7th January 2022 i.e. 4 years to the date of the application.

CONCLUSION

Evidence submitted in support of this application for the use of the office building and toilets as a residential dwelling comprises the Planning Contravention Notice questions (PCN) for ENF/55/20, a Statement of History for a previous application on site (FG/172/12/CLE) along with its supporting information comprising various historical applications , and information pertaining to occupation dates of the residential unit.

The details set out in the dates of occupation state since 1982 there have been a total of 5 tenants of the dwelling, the first being the the current applicant's father (1982- 1984) and the second occupant being one of the applicants(1984-1986).

Question 24 and 30 of the PCN questionnaire indicates that the use of the residential unit has been continuous/permanent since its first habitation in the early eighties as it was advantageous to have a person on site for security purposes.

Questions 25-28 relate to utilities and contractual arrangements of the residential unit. Q. 29 states that rent is charged and that a Standard Assured Shorthold Tenancy agreement is in place and that a copy of this can be made available. Despite efforts in trying to obtain a copy (email to agent 26th November 2021) of the current or indeed any previous tenancy agreements the agent has not furnished us with this information.

Question 25 states that 'standard marketing' of the accommodation was in place when a tenant was being sought. Again a request was made to provide any evidence of this marketing, or indeed whether the Estate Agent could provide confirmation of the marketing which has taken place, none has been forthcoming.

It is noted that the questionnaire mentions that there is a separate electrical meter for the property and that the property, being metered for water on the site as a whole, has an apportioned bill. It would be reasonable to expect that some of these bills/invoices for the utilities, or indeed bills such as Council Tax demands, would accompany such an application. Especially given there are detailed account information submitted in support of the commercial uses on site (also forming the submission of this application). None has been supplied.

The application form and supporting occupation dates indicated the use of this portion of building has been residential for decades; however, when looking at the previous information submitted as part of FG/172/12/CLE, this appears to have been contradicted. Plan MC007 shows the portion of building in question denoted in solid pink, there are other areas marked in various colours, one of which is red hatched. This information relates to the leasehold/freehold status of the individual buildings of the site up to 2012. It can be seen from the Statement of History submitted as part of FG/172/12/CLE, that the areas marked as pink on the plan were being used by Seasprite Sports and indeed their supporting letter MC009 confirms the use of 'several' of the existing buildings on site. Furthermore, it could be reasonable to have expected, that should the building in question be under the control of the sites owners, Mr M. Hutton and Mr R. Hutton, even for an unauthorised use, it would have been denoted as red hatch on plan MC007.

It is for the applicant to provide sufficient evidence that there has been a residential unit on site for the last 4 years. The PPG states that if a LPA has no evidence itself nor any from others to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In this instance the applicant has provided very little evidence to support the questions set out within the PCN, the PCN itself is the most detailed piece of evidence submitted in support of the application; other than a hand written uncertified list of dates, which the contents of has been contradicted by other submitted documents.

At this stage, the Local Planning Authority is not satisfied on the balance of probability, that residential dwelling has been created, and been present and continually in use as a residents, onsite for over 4 years.

RECOMMENDATION

REFUSE

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 in black on the plan attached to this certificate, was not lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the property had not been in use as a dwellinghouse for a continuous period of 4 years.

FIRST SCHEDULE

Use of pre-existing managers office/toilet block as a residential dwelling house for a continuous period of 4 years. The block is part of a larger 'U' shaped buildings of commercial premises set around a courtyard and is located to the Northwest of the courtyard. It consists of a Hall, Lounge 2 Bedrooms, Kitchen and Bathroom.

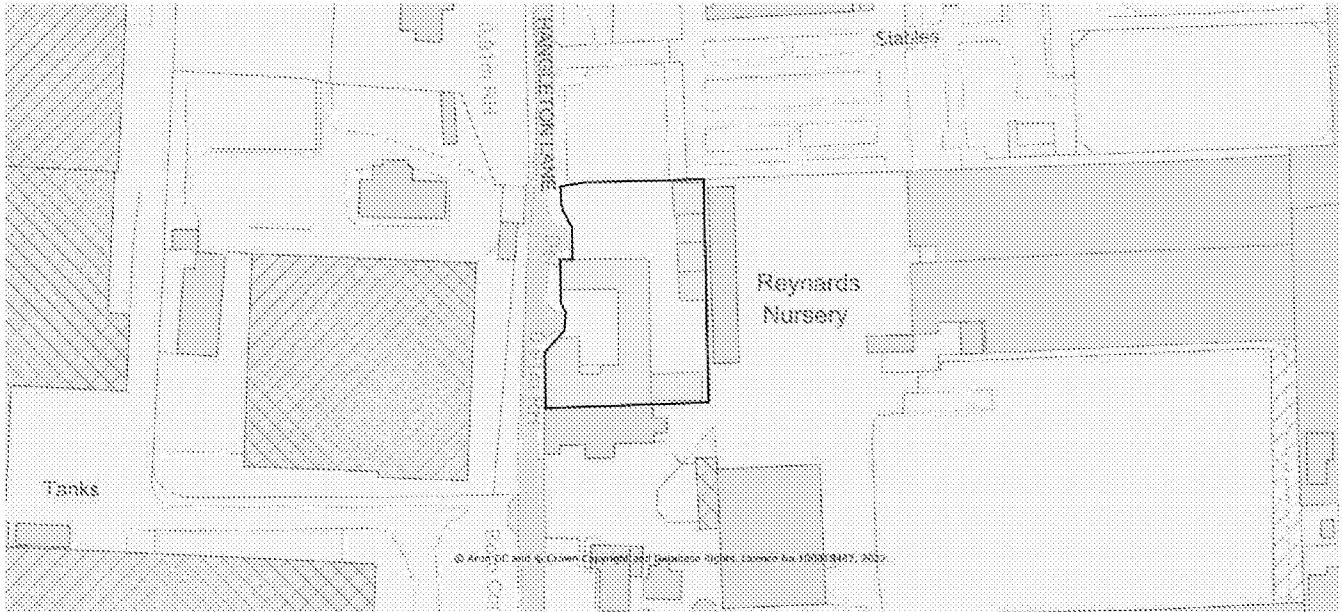
SECOND SCHEDULE

The Ladydell Site, Hangleton Lane, Ferring.

EXTENT OF USE

The extent of use is that defined on the submitted Block Plan Ladydell:001 and Location Plan and relates to the use of the North-western portion of the 'U' shaped buildings which surround the courtyard at the Ladydell Site.

FG/140/21/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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