

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: K/15/18/CLE

LOCATION: Land East of Kingston House
Kingston Lane
Kingston

PROPOSAL: Lawful development certificate for the existing siting of 1 No. wooden building & area of hardstanding.

DESCRIPTION OF APPLICATION

The application originally had a number of parts.

1 - wooden building with lean-to measuring 8.6m x 4.5m x 3.07m

2 - two sheds, typical of those found in a garden.

3 - hardstanding

DESCRIPTION OF SITE AND SURROUNDINGS

The site is an area of open ground south of the A259 which is used for the keeping of horses. A footpath runs west-east on the southern side of the hedge which is immediately adjacent to the structures in question.

RELEVANT SITE HISTORY

none

REPRESENTATIONS

Representations received:

Kingston Parish Council

KPC response below.

Comments on Representations received:

N/A

CONSULTATIONS

Consultations responses received:

KPC is not convinced that these particular sheds have been on site for 4 years - even more so if you take in to account the extended (and extended again) delay in the owner submitting this CLE and work to the date the owner was first notified of concerns that they were in breach of planning regulations. KPC is very concerned that these extensive delays by the owner are prejudicing the way this application may be considered.

History:

a. KPC first reported concerns about new buildings on this site in November 2015 (planning

Compliance case 409/15). We understood at this time the owner had been written to regarding the breach.

b. KPC again reported problems with the site in September 2016.

c. Arun DC September 2017 letter to KPC advising that owner had been written to re breach of planning and asking for an application within 28 days.

d. Arun DC June 2017 letter to KPC stating that "The owners have advised that architects/planning consultants have been engaged but that the process is taking longer than anticipated. Therefore, the period for submission of an application has been extended to the 13th October 2017."

e. Arun DC October 2017 email to KPC advising receipt of "an email from Planning Consultants who have been employed to submit an application(s) on behalf of the land owners in respect of the above. The consultants have been advised today that an application(s) should be submitted within 28 days."

f. Arun DC November 2017 email to KPC advising "that the Council has now been challenged by the owner's agent in respect of the structures/works carried out on the land. Therefore, I am now carrying out a degree of permanence exercise and, a letter has been despatched to the agent today for a response to be made within 21 days."

g. Arun DC December 2017 letter to KPC advising that "In order to regularise the situation relating to the aggregate hardstanding, large wooden building, independent concrete base & 2 No. domestic sheds, there are 2 options open to the owners as follows:

1. Submit an application for a certificate of lawfulness for existing use/development for any part of the development which has been on the site for more than 4 years in respect of any buildings/operation, or, 10 years in respect of the change of use of the land.

2. Alternatively, submit a planning application for change of use of the land & the retention of the large wooden building & 2 No. domestic sheds, aggregate hardstanding & independent concrete base."

Council therefore believes that the 2 No. 'Domestic sheds' should be the subject of a planning application.

Furthermore, it is important that any elements of this CLE which are allowed should be clearly restricted to be retained in connection to the grazing of horses only. In the same way that planning permission for application K/7/18/PL relating to this site (including horse shelters and other sheds) has conditions applied.

Comments on Consultation responses:

The parish council has commented extensively on the course of events but has failed to provide any evidence to dispute the applicants evidence.

LEGISLATIVE BACKGROUND

Section 192(2) 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.

CONCLUSIONS

This is for the existing use of 2 sheds, 1 wooden building and an area of hardstanding, used in connection with grazing horses.

It is claimed the use has occurred for more than 10 years; and the building works have been substantially completed for more than 4 years.

The date of the change of use and substantial completion of the development given is: 1 April 2007.

Evidence provided:

There is a statutory declaration of Lina Santangelo that she owned the land between 2008-2016 and then transferred the land to her children. Prior to her ownership, her father owned the land between 1984 - 2008. She confirms the use and development during the said period.

There is a statutory declaration of Tony Maio where he refers to aerial photos to prove the existing use, having acquired the land on 22 December 2016.

Google Aerial Photo 4/15/2007 shows the large 'wooden building' There is an area that could be the location of the hardstanding but is occupied by a building (shed). It is possible that the hardstanding is the base for the shed.

Google Aerial Photo 1/1/2010 shows one structure on the land, sited in the location shown on the plan as 'wooden building', In the location of the alleged hardstanding this aerial photo shows what could be a base/hardstanding of some description.

Google Aerial Photo 8/31/2012 shows one structure on the land, sited in the location shown on the plan as 'wooden building', The image doesn't provide any clear image of the hardstanding.

The three photos show the boundary where the sheds are sited on the plan covered by trees. The two sheds are sited near to the wooden building, however cannot be seen in the tree boundary on any of the photos.

In relation to CLEUDs, lawful development is development:

- Against which no enforcement action can be taken.
- Not in contravention of any planning enforcement notice or breach of condition notice which is in force.

The onus is on the applicant to prove on the balance of probability that a CLEUD ought reasonably be issued.

The breach must be continuing at the date of the application of the CLEUD (this appears to be the case given the content of this application and the recent planning application)

In the absence of any contravention of any planning enforcement notice or breach of condition notice that is in force, the structure in place as shown on the aerial photos in the place the wooden building is identified; and it is likely, on the balance of probabilities, that the concrete hardstanding has also been in existence.

With regard to the two small sheds these were removed from the description of the application on the basis that they were not fixed to the ground and capable of being moved as a whole with a use incidental to the use of the land and therefore did not constitute development. If this situation changes then planning permission would be required.

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 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, namely, the development has been in situ for a continuous period of 4 years

FIRST SCHEDULE

The siting of 1 No. wood building and area of hardstanding at Land east of Kingston House, Kingston Lane, BN16 1RP

SECOND SCHEDULE

Land east of Kingston House, Kingston Lane, BN16 1RP

EXTENT OF USE

The siting of 1 No. wood building and area of hardstanding at Land east of Kingston House, Kingston Lane, BN16 1RP as per plans K/15/18/CLE/01 and K/15/18/CLE/02



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