

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

REF NO: FP/12/26/CLE

LOCATION: 20 Guernsey Farm Lane
Felpham
PO22 6BU

PROPOSAL: Lawful Development Certificate for the existing sitting room and kitchen extensions.

DESCRIPTION OF APPLICATION

This application relates to retrospective works for the construction of two, single storey rear extensions. It is claimed that the sitting room extension has been in place for more than a 10 year period, such that the structure has become lawful under Section 171B of The Town and Country Planning Act 1990. It is also claimed that the kitchen extension constitutes permitted development under Schedule 2, Part 1, Class A of the General Permitted Development Order 2015 (as amended).

The kitchen extension is 2.6m deep, 3.8m wide and 3.6m in height, with an eaves height of 2.6m.

SITE AND SURROUNDINGS

The site is a detached, two storey dwelling located at 20 Guernsey Farm Lane, Felpham.

RELEVANT SITE HISTORY

REPRESENTATIONS

Representations Received:

Felpham Parish Council
No objection.

Comments on Representations Received:

Comments noted.

CONSULTATIONS

Consultations Responses Received:

LEGISLATIVE BACKGROUND

Section 191 of the Act states:

(2) For the purposes of this Act, uses and operations are lawful at any time-

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force

Section 171B of the Town and Country Planning Act 1990 states:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining, or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

The relevant time period is 2 February 2016 to 2 February 2026 where the latter is the date of the application.

Section 191 to 195 Town & Country Planning Act 1990 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy:

(i) What is judged on a balance of probability.

(ii) The onus of proof is on the applicant (and not the Local Planning Authority (LPA)) to adduce the evidence; and

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

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

"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 counterevidence.

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."

Section 191(4) 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 of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

The rear extension to the kitchen will be assessed under Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Provided the works satisfy the relevant criteria, and that no restrictive conditions to development have been imposed on the site, the works will have constituted Permitted Development and would not have required express planning permission. If the works fail to accord with the criteria then works may not be lawful.

CONCLUSION

The kitchen extension will be considered under Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.

Class A

The enlargement, improvement or other alteration of a dwellinghouse.

Development not permitted

A.1 Development is not permitted by Class A if -

- (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);
- (b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);
- (c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;
- (d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;
- (e) the enlarged part of the dwellinghouse would extend beyond a wall which;
 - (i) forms the principal elevation of the original dwellinghouse; or
 - (ii) fronts a highway and forms a side elevation of the original dwellinghouse;
- (f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and;
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
 - (ii) exceed 4 metres in height;

(g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and;

(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;

(h) the enlarged part of the dwellinghouse would have more than a single storey and;

(i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or

(ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse;

(i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would;

(i) exceed 4 metres in height,

(ii) have more than a single storey, or

(iii) have a width greater than half the width of the original dwellinghouse;

(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);

(k) it would consist of or include;

(i) the construction or provision of a verandah, balcony or raised platform,

(ii) the installation, alteration or replacement of a microwave antenna,

(iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(iv) an alteration to any part of the roof of the dwellinghouse, or

(l) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

OFFICERS COMMENTS

The kitchen extension accords with the relevant sections above and can be considered Permitted Development.

The sitting room extension will be assessed against the Town and Country Planning Act 1990, Section 171B, which states:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of

(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and."

The applicant has provided sales literature for the dwelling known as 20 Guernsey Road, printed in 1995. The literature mentions a sun-lounge / dining room. In the absence of an original floor plan, it is not absolutely clear which part of the ground floor is being referred to. However, it is likely that the dwelling would have needed an extension to accommodate the listing in the sales literature. In any case, there is no evidence to place doubt upon the applicants assertions.

Further to this, historical aerial mapping available online clearly shows the extension in situ as far back as 2001 (records are not readily available before this).

20 Guernsey Farm Lane is subject to permitted development restrictions in respect to gates, fences and garages, irrelevant to the extensions considered under this certificate.

OFFICERS COMMENTS

The evidence judged on a balance of probability is sufficient. The LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version less than probable, and indeed has some evidence which lends weight to the established nature of the sitting room extension. On this basis, the sitting room extension has been in situ in excess of 10 years. The period within which the LPA could take enforcement action against this use has expired. There is therefore no good reason to refuse the application and it is therefore recommended that the certificate is granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The development 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 lawful within the meaning of Section 191 of the Town & Country Planning Act 1990, by way of accordance of the kitchen extension with Schedule 2, Part 1, Class A of the General Permitted Development Order 2015 (as amended) and by reason that on the 2 February 2026, the sitting room extension had been in situ for a continuous period in excess of 10 years.

FIRST SCHEDULE

The single storey rear extensions as shown on the following plans:
 Location Plan, Floor Plans and Elevations 001
 Planning Statement

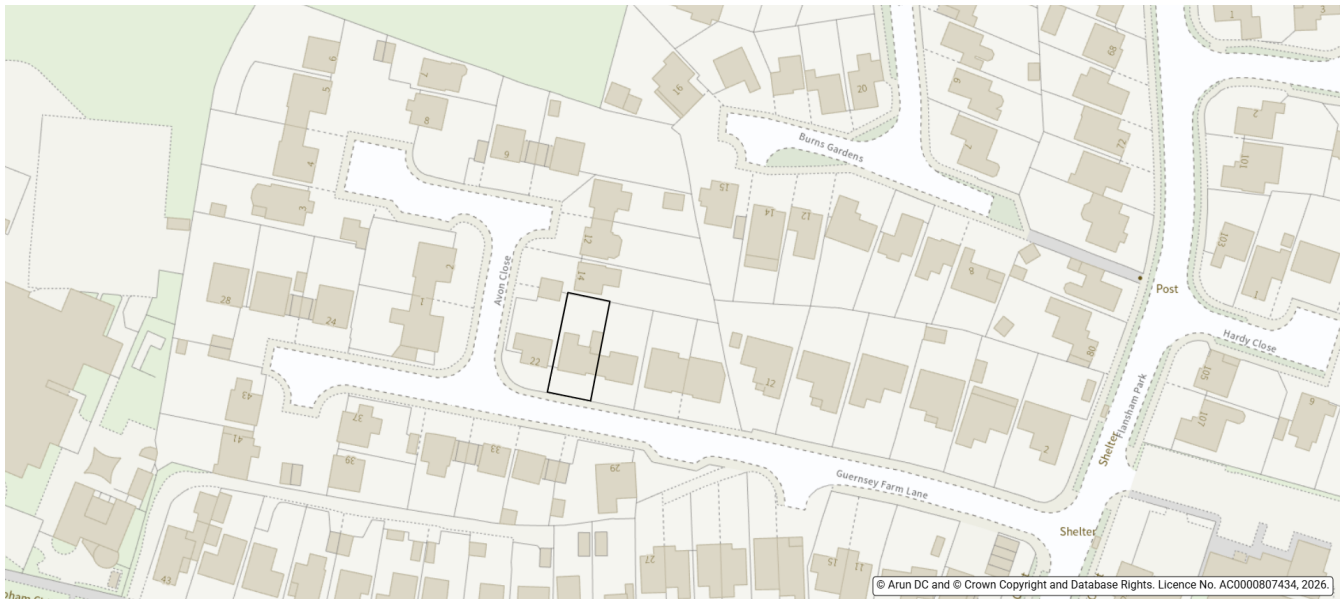
SECOND SCHEDULE

20 Guernsey farm lane, Felpham, PO22 6BU

EXTENT OF USE

Construction of the existing sitting room and kitchen extensions.

FP/12/26/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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