

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/152/13/CLE

LOCATION: Loraine
Sea Road
Bognor Regis

PROPOSAL: Application for a Lawful Development Certificate for an existing conversion into two separate dwellings.

DESCRIPTION OF APPLICATION

As above.

DESCRIPTION OF SITE AND SURROUNDINGS

Mid terrace property, located within a cul-de-sac which terminates at the coastal footpath. Single storey flat roof property, raised terrace to south elevation.

Site located in a residential area, characterised by a mix of property types. Beach located to the south of the site.

RELEVANT SITE HISTORY

None

REPRESENTATIONS

Representations received:

Awaited

Comments on Representations received:

None

CONSULTATIONS

Planning Solicitor
Council Tax

Consultations responses received:

Planning Solicitor:

I recommend you refuse 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 so the time limit is 4 years under the above .

The time period is ie 4/9/09 to 4/9/13 -4 years to date of the application.

The evidence does not 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 insufficient and is imprecise and ambiguous.

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 claim is that one dwelling was converted to two. This is a change use under S55(3)(a) TCPA 1990.

The evidence is sparse and consists of :- [a] the application form [b] a petition and [c] an extract rent book covering some parts of 2008 and 2012 and 2013.

The application form contains as sparse statement " para 9 -when I purchased the property in 1989 it was already converted". No more details are provided of accommodation or postal address, postal records , Council Tax registration , workmen's bills , utility bills etc such a would establish a change of use into two dwellings. There are no leases or Land Registry records or tenants details or agreements or letting agency letters .

There is a small piece of paper containing some 9 signatures. This is a petition saying " Alison Kempson has been renting the part of her property for at least ten years". There are no details of how these people know the premises or its contents and layout.

The Rent Book is informal and sparse. It fails to give details of property, address and tenants details or tenancy periods or accommodation and premises let.

I recommend you refuse. A further application can be made. More evidence will be needed to make a case on a balance of probability.

Comments on Consultation responses:

Comments noted and agreed.

LEGISLATIVE BACKGROUND

Principle

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.

(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.

1. Principles

Section 191 Town and Country Planning Act 1990 and Circular 10/97 Annex 8

1.1 Time: SS171(1)-(3) and S191 Town and Country Planning Act 1990.

2. Assessment

The evidence consists of:

- (a) the application form;
- (b) a petition
- (c) an extract rent book covering some parts of 2008, 2012 and 2013.

CONCLUSIONS

The evidence submitted is inadequate as to demonstrate that the use of site as two independent residential dwellings has been continuous for at least 4 years.

RECOMMENDATION

REFUSE

REASONS FOR REFUSAL OR INFORMATIVE(S)

- 1 The applicant has failed to show with the evidence produced, judged on the balance of probability that the use as a residential dwelling has been in continuous use for 4 years as required to satisfy the issue of Certificate of Lawfulness under Section 171 (1)-(3) and Section 191 of the Town and Country Planning Act 1990.
- 2 The evidence submitted is imprecise and ambiguous and fails the test in Circular 10/97 Annex 8 Para 8.12-8.22.