

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/40/18/CLE

LOCATION: 44A Summerley Lane
Felpham

PROPOSAL: Application for Lawful Development Certificate for an existing use - use of a first-floor unit known as 44a Summerley Lane as a self-contained residential flat in breach of planning permission FP/212/00

DESCRIPTION OF APPLICATION

This is an application for a Certificate of Lawfulness for the use of an existing first floor unit as a self-contained residential dwelling in breach of Planning Permission FP/212/00. The applicant must provide evidence that the unit has been occupied as a self-contained residential dwelling for a continuous period of time of at least 4 years.

DESCRIPTION OF SITE AND SURROUNDINGS

Existing one and a half storey building comprising a commercial use on the ground floor (Summerley Convenience Store/Post Office - no. 44), a residential flat (no. 44a) and an office (no. 44b) within the first floor roof space. There is a customer car park to the front and a private parking/servicing area to the rear. A site visit confirmed the following details:

- * 2 electricity/gas meter boxes on the northern flank side of the building;
- * 2 domestic rubbish wheelie bins within the rear servicing area; and
- * 1 ground floor door to the rear marked as 44 and with two doorbells on it, marked A and B.

The site is set within a predominantly residential area.

RELEVANT SITE HISTORY

FP/212/00/	Outline application for the demolition of existing parade of shops and flats. The construction of 12 houses and community store	ApproveConditionally 06-03-2001
FP/92/02/	Approval of reserved matters following outline permission FP/212/00 for the demolition of existing building within application site and the construction of a community store, post office, dentist & ancillary offices.	ApproveConditionally 15-08-2002

The building was initially approved with the use of the first floor as offices and a dentist. It is not clear from the application history as to whether there was ever a dentists present or when the residential flat

was created. There are no conditions on either FP/212/00 or FP/92/02/ which restrict the use of the building.

REPRESENTATIONS

Representations received:

Felpham Parish Council

"No objection"

Comments on Representations received:

Noted.

CONSULTATIONS

Consultations responses received:

ADC SOLICITOR:

"1. The applicant has submitted a statutory declaration confirming that the Property has been let as a self-contained flat since 24th November, 2004.

2. The statutory declaration is supported by a letter from Leader's which states that they have acted as tenant finder's since 24th November 2004 and that the Property has been continuously let since that date,

3. The statutory declaration is also supported by copies of 7 tenancy agreements all except one of which is between Walwin & Partners Ltd and third parties. The other agreement is between Ms Shilton and a third party.

4. The Council has no evidence or information to suggest that the Property has not been used as stated during that period of time.

5. The Applicant seeks a CLEUD in respect of the breach of condition and change of use to a single dwelling.

6. The time limit for enforcement in these circumstance is 4 years.

7. In all of the circumstances the Council can be satisfied that from 24th November 2004 to 12th February 2018 the Property was used as a self-contained flat, in breach of the condition on the planning permission granted on 6th March 2001 and that no enforcement action can be taken. Therefore, it appears to be appropriate to issue a CLEUD."

Comments on Consultation responses:

Comments noted.

LEGISLATIVE BACKGROUND

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 which 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."

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 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:

(a) Who is responsible for providing sufficient information to support an application?

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 states 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?"

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

The relevant time period is 12 February 2014 to 12 February 2018 i.e. 4 years to the date of the application.

CONCLUSIONS

On the balance of probability, it is considered that the application contains sufficient information to demonstrate that 44A Summerley Lane has been occupied continuously as a self-contained residential flat for at least 4 years prior to the date of this application.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the area of the building specified in the Second Schedule to this certificate and edged in black on the copy of the submitted Site Plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the property had been in use as a self-contained residential flat for a continuous period of 4 years.

FIRST SCHEDULE

Use of part of the first floor of the building known as 44 Summerley Lane, Felpham, West Sussex, PO22 7HX as a self-contained residential flat.

SECOND SCHEDULE

44a Summerley Lane, Felpham, West Sussex, PO22 7HX which is shown on the plan to this certificate, with the area of the first floor edged boldly in black.

The extent of the use is the part of the first floor of 44 Summerley Lane defined as 44a Summerley Lane which is accessed from the ground floor door marked 44a and 44b.



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