

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

REF NO: P/88/17/CLE

LOCATION: The Bungalow
Newlands Nursery
Pagham

PROPOSAL: Lawful development certificate for an existing bungalow to be used as a dwelling that is not occupied in connection with farming.

DESCRIPTION OF APPLICATION

This is an application for a Certificate of Lawfulness for the use of the existing dwelling by persons other than employed in agriculture. The applicant must provide evidence that the dwelling has been occupied by persons working outside of agriculture for a continuous period of time of at least 10 years.

DESCRIPTION OF SITE AND SURROUNDINGS

Existing bungalow within the confines of Newlands Nursery. The site has two accesses, one from within the Newlands Nursery and the second via track off Pagham Road to the south. The site is bordered by a mix of close boarded fencing & trees and 2-3 high hedging.

RELEVANT SITE HISTORY

P/39/49	Bungalow and garage	ApproveConditionally 08-02-1950
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There is no planning history other than P/39/49 which relates to the construction of the dwelling. This was subject to a condition which required the bungalow to be occupied as a farmhouse in connection with the farming of at least 35 acres in the immediate vicinity.

REPRESENTATIONS

Representations received:

Pagham Parish Council

"No objection"

Comments on Representations received:

Noted.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

ADC SOLICITOR - No objection. Comments set out below:

"GENERAL RECOMMENDATION

I recommend you grant for reasons that follow subject to your finding any contradictory evidence. I rely on you to tell me of any evidence indicating otherwise.

DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND NPPG GUIDANCE ON LAWFUL DEVELOPMENT CERTIFICATES [LDCs]

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

The application is for breach of an agricultural occupancy condition so the time limit is 10 years under the above i.e. 10 years is breach of condition time limit and this is not a creation of a dwelling - but a condition controlling use of the dwelling. The application is so phrased.

The time period is:- 23/8/07 to 23/8/17 i.e. 10 years to date of the application. The evidence does satisfy this test. I have at this date seen no contradictory evidence of this position. I explain why below.

(2) Sufficiency of Evidence: NPPG Guidance LDCs Part 3 Application and Determination

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

Para 3 NPPG says that ".....if an LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version less than probable, there is no good reason to refuse provided the applicant's evidence alone is sufficiently precise and unambiguous".

Para 3 in NPPG cited above and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not 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.

There is no evidence of an extant enforceable Enforcement Notice issued and affecting the Land

The evidence analysis with comments is

1 - Letter identifies condition in ref P/39/49 dated 1950 and breach commenced circa 2001 on sale of surrounding farm/horticultural land This PP is exhibited to the statement by Mr Goemans.

2 - Application - time period 10 years to 23/8/07 - 23/8/17

3 - Plans x 2 identify Bungalow location and surrounding land

4 - ref P/39/49 dated 8 /2/1950 - occupy bungalow as farmhouse in connection with farming of at least 35 acres in "immediate vicinity " - Note unusual and not compliant with 2017 model condition of a condition some 67 years old by now.

5 - 12 June 2001 Transfer of Newlands Nursery to Roundstone Nurseries

6 - Statement by FC Goemans to effect condition breached since 12 June 2001 when most of land sold to Roundstone nurseries so that occupier of the bungalow no longer farmed "35 acres in immediate vicinity"

The condition was phrased in 1950 in a manner not conforming to model conditions applicable today i.e. modern conditions simply require "occupiers or dependants work in agriculture or be retired farmers " thus keeping the condition more flexible and applicable to changing conditions.

But once 35 acres were no longer farmed by the bungalow occupier after the 2001 sale the condition was breached . It has been breached since then for some 16 years.

The case is proven on balance of probability on the evidence produced and listed above.

FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice .

TERMS

1. grant
2. identify precise land boundaries on plan for extent of use.- see plans
3. describe any car parks or other curtilage uses/space"

Comments on Consultation responses:

No comments.

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states that:-

"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 relevant time period is 22 August 2006 to 22 August 2016 i.e. 10 years to the date of the application.

CONCLUSIONS

On the balance of probability, it is considered that the application contains sufficient information to

demonstrate that the dwelling has been occupied by persons (Mr Francis Cornelius Goemans and Mrs Lorna Goemans) without being associated with the farming of at least 35 acres in the immediate vicinity and for in excess of 10 years (since 2001).

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, the property had been in use as a private dwelling occupied by persons not employed in agriculture for a continuous period of at least 10 years.

FIRST SCHEDULE

Use of the dwelling for unrestricted residential occupation.

SECOND SCHEDULE

The Bungalow, Newlands Nursery, Pagham, West Sussex, PO20 1LL which is shown on the plan to this certificate, within the area edged boldly in black.

EXTENT OF USE

Use of the Bungalow at Newlands Nursery as an unrestricted residential dwelling.



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