

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/51/19/CLE

LOCATION: Gendarshe (now Sea Song)
Manor Way
Elmer
Middleton-On-Sea
PO22 6LA

PROPOSAL: Application for a Certificate of Lawfulness for an existing use - use of land to incorporate into garden

DESCRIPTION OF APPLICATION

The application seeks to assure that the land has been used as private amenity land for up to 10 years before the date of 3rd of June 2019.

SITE AND SURROUNDINGS

The site is a reasonably small area of land bordered by a picket fence.

RELEVANT SITE HISTORY

Noted.

REPRESENTATIONS

Representations Received:

Middleton Parish Council

Parish Council - Objection

- The proposal would set an undesirable precedent.
- It would appear the applicant does not own the site.
- Sussex Wildlife require the foreshore to be protected.

10 Letters of objection, including information:

- The intrusion to the beach has a significant visual impact.
- In order to erect the fence, all of the vegetation has been destroyed, which was a rare environment in the U.K.
- The application would set an unacceptable precedent.

- It is not believed that the applicant owns the site in question.
- The land has not been in use for more than 10 years, until recently it was part of the beach.
- (Document submitted detailing the Elmer Rocks as being a Local Wildlife Site)
- (Land Registry document submitted showing land ownership in the area)
- (Historic photo of the site from local occupier)
- There are string lights on the fence, which detract from the natural view of the beach.

Comments on Representations Received:

Noted. The application seeks to ascertain as to whether the proposed development is 'lawful' or not, therefore, concerns relating to the design, neighbouring amenity, and ecology, which are planning issues, not lawful issues, are not taken into account. With regard to site ownership, this does not prevent the applicant from making this application.

CONSULTATIONS

Engineers (Coastal Protection)
Engineering Services Manager
Environment Agency

Consultations Responses Received:

The response of the Council's Legal Department is set out below:

1. I am asked to advise on an application for CLEUD in relation to "Gandarshe", Manor Way. Elmer, Bognor Regis PO22 6LA ("the Property")

BACKGROUND

2. On 3rd June, 2019 the Council received an application for a CLEUD in respect of the Property for use of the land to the rear of the Property as a garden. The application was given reference M/51/19/CLE and was not validated until 21st June 2019.

3. In support of the application I have seen the following:

a) a location plan;

b) a "statement" consisting of 3 paragraphs and 3 photographs. The statement claims that the "area to the rear of the house of Sea Song has been maintained by the previous owners for over 20 years. They used it to provide privacy and security for the pool in their garden. I have had to remove the greenery as it was attracting bees and I suffer from anaphylactic shock.

I have erected a picket fence - the same as my neighbours 3 doors down, to ensure that there is some security and that children and dogs cannot run out."

The photographs show before and after the clearing of the greenery and a fence 3 doors away.

c) Land registry titles and plans for SX6204 - (Elmer Sands Holiday Camp) and WSX86604 (the Property);

d) Title WSX86604 shows the Proprietor to be Oberholzer Properties Limited of South Lodge, South Avenue, Hurstpierpoint, Hassocks BN6 9QB, a company of which the applicant is the sole director;

e) the application form.

4. The Council has received a number of objections to the application which include objections on the following grounds:

a) the land is not owner by the applicant;

b) the area was not enclosed and maintained;

c) the greenery was vegetated shingle.

5. The applicant has not submitted a statutory declaration and the "statement" is of limited value as the two before and after photographs are clearly both recent and do not support the claim that the area was garden for a period of 10 years prior to 3rd June 2019.

6. The applicant has provided no statement or supporting evidence from the previous owner/occupier to support the application.

7. The application form, at section 7 gives a date of 8th April 2019 as the date when the works were completed, which is clearly less than 10 years ago.

8. The application form, at section 10, states that the applicant is the owner of the land, a fact that is disputed by one of the objectors, who claims to be owner of the area of land on the sea shore immediately above the mean high water mark.

9. I am of the opinion that the photograph showing 'before' shows vegetation that is more consistent with the description of the greenery as vegetated shingle rather than a cultivated, enclosed garden.

10. For the reasons set out above I am of the opinion that the applicant has failed to show that the land has been used as a garden, rather than beach or some other use for a period of at least 10 years prior to 3rd June 2019 and, therefore, the application should be refused.

Comments on Consultation Responses:

Noted.

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 time limit for this operation would be 10 years.

CONCLUSION

The advice from the Council's Legal Department is clear. It is judged that the evidence submitted is ambiguous and imprecise as to clearly demonstrate that the use of the site has not been private amenity land as a continuous use for at least 10 years.

It is considered that on the balance of probability, it has not been proved that the site has been used as garden land for a continuous period of 10 years or more.

RECOMMENDATION

PP REQUIRED

REASONS FOR REFUSAL OR INFORMATIVE(S)

- 1 It is considered that the evidence submitted is ambiguous and imprecise as to clearly demonstrate that the use of the site has not been private amenity land for at least 10 years. Therefore, on the balance of probability, it has not been proved that the site has been used as garden land for a continuous period of 10 years or more.