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/135/13/CLE**

LOCATION: Limmard House
Limmard Way
Summerley Bognor Regis

PROPOSAL: Application for Certificate of Lawfulness for existing use of garage as ancillary accomodation to dwelling house & addition of porch.

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for use of the existing garage as ancillary accommodation to the dwelling house and the addition of a porch.

DESCRIPTION OF SITE AND SURROUNDINGS

The site comprises of a former garage with porch extension which was converted in late 2002 into ancillary accommodation to the existing dwelling. The accommodation consists of a porch opening out onto an open plan lounge with kitchenette, a separate shower room and separate bedroom. The annexe is accessed through a gate to the rear garden which sits between the south western corner of the annexe and the north eastern corner of the dwelling. It reads as ancillary accommodation to the house as opposed to a separate dwelling. At the time of the site visit, it was occupied by a younger family member.

RELEVANT SITE HISTORY

BR/176/59	House & garage	Approve 26-10-1959

None.

REPRESENTATIONS

Representations received:

Felpham Parish Council

Felpham Parish Council - no objection.

Comments on Representations received:

No comments.

CONSULTATIONS

Solicitor - Legal Services

Consultations responses received:

Council Solicitor:

GENERAL RECOMMENDATION
I recommend you grant for reasons that follow subject to your finding any contradictory evidence. I rely on you to tell me of any evidence indicating otherwise.

DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

(1) Time: SS171 (1)-(3) and S191 TCPA 1990
The application is for material change of use to residence and operations so the time limit is 4 years under the above. The time period is (ie 8/8/09 - 8/8/13) 4 years to date of the application i.e. for operational development and residential conversion.

The evidence does satisfy this test. I have at this date seen no contradictory evidence of this position. I explain why below.

(2) Sufficiency of Evidence: para 8.12-8.22
The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 8.15 and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity. S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes. The evidence, as described below is sparse, but on a balance of probability, proves the case and is not contradicted by anything that I have seen.

I suggest you check Council tax records to see what property is registered here. I am not sure whether what is referred to is an annexe as an addition to the main dwelling or the use of the annexe as separate accommodation. This should be clarified. But it appears that the annexe was built 2002 and so presumably has been so used since then. I have interpreted the evidence as an addition to the main house.

Also, the garage is for internal works, which would not be development. Let me know if your site visit/further research finds out more. Is the porch PD anyway?

FURTHER EVIDENCE
I rely on you to show me any fresh evidence which may alter the tenor of this advice.

TERMS
1. grant
2. identify precise land boundaries and dimensions on plans/drawings for extent of use and operation.
3. describe accommodation i.e. number of rooms etc
4. limit persons in occupation

Comments on Consultation responses:

Comments noted. The application is indeed for accommodation ancillary to the dwelling. The ancillary residential accommodation has the potential to be considered as a form of permitted development under Class E but in this case, the accommodation is self-contained with a kitchen and bathroom and so could not be considered to be incidental to the use of the dwelling.

However, the former garage building itself has clearly been on site since 2005 and so is lawful by virtue of being in situ for at least 4 years. It is considered that the porch extension would benefit from permitted development rights under Class E but in any case, the porch is also shown on 2005 & 2007 aerial photography and has therefore been present for more than the requisite 4 years.

LEGISLATIVE BACKGROUND

Section 191 to 195 Town & Country Planning Act 1990 and DOE Circular 10/97 Annex 8 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

(i) What is judged on a balance of probability;
(ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence; and
(iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

The relevant time limit for this operation is 4 years and the time period; 8/8/09 - 8/8/13.

1. Principles - Section 191 Town and Country Planning Act 1990 and Circular 10/97 Annexe 8 1.1 Time: SS171(1)-(3) and S191 Town and Country Planning Act 1990.

2. Assessment - The submitted evidence consists of:

(a) The submitted application form which states that the use started in 2002 when the conversions works were completed; and
(b) Builders Letter invoice ref 744 dated 8/12/02 - reference to the conversion and decorating work done.

In addition, whilst it is clear that it is the use of the building that is key, aerial photography has been checked and the former garage appears on the 2005 and 2007 maps but not the 2001 map.

CONCLUSIONS

The application contains sufficient information to demonstrate that this 1 bedroom annexe is used as ancillary accommodation to the main dwelling and was built and first used in this manner in excess of 4 years ago.

The evidence consists of the application form, plans of the site & the building, builders invoice and Council owned aerial photography. The evidence in its entirety covers the period late 2002 to the present but the bulk of the evidence is from 2002, 2005 and 2007.

It is considered that on the balance of probability that consent should be granted. It is therefore recommended that the certificate is granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on 04-07-2013, the use described in the First

FP/135/13/CLE

Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 for the following reasons. Evidence produced by the applicant shows that the use has operated for a period of more than 4 years. The period in which enforcement action can be taken, as set out in Section 171B of the Town and Country Planning Act 1990 (as amended) has therefore expired.

FIRST SCHEDULE

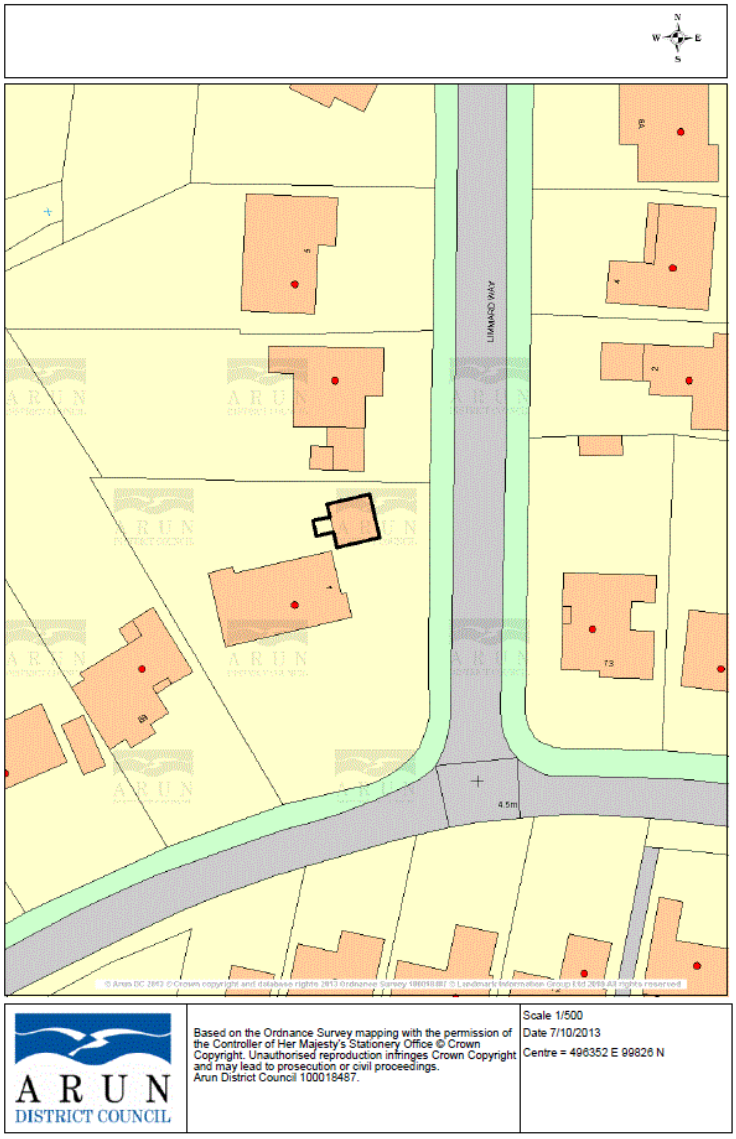
Use of the former double garage and additional porch as ancillary residential accommodation to the dwelling house.

SECOND SCHEDULE

Limmard House, 1 Limmard Way, Summerley, Felpham, PO22 7NH

EXTENT OF USE

The extent of use is that defined on the submitted plan Ref DRG1 (July 13) showing the site, elevations and floor plan; and relates to the use of this single storey detached converted double garage as a 1 bedroom annexe to Limmard House. The building comprises of 1 bedroom, 1 open lounge/kitchen, 1 shower room and 1 porch. There is car parking to serve the dwelling within the existing gravelled hardstanding to the side of the main dwelling house.



ARUN DISTRICT COUNCIL

Based on the Ordnance Survey mapping with the 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.

Scale 1/500
Date 7/10/2013
Centre = 496352 E 99826 N

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.

cleoffrep