

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

REF NO: WA/47/13/CLE

LOCATION: Brookfield Farm
Eastergate Lane
Walberton

PROPOSAL: Application for Certificate of Lawfulness for an existing use of The Barn as two units of residential occupation

DESCRIPTION OF APPLICATION

The application is for a Certificate of Lawfulness for independent residential use of two buildings called The Barn and Barn Cottage which on the balance of probabilities has occurred for more than four years. The properties are link attached and The Barn has 3no. bedrooms and Barn Cottage has 2no. bedrooms.

DESCRIPTION OF SITE AND SURROUNDINGS

The site is located on the north side of Eastergate Lane and comprises various detached residential and farm buildings and stables with associated fields to the north and east. The Barn and Barn Cottage which are the subject of this application are located close to the road with a separate driveway serving only these properties.

RELEVANT SITE HISTORY

WA/50/96	Removal of agricultural occupancy condition from application WA/71/85	Approved with S106 29-10-1997
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REPRESENTATIONS

Representations received:

Walberton Parish Council

This Council does not feel able to comment on the lawfulness of this use as it is not in possession of the full legal facts and is not party to any legal conversations that may have taken place between the applicant and Arun District Council.

Comments on Representations received:

Noted.

CONSULTATIONS

Building Control
Solicitor - Legal Services
Southern Water Planning

Consultations responses received:

Planning Solicitor

Recommend grant. The application is for a material change of use so the time limit is 4 years under the above.

The time period is 8/10/09 to 8/10/13 i.e. 4 years to date of the application.

The evidence satisfies this test.

To date no contradictory evidence of this position. I explain why below.

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

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 summarised/analysed is:-

1. Statement of History

Signed and proves four years separate occupation.

2. Application

States that 2000 was the date of subdivision.

3. Council Tax statements

These date from 2003/2004 and c.2009 to 2010 and 2012 and refer to different Band Ratings and different addresses at Brookfield, Stable Cottage and The Barn, indicating a separate address.

4. Letter from Mike Carter

5. Letter from Sam Coates

6. Letter from Mr. Gillbard

Arun District Council have made separate enquiries with the Council Tax department who has confirmed that both properties have been individually banded since 30 June 2003.

Comments on Consultation responses:

Noted. No contrary evidence from a site visit or from site history checks.

LEGISLATIVE BACKGROUND

Principle

Section 191 to 195 Town & 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) 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 4/10 years.

1. Principles

Section 191 Town and Country Planning Act 1990 and Circular 10/97 Annex 8

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

2. Assessment

The submitted evidence consists of:-

- (a) Supporting Statement signed by the applicant
- (b) Council Tax Bills dating 2003/2004 and c.2009 to 2010 and 2012
- (c) Letter from Mike Carter
- (d) Letter from Sam Coates
- (e) Letter from Mr. Gillbard

CONCLUSIONS

The evidence submitted by the applicant demonstrates that on the balance of probability that residential use has existed continuously at The Barn and Barn Cottage for at least the last 4 years.

The evidence consists of the application form, a Supporting Statement which has been signed by the owner, Council Tax statements and three signed letters from those who have had direct dealings with the properties between the period 2005-2010.

The Supporting Statement signed by the applicant states that the conversion of The Barn and Barn Cottage into single dwellings occurred after obtaining planning permission WA/50/96 and this is evidenced by individual liabilities to Council Tax with specific statements dated 12th March 2002 and a revised invoice dated 7th October 2003. During the life of the application, separate enquiries have been made by the Planning Department to interrogate this situation and the Council Tax department have confirmed that both properties have been individually banded since 30th June 2003.

A letter from Mike Carter, a previous farm manager at the site, confirmed that during his employment in 2009, The Barn and Barn Cottage were occupied as separate units of accommodation. Further evidence has also been accepted in a letter from Sam Coates who has occupied Barn Cottage since October 2010.

It is therefore considered that on the balance of probability that consent should be granted. It is recommended that the Certificate is granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on 11th December 2013 the occupation described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town and County Planning Act 1990 for the following reason:

Evidence produced by the applicant shows that the use has operated for a period of more than four years. The period in which enforcement action can be taken, as set out in Section 171B of the Town and Country Planning Act 1990 (as amended), has therefore expired.

Use of two dwellings The Barn and Barn Cottage for unrestricted residential occupation.

Brookfield Farm, Eastergate Lane, Walberton, BN18 0BA.

The extent of use is for two dwellings called The Barn, a 3no. bedroom dwelling with rooms comprising a lounge, dining room, kitchen, cloakroom, laundry, study, utility/boot lobby and two bathrooms and Barn Cottage, a 2no. bedroom dwelling with rooms comprising a lounge, bathroom and kitchen/dining room. Both of these dwellings are for use as unrestricted residential dwellings.



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