R/228/06/CLE

CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT REPORT

DESCRIPTION/ ADDRESS	-	Application for a certificate for an existing use for the erection of a fence Greasley Cottage, 2A Amberley Road, Rustington.

THE SITE AND ITS SURROUNDINGS

DESCRIPTION OF APPLICATION	A wooden fence measuring approximately 2 metres in height which is positioned along the northern boundary of the site fronting Glenville Road. The fencing extends approximately 28 metres in length.
SITE AREA	Approximately 450 square metres.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	N/A
TOPOGRAPHY	Predominately flat
TREES	None affected by the proposal
BOUNDARY TREATMENT	Open to front with the side boundaries consisting of a brown brick wall approximately one metre in height and miniature close boarded fencing at approximately one metre in height. The remaining northern boundary is marked by the wooden fence at approximately 2 metres in height which forms the subject of this application.
SITE CHARACTERISTICS	A detached bungalow with smooth rendered elevations painted white. The roof is hipped with brown pantiles. There is an integrated garage and a porch constructed from UPVc to front.
CHARACTER OF LOCALITY	A mixture including two storey detached properties of varied design styles and bungalows with detached garages.

RELEVANT PLANNING HISTORY

REFERENCE	DESCRIPTION	DECISION
R/62/93	Proposed porch	Approved Conditionally 04-06-1993

REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT
Rustington Parish Council	No objection
Local Groups	None
Other	None

CONSULTATION RESPONSES

CONSULTEE	SUMMARY OF RESPONSE
Planning Solicitor	This CLE application can be granted.

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POLICY COMMENTARY

Within Built-up Area Boundary

COMMENT ON CONSULTATION RESPONSES

Noted.

COMMENT ON REPRESENTATIONS RECEIVED

None

ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 191(2) and (3) of the Town and Country Planning Act 1990 states:-

"For the purposes of this Act uses and operations are lawful at any time if:

(a) *no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*

(b) *they do not constitute a contravention of any of the requirements of any enforcement notice then in force".*

"For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if:

(a) *the time for taking enforcement action in respect of the failure has then expired; and*

(b) *it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force."*

1. Principles

Section 191-195 Town and 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) Which is to be 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

1.1 The relevant time limit for this application is 10 years from date of application for the change of use of agricultural land to residential curtilage (i.e. January 1996 – January 2006).

OTHER MATERIAL CONSIDERATIONS

N/A

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CONCLUSIONS

The evidence submitted suggests that it meets the standards of 10/97 Annex 8 paragraphs 8.12-8.20 in ascertaining that the fence is constructed from wood, approximately two metres in height and has been present since 1986. It is therefore recommended that the Certificate of Lawfulness existing should be approved.

RUSTINGTON R/228/06/CLE

Application for a certificate of lawfulness for an existing use for the erection of a fence

Greasley Cottage
2A Amberley Road
Rustington

RECOMMENDATION

Approve

1 The Arun District Council hereby certify that on the 2nd ~~September~~ October 2006 the fence 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(s)

2 Close boarded wooden fence measuring approximately 2 metres in height

3 A close boarded fence measuring approximately 2 metres in height positioned along the northern boundary of the site fronting Glenville Road. The fence extends approximately 28 metres in length.

4 Greasley Cottage, 2A Amberley Road, Rustington.