

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

REF NO: R/225/17/CLE

LOCATION: Minstrels
6 West Mead
East Preston

PROPOSAL: Lawful development certificate for an existing summer house.

DESCRIPTION OF APPLICATION

The application seeks a lawful development certificate for an existing outbuilding used as a summer house. The outbuilding is situated on the southern boundary of the site, and measures 3.7m in width, 3.9m in depth with a maximum height of 3m. The proposal is to establish the lawful position of the existing summer house built in October/November 2007.

DESCRIPTION OF SITE AND SURROUNDINGS

The application site is occupied by a detached 2 storey dwelling of brick and clad construction with and a grey tiled roof. The character of the locality is predominantly residential and features large properties of a varying design and style. The single storey detached building in the garden is used for ancillary use relaxing with friends and reading and is located on the southern boundary of the property.

RELEVANT SITE HISTORY

R/10/13/	New conservatory	ApproveConditionally 01-03-2013
R/282/75	2 residential units (houses)	ApproveConditionally 09-01-1976
R/140/78	Extension to existing house to incorporate utilityroom swimming pool & ancillary accommodation	Refused 12-07-1978

None

REPRESENTATIONS

Representations received:

Rustington Parish Council

No Objection

Three Objections - It is notable that the applicant has not submitted or made any form of statement with regard to the builder or indeed the business or company responsible for the foundations, the build and construction of this wooden structure. Nor is there any dated

invoice/receipt included with the submission.

The boundary is not straight as indicated on the submitted block plan. It steps into the grounds of 5 West Mead by approx 800mm. This represents trespass. The position is also parallel with fence and not at an angle as per the block plan. The boundary has been moved out. The height of the structure exceeds the permitted 2.5m and is approx. 2.9m high.

The application form is dated 09-10-2017. There are hand written dates of 25 October and 26 October 2017 on 2 photographs submitted in support of the application, which only show the foundation and base of the wooden structure. Assuming that those dates are accurate it would not have been possible to use the structure for more than 10 years before the date of the application. There is no evidence submitted to support the October/ November 2007 date. There is no response as to whether the use has been interrupted.

The description indicates incidental use rather than ancillary use. The drawings indicate a cooking hob and bed. These plans are undated. The plan shows 7.7 sq m of uninsulated useable area which is unusual for a garden structure. Sale particulars for the property indicate that the structure is used as an office/study. There is no evidence that the structure has been continually used for certain purpose for more than 10 years. The application does not include measurements from the site boundary which is a requirement under the letter dated 17th October from the Council. The block plan does not indicate the number of trees on 5 West Mead, Structure is now more visible following the removal of trees.

The wooden structure is a health and safety hazard. Existing guttering is not indicated on the plan. There is no information about drainage.

Comments on Representations received:

The time period for the application is 4 years, not 10 so no evidence is required to be submitted with respect to the month the structure was erected 10 years ago.

A copy of the invoice for the structure has been submitted and is dated 17-09-2007. It relates to a log cabin at the application address and is from Scandinavians Log Cabins Direct.

There is no requirement for the application to include drainage details and the appropriateness of the materials, loss of trees, extent of insulation are not relevant considerations to this lawful development application.

The red edge of the application site is the same as that submitted with application R/10/13.

Any encroachment onto neighbour's property is a private matter.

The application relates to ancillary use regardless of what is indicated on the floor plans.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Council's Solicitor - No Objection

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.

Query - is this PD under GPDO Schedule 2 Part 1 Class E ? see attachment to email

I don't have any dimensions to come to any conclusions - but I suggest you also explore this ie Permitted development

The provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

In any case I answer the CLEUD question below

3.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 operations ie building a summerhouse so the time limit is 4 years under the above .

The time period is 9/10/17 to 9/10/13 ie 4 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

Number Item of Evidence Comment

1 Application - alleges 10 years plus use - 2007 -17

Probative and uncontradicted

2 Photos x 6 showing photos dated 2007 2011 including early construction and site clearance

Probative though query how you establish dates but uncontradicted

3 Letters and statements x 7

Frake - known since 8 years and always seen summerhouse there Marnham - neighbour and friend 2006- 2013 confirms summerhouse built in 2007

Smith - confirms summerhouse built in 2007

No 3 West Mead name deleted - known summerhouse present since 2013

Bowdery = confirms summerhouse built 2007

Lusty confirms summerhouse built 2007

Smith a applicants - submission letter

These are uncontradicted and probative

I suggest some further checks for you to conduct are :-1.Aerial photos

2. builders invoices

The floor plan reveals - I think - a cooker and sink ? - which may be used as an annexe /dwelling - but there is no evidence or claim of its use as an independent dwelling and that would be subject to enforcement as a new and different use.

I have suggested a reference to this in the terms of grant below

4.FURTHER EVIDENCE

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

5.TERMS

1. grant

2. identify precise land boundaries on plan for extent of use.

3. describe accommodation ie number of rooms and dimensions etc even refer to a plan or photo as description

4. the use is as summerhouse only and there is no use as an independent dwelling

Comments on Consultation responses:

The structure does not constitute permitted development under Class E since it exceeds 2.5m in height and is within 2 m of the boundary.

LEGISLATIVE BACKGROUND

Section 191(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.

Section S171(1)-(3) and S191 TCPA 1990. The applications relates to operations to a single dwelling and as such the time limit is 4 years or that the works benefitted from planning consent or comply with the limitations of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

CONCLUSIONS

It is clear from the signed neighbour letter evidence submitted that the development was built more than 4 years before the date this certificate was applied for and subsisting in residential use for more than 4 years.

Therefore, the development exempt from planning enforcement controls and lawful in regards to the Town and Country Planning Act 1990, Part VII, Section 171B.

Approval of the certificate is recommended

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 for a continuous period of 4 years.

FIRST SCHEDULE

The existing outbuilding as detailed on the submitted drawings:

Location Plan - TQRQM17294181452396

Block Plan - TQRQM17294190834652

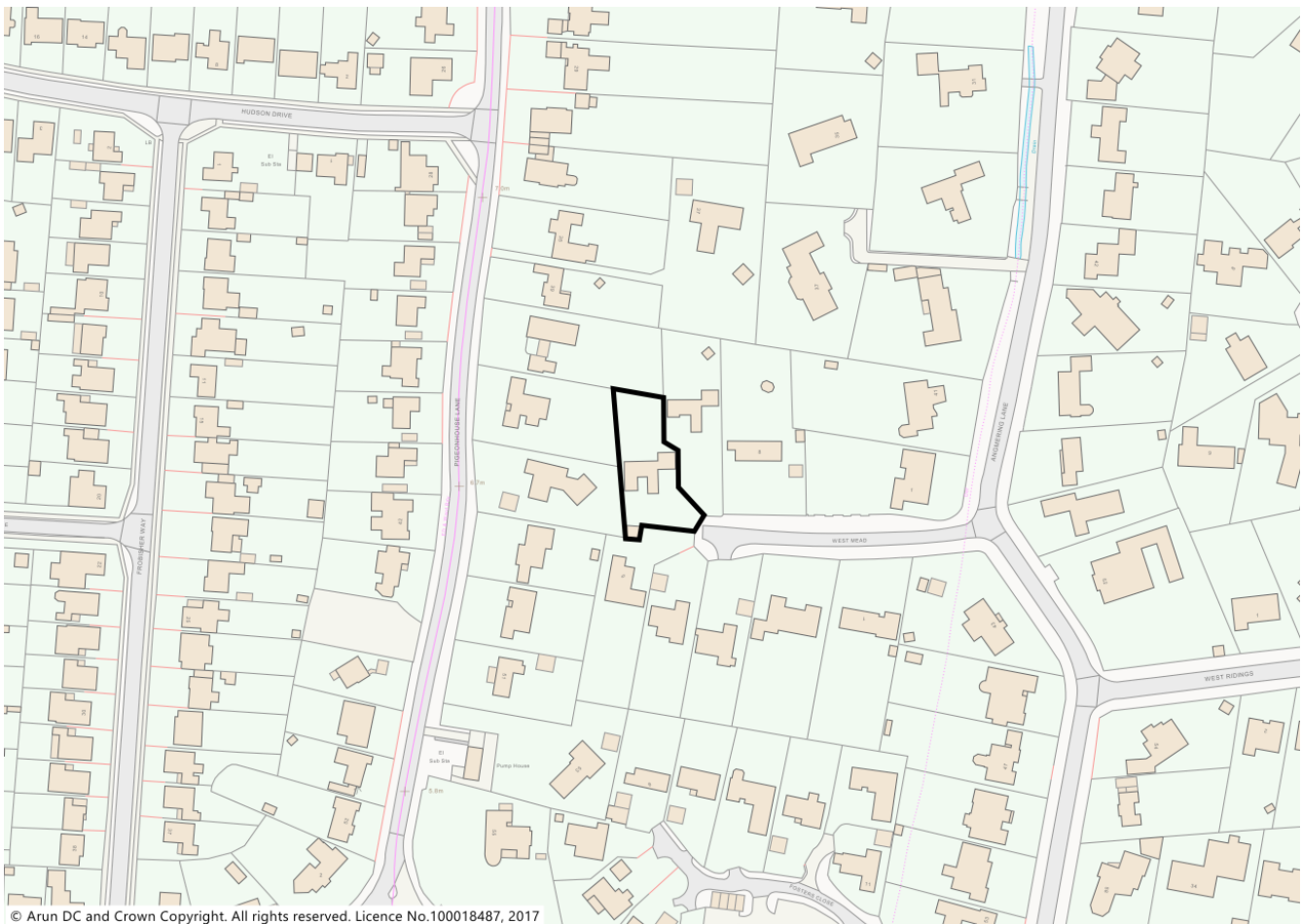
Tallbo Overall Dimensions and Views 1:100

SECOND SCHEDULE

6 West Mead. East Preston, West Sussex, BN16 2SL.

EXTENT OF USE

Residential summer house in the garden measuring measures 3.7m in width, 3.9m in depth with a maximum height of 3m.at Minstrels. 6 West Mead, East Preston.



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