

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/78/21/CLE

LOCATION: Thatched House Inn
8 Limmer Lane
Felpham
PO22 7EJ

PROPOSAL: Lawful development certificate for existing use of car park as pub garden.

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for the existing use of the pub car park as a pub garden. The site plan provided (labelled Ground Floor Plan and Location Plan Existing, drawing no. 2108/01) shows areas of fencing and gates (which do not appear to benefit from planning permission) and the main car park area, to the south, is labelled as having 'picnic tables throughout garden'. The photos provided shows a timber decked area directly adjacent to the pub with chairs and tables and the former car park area with picnic tables and chairs.

SITE AND SURROUNDINGS

The site consists of the 'The Thatched House' Inn Public House (and residential accommodation), located on the junction of Limmer Lane and Waterloo Road. The property is a Locally Listed 'Building of Special Character' and consists a 2 storey building with painted render/brick elevations, timber framed windows and pitched slate roof. To the south and east the premises has external areas of hardstanding used for car parking and some tables/chairs associated with its pub use. The site is located within the Felpham Conservation Area.

RELEVANT SITE HISTORY

N/A.

REPRESENTATIONS

Representations Received:

15 letters of objection, 12 letters of no objection and 121 letters of support were received.

Comments on Representations Received:

This application is restricted to testing the legal merits of what is being applied for i.e. whether the use of

the pub car park as a pub garden would constitute material development and if so whether it has been use as such for a period of 10 years or more.

CONSULTATIONS

Consultations Responses Received:

Felpham Parish Council consulted - no response received.

Comments on Consultation Responses:

N/A.

LEGISLATIVE BACKGROUND

CERTIFICATE OF LAWFULNESS APPLICATIONS:

Section 191(1) of the Town & Country Planning Act 1990 states -

"Certificate of lawfulness of existing use or development

(1) If any person wishes to ascertain whether -

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."

INFORMATION/EVIDENCE:

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's have the effect of requiring these applications to be determined having regard only to the information/evidence provided and not planning policy.

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 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) on LDCs states that:

"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."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG on LDCs points out 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?"

MATERIAL DEVELOPMENT:

Section 55 of the Town & Country Planning Act 1990 states -

"Meaning of "development" and "new development".

(1)Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(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."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG on LDCs points out that:

"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."

If an LDC application refers to a material existing use or operation which has, based on the evidence and the balance of probability, been in use for a period of ten years after the date of the breach of planning control then no enforcement action may be taken, it becomes lawful with the passage of time and a Certificate of Lawfulness for said existing use/operation can be granted.

In relation to S171 (1-3) as above, in the case of this LDC application for existing use, the relevant time period is March 2011 to March 2021 i.e. 10 years to the date of the application being made to the Council.

CONCLUSION

The use of the pub car park as a pub garden would be on land within the curtilage of the pub premises and would be intrinsically related to the use as a pub (i.e. the main planning unit) and would be

considered to be an 'ancillary' use to the main use of the pub. This change from the use of the land from a pub car parking area to a pub garden area would not be considered to constitute a 'material change of use' nor 'material development', as defined under Section 55 of the Town & Country Planning Act. Furthermore, the placement of tables and chairs on the ground to facilitate the use of the land as such (with no fixed structures being proposed under this application) would not constitute 'operational development', as defined under Section 55 of the Town & Country Planning Act. In conclusion, the use does not require planning permission since it does not constitute material development under the Act and accordingly a Certificate of Lawfulness can be granted.

Given this conclusion, it is not necessary to consider if there is sufficient information and evidence to demonstrate that the use has been in operation for ten years or more, making it immune from planning enforcement and lawful by virtue of the passage of time, in accordance with Section 171 of the Town & Country Planning Act.

It is noted that the site plan provided (labelled Ground Floor Plan and Location Plan Existing, drawing no. 2108/01) and online imagery dated 2020 shows fencing and gates within the curtilage of the site. A section of this fencing and gates is sited directly adjacent to the highway (on Waterloo Road) and is above 1m in height. As such, this section of fencing/gates would not constitute permitted development under the General Permitted Development Order (2015, as amended) and would require planning permission. It appears to have been in place for less than 4 years (online imagery shows it was erected sometime between 2019 and 2020) and so would not be immune from a breach of planning control, as per S171 of the TCPA, and would require planning permission. Since the fencing/gates has not been applied for under this current Certificate application (only the use has) this does not affect the determination of this application, however an informative will be added to the decision confirming that the applicants need to seek planning permission for this and any operational development (e.g. fixed structures which may not benefit from permitted development, including timber decking less than four years old) related to the use of the land as the pub garden.

RECOMMENDATION

APPROVE

The use 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 55 of the Town & Country Planning Act 1990 by reason that it would not constitute material development.

FIRST SCHEDULE:

Use of pub car park as a pub garden (associated with the currently named 'The Thatched House' Public House).

SECOND SCHEDULE:

The Thatched House Inn/Public House (current Pub name), 8 Limmer Lane, Bognor Regis, PO22 7EJ.

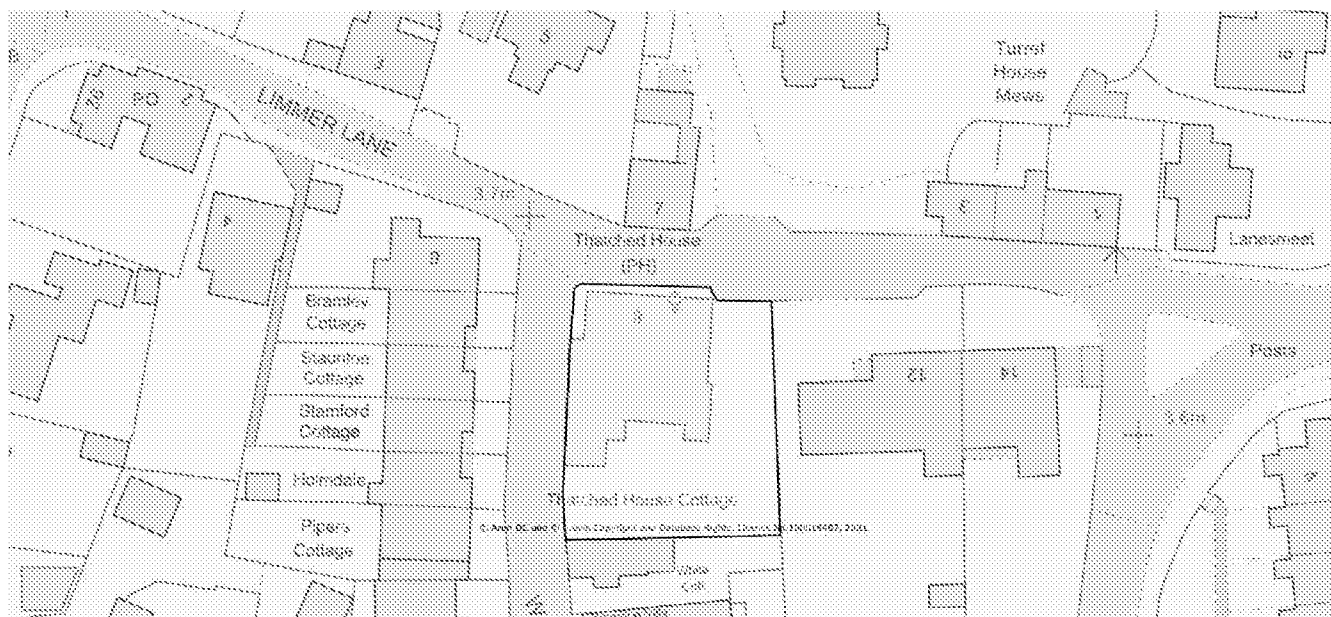
EXTENT OF USE:

The extent of the use is defined in the submitted Ground Floor Plan and Location Plan Existing, drawing no. 2108/01.

REASONS FOR REFUSAL OR INFORMATIVE(S)

- 1 INFORMATIVE: The applicants need to seek planning permission for the existing fencing/gates fronting onto Waterloo Road and any operational development (e.g. fixed structures which may not benefit from permitted development, including timber decking less than four years old) related to the use of the land as the pub garden.

FP/78/21/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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