

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

REF NO: LU/228/19/CLE

LOCATION: 24 Gosden Road
Littlehampton
BN17 6DX

PROPOSAL: Lawful development certificate for the existing repavement of driveway.

DESCRIPTION OF APPLICATION

The application seeks a lawful development certificate for an existing driveway. The proposal is to establish the lawful position of the driveway, repaved in August 2015.

SITE AND SURROUNDINGS

The site is a residential dwelling, in an area hosting a range of building styles and types.

RELEVANT SITE HISTORY

Noted.

REPRESENTATIONS

Representations Received:

Littlehampton Town Council

None.

Comments on Representations Received:

N/A.

CONSULTATIONS

Consultations Responses Received:

None.

Comments on Consultation Responses:

N/A.

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.

PRINCIPLE

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 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 applications relates to operations to a single dwelling and as such the time limit is 4 years or that the works benefitted from planning consent or comply with the limitations of Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

CONCLUSION

The submitted builders letter/invoice detailing the cost and completion date of the works is sufficient to demonstrate that in all probability the development was completed on the 1st of September 2015.

However, this application, for a lawful development certificate, was made on the 17th of June 2019, which is within the four period, and that the time of submission, could be enforced against. Section 191(4) of the Town and Country Planning Act 1990 is clear that evidence provided must show that the works were lawful at the time of application, or else the application must be refused. Therefore, refusal of the certificate is recommended.

It should be noted, that the works are exempt from enforcement action after the 1st of September 2019. Therefore, at time of decision, the development is exempt from planning enforcement controls, and is lawful in regards to the Town and Country Planning Act 1990, Part VII, Section 171B.

RECOMMENDATION

REFUSE

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 unlawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date of making an application, the replacement of the driveway had been carried out less than 4 years ago.

FIRST SCHEDULE

The repaved driveway

SECOND SCHEDULE

24 Gosden Road, Littlehampton, BN17 6DX.

EXTENT OF USE

Repaving of driveway