

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

REF NO: M/14/19/CLE

LOCATION: Land adjacent to 46 Sea Lane
Middleton on Sea

PROPOSAL: Application for a Lawful Development Certificate following grant of planning permission M/7/16/PL for an existing development - Confirmation required that permission has been lawfully commenced

DESCRIPTION OF APPLICATION

The application essentially seeks to confirm that planning permission M/17/16/PL has been lawfully commenced on the basis of the demolition which has been undertaken.

DESCRIPTION OF SITE AND SURROUNDINGS

The site lies in a residential area characterised by mainly large detached properties. The original residential property on the site is still present, but the garage has been demolished. and so has the extension.

RELEVANT SITE HISTORY

M/7/16/PL	Demolition of existing garage, pool house & part east wing of existing house & erection of 1 No. dwelling & garage.	ApproveConditionally 16-06-2016
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REPRESENTATIONS

Representations received:

Middleton Parish Council

None

Comments on Representations received:

None

CONSULTATIONS

Consultations responses received:

None

Comments on Consultation responses:

None

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.

The relevant legislation is found in:

Section 56 of the Town and Country Planning Act 1990(as amended) ("the Act")

Section 91 of the Act

Section 191 of the Act

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

Section 56(2) to (4) of the Act provides that a planning permission will be commenced within the time limit under Section 91 on the earliest date when a material operation comprised in the permission is carried out and that demolition of a building is a material operation.

CONCLUSIONS

On 4th February 2016 the Council received an application in respect of demolition of existing garage, pool house & part east wing of existing house & erection of 1 No. dwelling & garage, in respect of land at Little Coombe, 46 Sea Lane, which was validated on 18th February 2016.

The application was decided on 16th June 2016 and permission issued.

The permission was conditional and the relevant conditions are:

Condition 1 which states: "The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended)"

Condition 5 which is a pre-commencement condition states

Development shall not commence until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority.

The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, the recommendations of the SUDS Manual produced by CIRIA.

Winter groundwater monitoring to establish highest annual ground water levels and Percolation

testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage.

No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the details so agreed shall be maintained in good working order in perpetuity.

Reason : To ensure that the proposed development is satisfactorily drained in accordance with policies GEN7 and GEN9 of the Arun District Council Local Plan.

Condition 6 which is a pre-commencement condition in relation site levels.

Conditions 5 and 6 have not been discharged.

This application dated 26th March 2019 relates to a Lawful Development Certificate.

The Applicant has stated that the activity was begun before submission of the application on 26th March 2019.

APPLICATION

In this case planning permission M/7/16/PL was granted on 16th June 2016 with a condition that it be begun within 3 years, namely by 16th June 2019.

The Permission was subject to two pre-commencement conditions which the Council has not discharged. The garage and extension to the dwelling at 46 Sea Lane have been demolished and removed from the site.

The applicant has submitted a plan dated 25th January 2016 indicating the areas of demolition and the proposed drainage diversions which is noted as "All works complete" and elevations of the existing dwelling house dated 25th January 2016 which are noted as "All works complete". The areas indicated for demolition correlate with those shown on the approved plans for M/7/16/PL. A quotation from Assent Building Control dated 18-02-2019 has also been submitted with the application.

Photographs clearly indicating the areas of demolition and showing the extension prior to the start of works of demolition and at completion are indicated have also been submitted.

The evidence submitted is considered to be sufficient to demonstrate commencement of the development approved under references M/7/16/PL for the purposes of 'Section 56' of the Town and Country Planning Act 1990 (as amended), which states;

"1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated -

- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
- (b) if the development consists of a change in use, at the time when the new use is instituted;
- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

(2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

(3) The provisions referred to in subsection (2) are sections 85(2), 86(6), 87(4), [89,] 91, 92 and 94.

(4) In subsection (2) "material operation" means - (a) any work of construction in the course of the erection of a building; (aa) any work of demolition of a building;

(5) In subsection (4)(e) "material development" means any development other than -

(a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted;

(b) development of a class specified in paragraph 1 or 2 of Schedule 3;

(c) development of any class prescribed for the purposes of this subsection.

Demolition of the extension and garage is a material operation within Section 56(2) to (4) of the Act; was carried out in compliance with condition 4 and following the Discharge of the Pre-Commencement Conditions (7 and 19) and was comprised in the development. Therefore, the Planning Permission M/7/16/PL has been begun within the three year period running from 16th June 2016 to 16th June 2019.

It is also noted that a similar Certificate application was granted under reference F/27/18/CLE at Buttercups, Ford Lane, Ford where demolition had been undertaken and pre-commencement conditions had not been discharged.

As such the certificate is recommended for approval.

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 time of submission of the application, on 26-03- 2019, demolition of the property extension and garage had taken place and planning permission M/7/16/PL had lawfully been implemented.

FIRST SCHEDULE

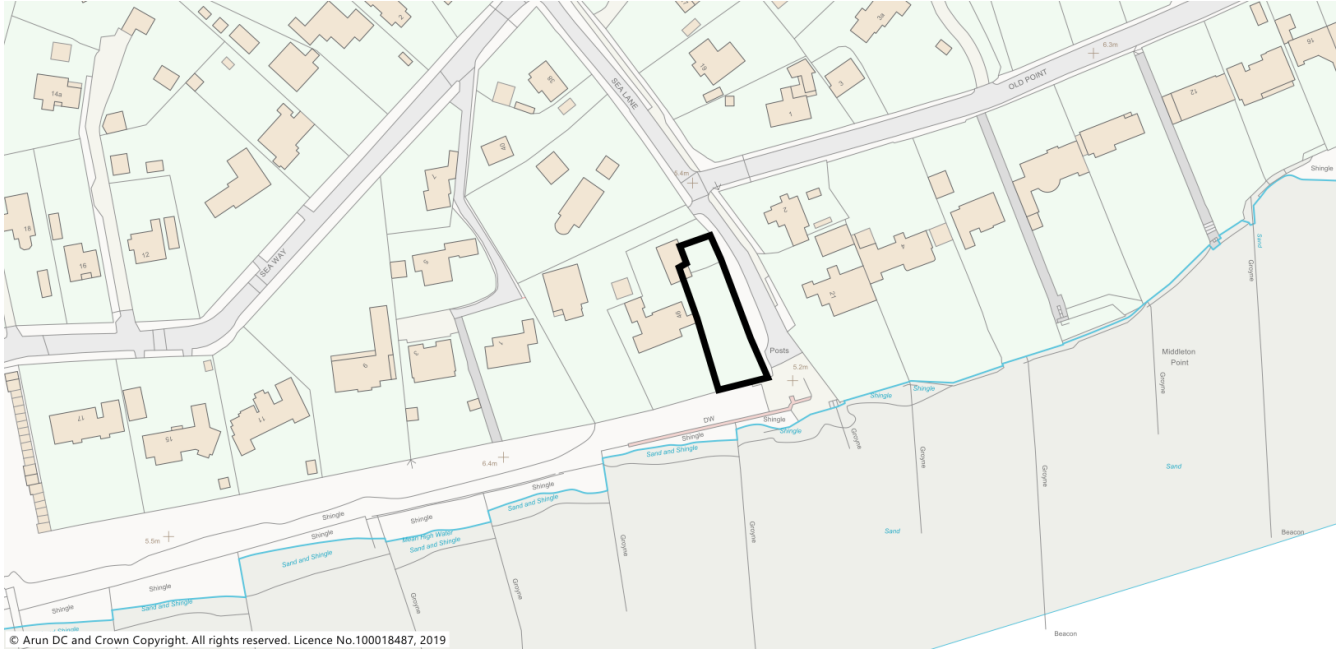
The provision of the development comprising the erection of a dwelling and garage in accordance with planning permission M/7/16/PL.

SECOND SCHEDULE

Land adjacent to 46 Sea Lane, Middleton, PO22 7RX

EXTENT OF USE

Implementation of planning permission M/7/16/PL.



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