

**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/8/14/CLE

**LOCATION:** 20 The Parade  
Pagham

**PROPOSAL:** Application for a Lawful Development Certificate for an existing use as a ground floor office (B1).

**DESCRIPTION OF APPLICATION**

As above.

**DESCRIPTION OF SITE AND SURROUNDINGS**

Two storey modern parade of shops constructed from red brick with concrete panels and a flat roof. The ground floor corner unit (Ground Floor, no. 20) was at the time of the site visit on 13/02/14 occupied by what appeared to be an office use (as indicated by desks, computers, office blinds). The adjacent unit is a Chinese takeaway (use class A5). There is a mix of flats and a separate office above. The upstairs office (which is a separate planning unit) was empty at the time of the visit. The site forms part of a parade of shops and similar uses set around a central courtyard. There are 13 off-street parking spaces.

**RELEVANT SITE HISTORY**

|          |                                                                                                                    |                                    |
|----------|--------------------------------------------------------------------------------------------------------------------|------------------------------------|
| P/1/91   | Change of use from a bank (A2 user classification) to a chinese restaurant (Takeaway)                              | ApproveConditionally<br>04-02-1991 |
| P/91/93  | Proposed change of use from offices to 2 no. 1 bedroom and 1 no. 2 bedroom flats                                   | ApproveConditionally<br>09-02-1994 |
| P/91/11/ | Change of use from office (B1) to shop (A1)                                                                        | ApproveConditionally<br>11-01-2012 |
| P/19/74  | 2 storey building comprising bank premises and ground floor and general office space on 1st floor plus car parking | ApproveConditionally<br>12-03-1974 |
| P/89/75  | Erection of a 2 storey building with bank premises on ground and 1st floor car parking area                        | ApproveConditionally<br>01-10-1975 |

It is noted that the officer's report for P/91/11/ which referred to a site visit on 21 December 2011 stated that:

"..... The unit is currently vacant, having previously been used as ancillary office space and store for Bognor Fun Bus Charity."

And that:

"The premises have been vacant since March 2011 and are currently being marketed for sale and to let."

The submitted application form stated that the Bognor Fun Bus Company ceased occupation in March 2011. This is presumed to be where the officer's comment came from. It is noted that the agent who submitted the 2011 application is the same agent as for this application. Therefore it is curious that the agent is now relying on evidence from Holland Alexander that states that the Bognor Fun Bus Company had a 5 year lease from May 2009 (although the Holland Alexander letter does not state when this period of use ceased).

#### **REPRESENTATIONS**

##### **Representations received:**

Pagham Parish Council

Pagham Parish Council - no objection.

##### **Comments on Representations received:**

Comments noted.

#### **CONSULTATIONS**

Planning Solicitor

##### **Consultations responses received:**

The response of the Councils Solicitor is set out below:

#### **GENERAL RECOMMENDATION**

I recommend you refuse for reasons that follow subject to your finding any contradictory evidence, and due to the failure to provide full evidence. I am sure an opportunity to provide this evidence should produce it, so an amended decision can be issued. I rely on you to tell me of any evidence indicating otherwise.

#### **DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8**

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

The application is for material change of use so the time limit is 10 years under the above. The time period is 07/2/04 to 07/2/14 i.e. 10 years to the date of the application.

The evidence does not satisfy this test. I refer to the letter dated 17/1/14 from Holland Alexander containing paragraph 2 and 3 which refer to:-

(a) occupation from 2002 to 2006 by Century 21 Security Limited.

(b) this also refers to Century 21 "..... remained in occupation after the lease had expired and vacated on 29 September 2006....."

(c) the letter then says a lease was granted to Bognor Fun Bus Company for a term of 5 years

from 8 May 2009. This suggests a time gap or lapse of some 2 and half years between September 2006 and May 2009.

So this needs to be clarified. Who occupied in the period 2006-2009? What was the place used for in 2006-2009? It suggests a discrepancy that may mean a refusal, if B1 use was interrupted.

I have at this date seen no contradictory evidence of this position. I explain why below.

**(2) Sufficiency of Evidence: para 8.12-8.22**

The evidence judged on a balance of probability and the above criteria is insufficient and is imprecise and ambiguous.

Para 8.15 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.

The evidence consists of:-

- \* Application form, refers to a B1 Use from "prior to 2002". But cites no evidence.
- \* Letter from Regent Property dated 20/1/14. This just refers to the letter from Holland Alexander. So it is of no evidential value of itself. It refers to B1 use since 1998.
- \* Letter from Holland Alexander dated 17/1/14. This has several gaps in it. I have referred to the time lapse of 2006-2009. This is a potential break in the ten years period, unless it can be explained or filled or explained.

I suggest that these papers are needed :-

1. NNDR records for occupiers 2004 - 2014
2. Leases from 1998, 2002 and 2009.
3. Letters/statements from occupiers
4. letters/statements from rent collectors
5. Financial records and any payments out or rents received in 2004-2014

These records should or may clarify the occupation and use.

B1 use in UCO 1987 specifically excludes A2 uses for professional or financial services. B1 is different from A2 uses. The evidence provided, such as it is, does NOT address whether the office uses carried out were A2 or B1.

I will try some Company Searches. I doubt if this will clarify the position, which only the owner/occupier/applicant with further evidence. I append an annex of company search results , which indeed, do not clarify the position.

**FURTHER EVIDENCE**

I rely on you to show me any fresh evidence which may alter the tenor of this advice. You may refuse or give them a chance to clear up the gaps.

#### TERMS

1. Refuse
2. Failure to prove 10 years occupation as B1
3. Failure to prove B1 use for 2004-2014
4. Failure to produce precise unambiguous clear evidence of uses
5. Failure to clarify and full in the gap of use history in 2006-2009
6. Failure to give precise evidence about uses carried out in office so as to establish if it falls within B1 [industrial or commercial] or A2 [financial or professional] use.

#### ANNEX COMPANY SEARCH RESULTS

Momentum Technology Ltd - specialist machinery maker - B1 it appears but specific use and product not stated;

Century 21 Security Ltd - private security firm so I suggest B1, but depends on its precise activity; and

Bognor Fun Bus Company Ltd - recreation/social work - so is this professional and not commercial?

I am not in a position to conclude anything definitively, but it appears that these companies may have been a mix of A1 or B1, so again a full ten years of B1 use is not established.

#### **Comments on Consultation responses:**

Comments noted and agreed.

The agent was contacted on 13 February to advise of the 2006-2009 gap in the evidence. The agent wrote back to state that: "It was used as B1 during that period. I will present proof". However, no additional evidence has been forthcoming.

Additional evidence has been obtained from the Council's Revenues & Benefits department:

| Period              | Liable Party               | Paid                                    |
|---------------------|----------------------------|-----------------------------------------|
| 26/07/02 - 28/09/06 | Century 21                 | Yes                                     |
| 29/09/06 - 07/05/09 | Corporate & Industrial Ltd | Yes                                     |
| 08/05/09 - 02/11/11 | The Bognor Fun Bus Co Ltd  | No - Written Off due to Liquidation     |
| 03/11/11 - 08/11/11 | Foxgrove Estates Ltd       | Yes                                     |
| 09/11/11 - 19/05/13 | Pandrell Ltd               | No - Full Small Bus Rate Relief granted |
| 20/05/13 - 24/05/13 | Foxgrove Estates Ltd       | No - Empty property rate relief granted |
| 25/05/13 - date     | Mr Joshua Alan Alner       | No - Full Small Bus Rate Relief granted |

It is noted that Corporate & Industrial Ltd are also mentioned in the submitted letter from Holland Alexander as providing a lease to Century 21 Limited. This suggests that Corporate & Industrial Ltd were not actually occupying the property but either managed or owned it. This supports the opinion of the Council's Solicitor that there was a 2.5 year gap in the occupation of the premises.

Furthermore, Pandrell Ltd and Foxgrove Estates Ltd are estate management companies who

may have not occupied the premises but rather were the managing agents and for that reason were paying the business rate charge (e.g. Foxgrove Estates obtained an empty property relief in May 2013). This assertion is supported by the officers report for P/91/11/ which commented that the premises were vacant in December 2011 and had been so since March 2011. It is understood from the internet that Mr Joshua Alan Alner has a company called Protect Direct Limited which is registered to the premises at 20 The Parade.

## **LEGISLATIVE BACKGROUND**

### Principle

Section 191 to 195 Town & Country Planning Act 1990 and the Planning Practice Guidance section on lawful development certificates 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.
- (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 is 10 years.

1. Principles - Section 191 Town and Country Planning Act 1990 and the Planning Practice Guidance section on lawful development certificates;

1.1 Time: SS171(1)-(3) and S191 Town and Country Planning Act 1990.

### 2. Assessment

The evidence consists of:

- (1) the application form which refers to a B1 use from "prior to 2002" but cites no evidence;
- (2) letter from Regent Property dated 20/1/14 which refers to the letter from Holland Alexander and to a B1 use since 1998; and
- (3) letter from Holland Alexander dated 17/1/14. This sets out the following:
  - (a) occupation from 2002 to 2006 by Century 21 Security Limited;
  - (b) this also refers to Century 21 remaining in occupation after the lease had expired and vacated on 29 September 2006; and
  - (c) the letter then says a lease was granted to Bognor Fun Bus Company for a term of 5 years from 8 May 2009. This suggests a time gap or lapse of some 2.5 years between September 2006 and May 2009.

## **CONCLUSIONS**

The evidence submitted is inadequate as to demonstrate that the use of the premises as B1 offices has been continuous for at least 10 years. There are clearly gaps in the history between September 2006 & May 2009 and between March 2011 and May 2013. Furthermore, no evidence has been submitted to prove that the users of the premises were in accordance with the B1 office use class.

|                       |
|-----------------------|
| <b>RECOMMENDATION</b> |
|-----------------------|

**REFUSE**

**REASONS FOR REFUSAL OR INFORMATIVE(S)**

- 1      The applicant has failed to show with the evidence produced, judged on the balance of probability that the use as a B1 office has been in a continuous use for 10 years as required to satisfy the issue of Certificate of Lawfulness under Section 171 (1)-(3) and Section 191 of the Town and Country Planning Act 1990.
  
- 2      The evidence submitted is imprecise & ambiguous and fails the test in the Planning Practice Guidance section on Lawful development certificates (paragraphs 001-014). In particular, the evidence fails to clarify and fill in the gap in the history between September 2006 to May 2009 and also there is no evidence given as to the nature of the businesses that occupied the premises and whether they were indeed B1 office uses.