

PLANNING APPLICATION REPORT

REF NO: P/34/10/CLE

LOCATION: 95 West Front Road
Bognor Regis

PROPOSAL: Application for a Certificate of Lawfulness for an existing use or operation -
erection of dwelling

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This is an application for a Certificate of Lawfulness for an existing use that of non compliance with Conditions 3 and 4 of P/17/85 and as a period of 4 years or more has elapsed the development then has deemed consent.
SITE AREA	0.06 hectares.
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Flat
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	Wall to front and gate.
SITE CHARACTERISTICS	Bungalow with roof light in gable ends. Garage to front. Front conservatory
CHARACTER OF LOCALITY	Predominantly residential, adjacent to the sea.

RELEVANT SITE HISTORY

P/68/04/CLP	Application for a Certificate of Lawfulness for a Proposed Use for the creation of 4 No recessed door openings with projecting balcony railings on south plane of roof.	Refused 14-07-2004 Appeal: Dismissed 06 03 2006
P/120/04/CLP	Creation of 4 No. recessed door openings with balcony railings, none of which project beyond south plane of roof. (Re-submission of P/68/04/CLP)	Refused 17-12-2004 Appeal: Dismissed 06 03 2006
P/19/07/	To erect a conservatory to the rear.	PP Not Required 20-03-2007

P/74/78	Detached bungalow and garage	Approve Cond 12-07-1978
P/149/83	Outline application for detached dwelling and garage	Withdrawn 01-11-1984
P/17/85	O/A for detached dwelling and garage	Approve Cond 22-05-1985
P/90/85	Details in pursuance of P/17/85 for detached dwelling and garage	Approve 07-10-1985

REPRESENTATIONS

Representations received:

Pagham Parish Council

No objection - Dismayed that this matter appeared to have escaped scrutiny within the appropriate time scales and enforcement now considered inappropriate.

Comments on Representations received:

Noted. The time elapsed renders the development immune from enforcement action.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor:

The intention of this application is to seek confirmation that the original application P/17/85 was not complied with. The result of this is that none of the conditions will bind the resulting dwelling. This is stated in the application. There is a history of the applicant seeking to avoid this condition 5 which prohibits any dwelling space in the roofspace. There is a history of the applicant seeking to avoid this condition. It is not clear how material this is to this CLE but it does explain why the application is made for the dwelling that has indisputably been on site for more than 4 years. The dwelling was there in 2004 when P/120/04/CLP was submitted. The consequence of issuing this CLE is that it could set a precedence. In this case would recommend consent is granted for the following reason:

(1) Time: SS171(1)-(3) and S191 TCPA 1990

The application is for operations so the time limit is 4 years. Further the applicant seeks to prove that the conditions attached to the application were not complied with therefore the time limit is ten years, in this case 1985/1996.

The evidence does satisfy this test. The Local Planning Authority evidence on file confirms this. The applicants burden of proof under para 8.12 Circ 8/97 Annex 8 is discharged.

(2) Sufficiency of Evidence: para 8.12-8.22

The evidence judge on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 8.15 and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to corroboration not being needed unless to resolve any ambiguity. S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

It is clear that the dwelling was on site in 2004.

Conditions precedent

Conditions 3 and 4 are conditions precedent ie they need to be complied with and discharged before the dwelling authorised by the planning permission is built. See EPL Vol2 para 56.13.6 R on behalf of Hart Aggregates v Hartlepool BC 2005 EWHC 840 ... a condition which expressly prohibits any development taking place before a particular requirement has been met...condition 3 begins, "details of screen walls and/or fences shall be submitted...before development is commenced..."

Condition 4 begins "before development is commenced..."

Consequently these are conditions precedent as described above. Until an application for approval of reserved matters was made and approved no development capable of being a specified operation was permitted.

The microfiche is of too poor a quality to decide if conditions precedent under P/17/85 or reserved matters under P/85/90 were complied with so we have no evidence to rebut the applicants case.

Further the letter from Dan Vick dated 12th May confirms this "I have worked through microfiche...have not been able to locate any letters which confirms conditions have been discharged..."

The Local Planning Authority is in no position to challenge with any kind of quality evidence this assertion by the applicants.

Therefore on balance of probability these conditions 3 and 4 relied upon are:-

- (1) breached as above
- (2) conditions precedent as above
- (3) it would be irrational to enforce because it is now illegal under the time limits
- (4) there is no evidence of informal compliance or waiver as referred to in EPL Vol 2 para 56.13.4 Flintshire CC ex p Somerfield Stores 1998 PLCR 36 - the Local Planning Authority have no evidence on file to rebut the applicants case.
- (5) are conditions which are important and not negligible - the reason for them establish this viz they were imposed to protect amenity which are unlikely to be regarded as a trivial matter.

Enforcement

Enforcement is not an option due to the expiry of the 4 years and ten years time limits to enforce. It might be possible (were this not so) to use an enforcement notice or BCN to enforce such conditions.

Comments on Consultation responses:

Comments noted

POLICY CONTEXT

Designation applicable to site:
(NOT REQUIRED FOR CLE/CLP)

DEVELOPMENT PLAN POLICIES

South East Plan:

Arun District Local Plan:

PLANNING POLICY GUIDANCE

POLICY COMMENTARY

N/A

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

N/A

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

1. Principle

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 began at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Section 191 to 195 Town & Country Planning Act 1990 and DOE Circular 10/97 Annex 8 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

- (i) What is judge on a balance of probability.
- (ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence.
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

1.1 The relevant time limit for the material change of use of the land is for 10 years from 14th April 2006 to 14th April 2010.

2. Assessment

2.1 The submitted Evidence consist of

- Statement dated 17th March 2010.

2.2 The evidence collaborated from the Council's record consists of:

- Planning history
- Appeal decision APP/C3810/X/05/2002097 following refusal of P/68/04/CLP which sought creation of 4 No. recessed door openings with projecting balcony railings on south plane of roof. The appeal was dismissed.
- Letter

3. Conclusion

3.1 Grant

3.2 On balance of probability and absence of contrary evidence the dwelling has been on site for over 4 years as operational development and

3.3 On balance of probability and absence of any contrary evidence seen the dwelling has been on site for over 10 years in breach of condition.

3.2 This application is for a Certificate of Lawfulness for an Existing Development in that the dwelling was erected non compliant to approval P/17/85 in that the attached conditions were never discharged. The quality of the evidence has been judged on a balance of probability and it is considered that the evidence is robust and meets the standards required in Circular 10/07 Annex and paras. 8.12-22 to prove the development was constructed without complying with Conditions 3 and 4.

Condition 3 reads:

Details of screen walls and/or fences shall be submitted to and approved by the Local Planning Authority before development is commenced and such walls and/or fences shall be erected before the building with which they are associated are first occupied and shall thereafter be maintained to the satisfaction of the Local Planning Authority.

Condition 4 reads:

Before development is commenced a schedule of materials and finishes and, where so required by the Local Planning Authority, samples of such materials and finishes to be used for the external walls and roofs of the proposed building(s) shall be submitted to and approved by the Local Planning Authority.

From the Council's records, it is clear that these two conditions have not been discharged. As a period of over 4 years has elapsed since the building was constructed, it is immune from enforcement action and therefore has the benefit of deemed consent for a dwelling which is not built in accordance with the submitted plan.

The appeal decision to dismiss the P/08/04/CLP proved beyond reasonable doubt that the dwelling had been constructed, but not in accordance with the approved plan. The period of four years has elapsed and therefore the development is immune from enforcement action.

RECOMMENDATION

APPROVE

- 1 The Arun District Council hereby certify that on the 14th April 2010 the use hereby described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged boldly on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:
 - the development was completed without discharging planning conditions 3 and 4 and the time limit of 4 years has elapsed without enforcement action being taken and is therefore now immune.
- 2 The dwelling house was constructed without the discharge of conditions imposed on application P/17/85.
- 3 The dwelling house has been constructed without discharging conditions 3 and 4 concerning materials and boundary treatment.
- 4 The dwelling house as shown on the plan attached to this certificate within the edge boldly in black.