

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development**REF NO:** R/70/22/CLP**LOCATION:** 66 The Street
Rustington
BN16 3NR**PROPOSAL:** Lawful development certificate for operations to comply with R/205/19/PD pursuant to the approved plans.**DESCRIPTION OF APPLICATION**

This Certificate of Lawfulness application seeks confirmation that it would be lawful to continue the works being carried out on site to create 6 residential units.

The applicant alleges that permission R/205/19/PD is being implemented on site by the works which have been being undertaken.

RELEVANT SITE HISTORY

R/113/21/PL	Construction of a single-storey upwards extension to provide an additional 4 No. residential units. This application affects the setting of a listed building & affects the character & appearance of the Rustington Conservation Area & is in CIL Zone 4 (Zero Rated) as flats.	Refused 15-12-21
R/205/19/PD	Notification for Prior Approval under Class PA for change of use from Premises in Light Industrial Use (Class B1(c)) to dwellinghouses (Class C3) to provide self contained flats (4 one bed flats & 2 two bed flats)	No Object'n + Conds 24-10-19

REPRESENTATIONS**Representations Received:****CONSULTATIONS**

Consultations Responses Received:**LEGISLATIVE BACKGROUND**

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 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.

3) A certificate under this section shall -

- a. specify the land to which it relates;
- b. describe the use or operations in question
- c. give the reasons for determining the use or operations to be lawful; and
- d. specify the date of the application for the certificate

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

The Planning Practice Guidance ("PPG") states:

What information must accompany an application for a lawful development certificate?

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. The application must be accompanied by sufficient factual information/evidence for a Local Planning Authority to decide the application, along with the relevant application fee. Application forms can be obtained from the Local Planning Authority and can be completed by the applicant or someone working on their behalf. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a Local Planning Authority may be justified in refusing a certificate.

This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a Local Planning Authority always need to co-operate with an applicant who is seeking information that the Authority may hold about the planning status of the land. A Local Planning Authority is entitled to canvass evidence if it so wishes before determining the application. If a Local Planning Authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counterevidence.

In the case of applications for existing use, if a Local Planning Authority has no evidence itself, nor any from others to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a Local Planning Authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990.

'Development' includes:

- building operations (eg structural alterations, construction, rebuilding, most demolition);
- material changes of use of land and buildings;
- engineering operations (eg groundworks);
- mining operations;
- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part it) used as a dwellinghouse for use as 2 or more separate dwelling houses

The categories of work that do not amount to 'development' are set out in section 55(2) of the Town and Country Planning Act 1990. These include, but are not limited to the following:

- interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
- building operations which do not materially affect the external appearance of a building. The term 'materially affect' has no statutory definition but is linked to the significance of the change which is made to a building's external appearance.
- a change in the primary use of land or buildings, where the before and after use falls within the same use class.

CONCLUSION

BACKGROUND

Site History

Application R/205/19/PD 'Notification for Prior Approval under Class PA for change of use from Premises in Light Industrial Use (Class B1(c)) to dwellinghouses (Class C3) to provide self-contained flats (4 one bed flats & 2 two bed flats)' was submitted to the Council on 02-09-2019 and was approved conditionally on 03-10-2019.

The permission was subject to 2 pre-commencement conditions namely:

1) Prior to commencement of the development hereby approved (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:

1. A 'Site Investigation Scheme', based on the Phase 1 Desk Study Report ref no PH1-2019-000050 to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. The extent of intrusive site investigation to be agreed with the Local Planning Authority prior to commencement of works.

2. Based on the 'Site Investigation Scheme' and the detailed risk assessment (1), an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

3. A 'Verification Report' providing details of the data that will be collected in order to demonstrate that the works set out in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Note: Any changes to these components, (1) to (3) require the express written consent of the Local Planning Authority.

The scheme shall be implemented as approved above and, prior to commencement of any construction work (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), a Verification Report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of that remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a 'long-term monitoring and maintenance plan' for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification report, and for the reporting of this in writing to the Local Planning Authority.

Reason: To protect the amenity of local residents in accordance with Policy QE DM4 of the Adoption Arun Local Plan 2011 - 2031.

2)The owner(s) of any commercial property (warehouses, offices, etc.) built before 2000 are legally obliged to hold a copy of an asbestos register for each property in their portfolio. As the proposed development is being converted into residential, the Council need to be satisfied that if any asbestos previously identified is still present, it is either removed or suitably managed to minimise risk to human health as there is no safe threshold for asbestos exposure. A copy of the asbestos register and any remedial strategy (where appropriate) must be provided in writing to the Local Planning Authority prior to any works commencing.

Reason: To protect the amenity of local residents in accordance with Policy QE DM4 of the Adopted Arun Local Plan 2011 - 2031.

Following approval there was no subsequent submission of applications to discharge the above conditions. The works therefore commenced in breach of the conditions.

SITE INVESTIGATIONS

The site was visited on 8th October 2021 and 15th December 2021 by an enforcement officer and photographs taken at the time of each visit and it was noted that the building on site in October was being rebuilt in December. The roof of the building had been removed and the walls of the building were being replaced with new brick and blockwork. The amount of work being undertaken exceeded that which was required to facilitate conversion and constituted rebuilding of the premises. A new replacement building was effectively being created.

The building the subject of prior approval reference R/205/19/PD was considered to have been demolished. Photographs were taken recording the works undertaken at the time of the officer's visit. The Council therefore has evidence to substantiate its assertion. The statements provided by the applicant and site contractor conflict with this evidence.

Whilst the TCPA 190 s55.2. states alterations that do not materially affect external appearance are not development, it is contended that the extent of works undertaken at the site resulted in the PD works being exceeded. The elevation changes approved comprised the following and were not considered to be material alterations:

- Adding a door in west section facing east,

- Adding door in north section facing south,
- Changing door to window in south section, south elevation.

However, the changes undertaken on site exceeded these works detailed in application R/205/19/PD. The enforcement officer's notes dated 16-12-2021 state 'demolition and construction under way with new blockwork in situ and scaffolding erected'.

It will therefore be unlawful to continue the replacement building works being undertaken. They do not constitute completion of the development pursuant to R/205/19/PD.

The development has progressed without the benefit of planning permission and as such is a breach of planning control. Prior Notification application reference R/205/19/PD did not allow for the demolition of the pre-existing building and rebuild. The works have not been carried in accordance with the PD permission and exceed the limits within PD tolerances.

PROVISION OF SUFFICIENT INFORMATION

The onus is on the applicant to provide sufficient information to support this application.

The statement by Mr Verna, appointed contractor, states at no time between 02-11-2021 and 24-03-2022 was there no building on site. The Council is not arguing no building was on site at these times. It is asserting that the building on the site on 15th December was not the building approved for conversion under R/205/19/PD. The evidence submitted within the statement is not precise and is ambiguous. There is no confirmation of the footprint of the building before and after works started or what elements of the original building have been replaced or retained.

The statement by Mr Khan refers to the carrying out of conversion works comprising many revisions to openings in various elevations with 2 new window openings approved. The works observed on site by the enforcement officer exceeded the external elevation changes approved in the conversion works. The statement is not precise and unambiguous and does not confirm that the original building remained on site on 14-12-2021. There is no detail of the parts of the original building which remained, or which have been incorporated into the building which was evident on site at that time. There is no confirmation of the footprint of the building before and after works started or what elements of the original building have been replaced.

The evidence submitted is not corroborated by the photographs taken at the time by the Council Officer.

SUMMARY

The evidence submitted is not considered to be sufficient to demonstrate implementation of the development approved under R/205/19/PD. The material operations were not carried out in compliance with the approved conversion works or conditions imposed on the planning permission. The works carried out do not constitute conversion and implementation of R/205/19/PD and would require the submission of an application for planning permission. They constitute development and under Section 57 of the Town and Country Planning Act 1990 require planning permission.

RECOMMENDATION

It is hereby confirmed that the works authorised by the consent would not be lawful to continue to be undertaken and it is recommended that the certificate is refused.

RECOMMENDATION

REFUSE

The Arun District Council hereby certify that the development 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 not lawful within the meaning of section 192 of the Town & Country Planning Act 1990 by reason that the works do not constitute conversion of the existing building and planning permission R/205/19/PD has not been lawfully implemented.

FIRST SCHEDULE

The provision of development comprising creation of 6 self contained flats (4 one bed flats & 2 two bed flats) not in accordance with planning permission R/205/19/PD.

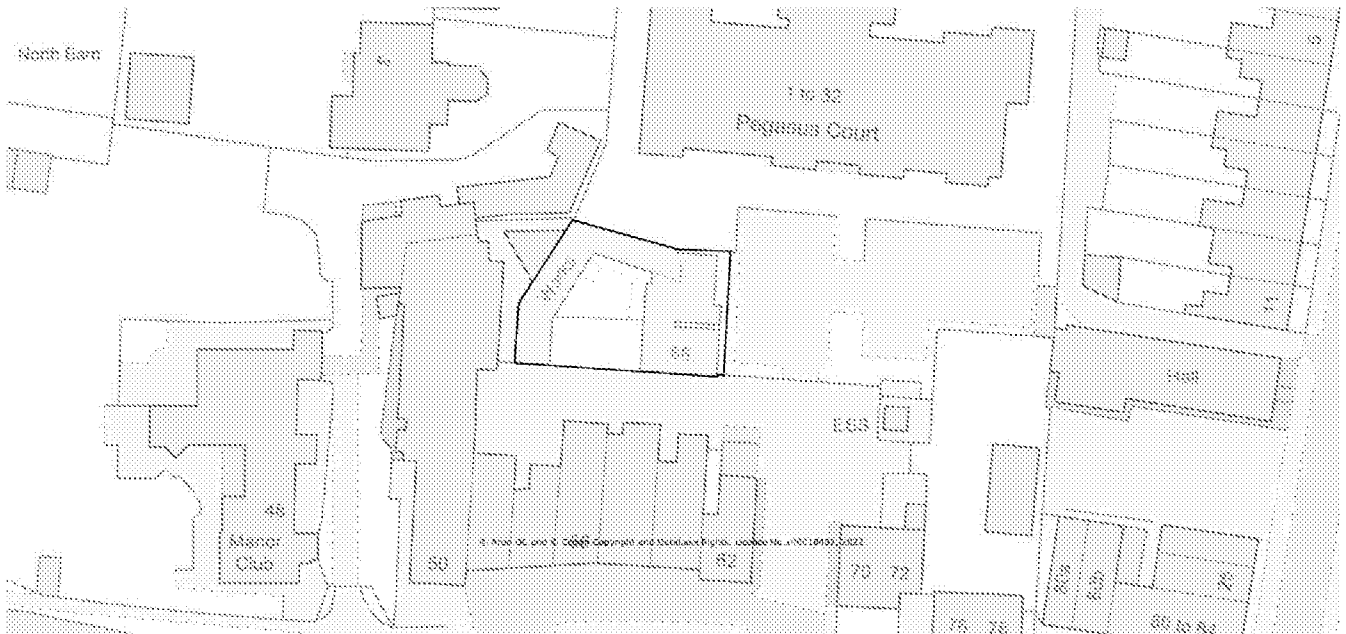
SECOND SCHEDULE

66 The Street, Rustington, BN16 3NR.

EXTENT OF USE

Development of 6 flats at 66 The Street, Rustington, BN16 3NR.

R/70/22/CLP - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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