

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/44/22/CLE

LOCATION: The Ladydell Site
Hangleton Lane
Ferring
BN12 6PP

PROPOSAL: Lawful development certificate the existing use as a single residential unit (resubmission following FG/140/21/CLE).

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/140/21/CLE	Lawful development certificate the existing use as a single residential unit.	Refused 18-01-22
---------------	---	---------------------

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 is a resubmission of the previous application FG/140/21/CLE.

REPRESENTATIONS

Representations Received:

Ferring Parish Council

Ferring Parish Council - Objection

Ferring Parish Council support the refusal decision by ADC on the previous application FG/140/21/CLE due to the lack of evidence to support the claim of continual residential use as a dwellinghouse for the statutory period. The current application (re-submission) fails to provide formal documentary evidence that we would expect in support of the claim. There are no council documents, utility documents, rental agreements etc. and we would ask ADC Planning Officers to obtain the council's Legal Department opinion of the validity of the personal letters submitted to uphold the case of the applicant. Unless the personal letters provided can be determined to give the required level of legal proof and integrity to the claims in this submission, we would urge ADC to refuse the application. We would appreciate sight of the legal response.

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.

Section 192(2) of the Town and Country Planning Act 1990 states that:-

"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."

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 S171B(2) and S191 TCPA 1990. The relevant time period is 28th February 2018 to 28th February 2022 i.e. 4 years to the date of the application.

CONCLUSION

This is a resubmission of application FG/140/21/CLE which was refused due to the lack of evidence submitted. This is a like for like application however in this instance further documents have been provided in support of a residential unit at the site.

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 dated 16th February 2022.
- Three Assured Shorthold Tenancy Agreements (AST) dated 1st March 2013, 3rd April 2015 and .
- A written statement from a previous occupier.
- A written statement from a long residing neighbour.
- Two Statutory Declarations from both owners
- Photographs

A site visit was also conducted by the Planning Officer in May 2022. The accommodation was found to be as described, 2 bedrooms to the western portion of the building, running into a living area and kitchen with a bathroom to the eastern end. The property had two pedestrian access doors to the southern elevation. It appeared to be currently lived in.

The Statement of History 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. The two AST agreements submitted as part of this application detail the unit being in use as a residential dwelling for the period covering 1st March 2013-2015, rented by a Ms Fisher, and 3rd April 2015 until present by a Mr Hopper. Although there is a slight contradiction in the dates provided as the PCN has Mr Hopper being in occupation since June 2014 it would be reasonable to ascertain that it has been in continuous use as a residential dwelling since at least 2013. This evidence provides the 4 year period as required under Section S171 B(2) of the TCPA 1990.

Despite information irregularities being found during application FG/140/21/CLE, in particular: '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.' Written evidence has been submitted from previous occupiers Mr and Mrs Onslow, stating that they resided at the property between February 2009- February 2013, this evidence is not certified in any way. It is also noted that this irregularity is of little consequence as the 4 year time period has been proven as above.

A letter dated 31/01/2022 has also been submitted from a neighbouring occupier at Carol Anne House. Carol Anne House is located approximately 50m north west of the site. It is reasonable to think that the occupier has to pass the entrance to The Ladydell site on a regular basis as the access way out of their property is past The Ladydell site and on to the A259. This letter is not certified.

Further information was submitted in support of this application. This information consists of two Statutory Declarations by both owners and the most recent AST agreement. The Statutory Declarations have been certified by a solicitor and confirm that the property has been used as a residential unit for over 20 years.

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 evidence to support the questions set out within the PCN, including the three AST agreements and the Statutory Declarations which are the most substantial pieces of evidence submitted in support of the application. On the whole, the various pieces of evidence (even uncertified pieces) submitted as part of the application and the previous application FG/140/21/CLE provide sufficient evidence to cover a minimum 4 year period.

At this stage, the Local Planning Authority is satisfied on the balance of probability, that residential dwelling has been created, and been present and continually used as a residents, onsite for over 4 years.

RECOMMENDATION**PP NOT REQUIRED**

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 has 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.

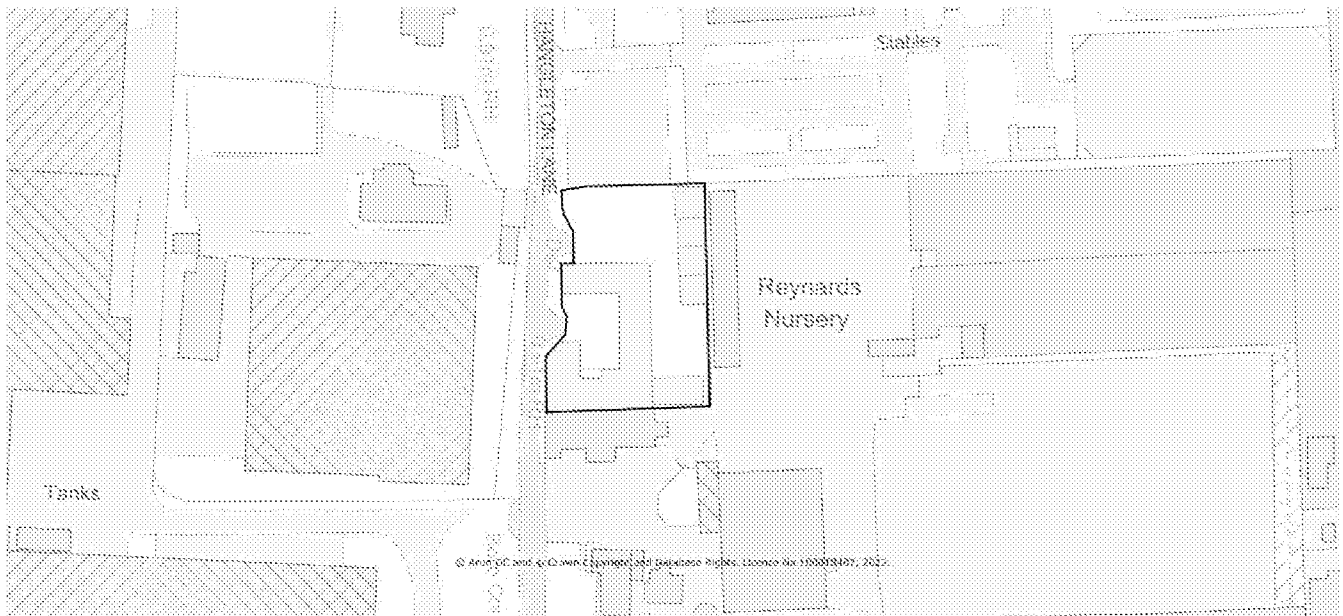
SECOND SCHEDULE

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/44/22/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



Based on the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationery Office © Crown Copyright.
 Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Arun District Council
 100018487. 2015