

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/229/13/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 is located in a residential area, characterised by a mix of property types. Beach located to the south of the site.

The southern half of the property comprises of a bedroom, lounge, galley kitchen and a small bathroom. The back door opens onto a small enclosed yard but there is no access from this area to the northern half of the property. It was not possible to view the inside of the northern/rear half.

RELEVANT SITE HISTORY

FP/152/13/CLE	Application for a Lawful Development Certificate for an existing conversion into two separate dwellings.	Refused 14-11-2013
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Application FP/152/13/CLE was refused in November 2013 on the grounds of insufficient evidence. The current application is a resubmission of that refusal.

REPRESENTATIONS

Representations received:

Felpham Parish Council

None

Comments on Representations received:

No Comments.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning 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 so the time limit is 4 years under the above. The time period is 4 years to the date of the application i.e. 9 December 2009 to 9 December 2013. 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, taken together, proves the case for two separate dwellings, judged on balance of probability.

I have had regard to the EPL Vol 6 para 3B-2054 definition of a "dwellinghouse" per Gravesham BC v SoSE 1984 and Sage v SoSE 2003 meaning no special legal definition, but applying ordinary common sense concepts of a living space.

I suggest you get further confirmation from Council tax and the Electoral Roll.

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 on plan for extent of use.
3. Describe accommodation i.e. number of rooms etc.
4. Limit persons in occupation
5. Describe any car parks or other curtilage uses/space

Comments on Consultation responses:

Comments noted. The Council Tax records are reported above under "Legislative Background". Electoral Roll were contacted but did not respond.

LEGISLATIVE BACKGROUND

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."

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

Section S171(1)-(3) and S191 TCPA 1990. The period for the change of use to single dwellings is 4 years.

The relevant time limit for this material change of use of the land is 4 years from 09/12/09 to 09/12/13.

ASSESSMENT

SS191 TCPA 1990 and Circular 10/97 Annex 8 para 8.12-8.22. The evidence is judged on the balance of probability and the above criteria is sufficient and in precise and unambiguous. The evidence consists of:

- (a) the application form signed by the applicant, Mrs Kempson;
- (b) a petition/joint statement by 7 people stating that Mrs Kempson has lived there for 25 years, that the property was already separated into two dwellings at that time and that Mr Bushell has resided in the northern half for 10 years. This statement is not dated and is not considered to have any weight but does give the gist of the evidence to follow.
- (c) Signed letter from a neighbour confirming 20 year occupation by Mrs Kempson and that the property is split in two.
- (d) Signed letter from the tenant of the rear section, Mr Bushell confirming that there is no access between the two, that the northern/rear half is leased from Mrs Kempson and that the property comprises of a lounge, a bedroom, a bathroom and a kitchen.
- (e) Signed letter from a Mr Fisher who worked at the property in 2001 and confirms that there was no access between the two dwellings.
- (f) Signed letter from Miss Stevenson (Arun DC Benefits Team Leader) confirming that housing benefit was paid to Mr Bushell between 2005 and 2013 as a tenant.
- (g) A rent book for Mr Bushell setting out that the first payments were made in February 2003 and last ones in March 2013.

In addition, Council Tax records show that Council Tax has been paid by Mrs Kempson since 01/04/96 (the start date of records on our computer system) and by Mr David Bushell since 01/04/13. The fact that Mr Bushell has only been paying council tax separately for a year is not considered to weaken the case given the amount of other evidence.

It is considered that on a balance of probability the evidence is precise and unambiguous.

CONCLUSIONS

The application contains sufficient information to demonstrate that the property Loraine has been used as two separate residential dwellings for a continuous period of way in excess of the statutory 4 year period. It was also quite clear from a site visit that there is no access from Mrs Kempson's half to Mr Bushell's. 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 the 9th December 2013, the use hereby described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged boldly on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The property has been used as two separate dwellings for a continuous period in excess of 4 years.

FIRST SCHEDULE

Enter full description of use, operations or other matter, if necessary, by reference to the use class, if any, specified in an order under section 55(2)(f) of the 1990 Act, within which the certified use falls.

Use of the property Loraine, Sea Road, Felpham, West Sussex, PO22 7AN as two separate dwelling houses each comprising of 1 bedroom, 1 bathroom, 1 lounge and 1 kitchen but with no dividing doorway.

SECOND SCHEDULE

Loraine, Sea Road, Felpham, West Sussex, PO22 7AN which is shown on the plan to this certificate, within the area edged boldly in black.

EXTENT OF USE

The extent of the use is the property known as Loraine including its garden curtilage to both the front and rear.



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