

CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT REPORT**REF NO:** Y/16/08/CLE**LOCATION:** Oak Trees
Bilsham Road
Yapton**PROPOSAL:** Application for Lawful Development Certificate for an existing use as a single dwelling.
(Resubmission following Y/81/06/CLE)**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	As above.
SITE AREA	Approximately 290 square metres.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	N/A
TOPOGRAPHY	Predominantly flat
TREES	None of any significance affected by this proposal.
BOUNDARY TREATMENT	Open fields stretch beyond the site area.
SITE CHARACTERISTICS	The subject of this application is a detached single-storey unit, with painted render and brick elevations and a pitched roof. Various pre-fab buildings exist near the unit with another residential house Little Meadows at the front of the site.
CHARACTER OF LOCALITY	Access is gained to the site of both Gravitts Lane West and Bilsham Road. Various prefab buildings and a house Little Meadows lies to the front of the site with agricultural land behind the unit. The area generally rural in character.

RELEVANT SITE HISTORY

Reference	Description	Decision
Y/39/96	Replacement building in lieu of 3no. structurally unsound buildings for repair, service, purchase and sale of fork lift trucks and agricultural machinery.	Approve Cond 06-11-1996
Y/4/94	Renewal of temporary permission Y/44/92 for the continuation of use for the repair,	Approve Cond 13-04-1994

service, purchase and sale of forklift trucks together with agricultural and associated machinery.

Y/44/92	Continuance of the use of land and buildings for the repair, service, purchase and sale of forklift trucks together with agricultural and associated machinery.	Approve Cond 07-04-1993
Y/44/94	Non-compliance with Condition No 1 and variation of Condition No 2 imposed on planning permission Y/4/94 for the continuation of use for the repair, service, purchase and sale of forklift trucks together with agricultural and associated machinery.	Approve Cond 30-11-1994
Y/53/90	Renewal of Unimplemented Permission Y/56/85 for extension to property to provide double garage on ground floor with Snooker Room over.	Approve Cond 08-10-1990
Y/68/04/	Extension to existing workshop/storage building for repair, service, purchase & sale of forklift trucks and of agricultural machinery. Demolition of existing workshops.	Approve Cond 06-01-2005
Y/13/07/	Amended siting of workshop extension previously approved under Y/68/04.	Approve Cond 11-05-2007
Y/42/91	Outline Application for one house	Inc Docs Ret'nd 09-10-1991
PE/Y/14/96		No Further Actn 24-04-1996
PE/Y/51/98/		No Further Actn 29-09-1998
Y/1/92	Application for two residential caravans	Refused 11-03-1992
Y/54/91	Proposed new 3 bedroom bungalow	Refused 02-12-1991
Y/81/06/CLE	Application for Certificate of lawfulness for an existing use - residential use only	Refused 24-04-2007

Y/28/92	Use of land and buildings for repair, service, hire, purchase and sale of forklift trucks, agricultural and associated machinery including the delivery and collection of machinery and parts to and from the site.	Withdrawn 24-07-1992
Y/21/79	Single storey extension to living room	Approve Cond 11-04-1979
Y/34/84	Building to provide stables for 6 horses with tack room	Approve Cond 30-05-1984
Y/49/81	Kitchen extension on ground floor with bedroom over	Approve Cond 26-08-1981
Y/56/85	Extension to property to provide double garage on ground floor with snooker room over	Approve Cond 19-08-1985
Y/8/50	Farmworkers dwelling	Approve Cond 20-09-1950
Y/8/50/A	Extension	Approve Cond 13-08-1964
Y/8/50/B	Garage	Approve Cond 10-06-1965
Y/95/83	Extension at first floor level to form enlarged existing bedroom	Approve Cond 25-01-1984

REPRESENTATIONS

Representations received:

Yapton Parish Council

Three Letters of Objection:

The building is against current building regulations and against refusal of previous application, and there is no reason to change this decision now

The dwelling is outside the village boundaries for Yapton and Middleton.

The site has a history of buildings being erected without appropriate permission and then retrospective permission is applied for - if this dwelling is granted, then more would follow, and this would cause even more noise from lorries and other vehicles than we already have.

Mr Greenwood (the agent) does not provide any primary source evidence to substantiate his declaration. How was he aware of the circumstances of occupation? If

he was aware why did he not advise Mr Hyams that the circumstances of occupation were like to be contrary to planning policy? Being familiar with the site and history, why was this apparent oversight not corrected before?

The application has not been fully completed, section 4 confirms a meeting was held with J Searle and D Vick however, the advice given has not been declared. What advice was given by the council officers?

The declaration does not provide any further evidence that the use of the structure was independent and not ancillary to the main house (3.11 of the assessment proposal Y/81/06/CLE.)

There are no grounds on which the decision reached in Y/81/06/CLE should be changed, none of the recommendations given in Y/81/06/CLE have been addressed by the evidence.

Comments on Representations received:

The application is based purely on fact, with regard as to whether the circumstances claimed that on the balance of probability the use has been undertaken for the last 4 years prior to the submission of the application.

The merits of the proposal are not for consideration.

It is considered to be a valid comment that the agent fails to provide further details regarding his knowledge of the circumstances of the case.

The meeting held on with D Vick and J Searle explained to the applicant and agent the reasons of refusal attached to Y/81/06/CLE.

CONSULTATIONS

Delwyn Jones - Planning Solicitor
Environment Agency

Consultations responses received:

Planning Solicitor:

Recommends refusal for the following reasons, subject to finding any contradictory evidence:

In general, the evidence is evenly balanced but it is not considered that the burden of proof has been discharged by the applicant.

The application is for the material change of use so the time limit is 4 years - 10.3.04 - 10.3.08. There is an enforcement notice, now subject to an appeal, which was issued in 2007, so under S191, there is a need to prove that the use achieved legitimacy before then.

On the fact to it they claim occupation for four years - however in the interim in 2007, an Enforcement Notice was served, now subject to an appeal, and they need to show they acquired immunity pre-2007 e.g. 2003 - 2007. It is not considered the evidence does this and specific reasons are discussed in the memorandum.

The evidence as a whole if considered to be contradictory, imprecise and ambiguous. They have not been registered for Council Tax, even since 2006, all service are through the main house, Little Meadows. This suggests that the accommodation at Oak Trees may not be an independent dwelling, but rather, it is an annex, given the nature of the arrangement e.g. overspill, emergency provision or family, joint service provision, joint council tax payment. Reference should be made to Wakelin v SoSE (1978) JPL 769.

Environment Agency:

Comments awaited.

Council Tax:

Oak Trees was banded in March 2007, with a back-dated start date of 01/04/01. A survey form was sent out and returned with an occupation date of "Sept 2000" entered on it. The start date has then been used as the following financial year

Comments on Consultation responses:

Comments noted.

Following receipt of the planning solicitor's comments, Council Tax have now advised that Oak Trees was banded in March 2007, with a back-dated start date of 01/04/01. Council Tax sent out a survey form, which was returned with an occupation date of "Sept 2000" entered on it. The start date was used as the following financial year.

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

- (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."

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

(c) The relevant time limit for this application is 4 years as this is 'development' and a breach of planning control being a breach of a condition under SS171 A(1)(b) and 171B(3). As such the time limit is 10.3.04 - 10.3.08. However, an Enforcement Notice was served on the 30th August 2007, so that under S191, there is a need to provide that the use was achieved legitimately before then eg 30.8.03 - 30.8.07.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the legislative background.

CONCLUSIONS

Assessment:

The applicant has submitted the following evidence with their application form:

Statutory declaration of Antony Greenwood MRTPI
 Statutory declaration of Lynda Hyams
 Statutory declaration of Patricia Stancomb
 Statutory declaration of Samuel Hyams
 Letter received from Westergate Community School
 Letter from Rutter and Co Accountants and Taxation Consultants
 Letter from Barnham Station Taxis
 Letter from Terry Wesson, postman
 Letter from DBS Cleaning Services
 Letter from Ms Amanda Fraser
 Letter from Ms Michaela Mercado
 Letter from Mr P Deacon
 Invoice from Brian R Rockall
 Invoice from Fontwell Flooring
 Letter from D Ashcroft of Dales Ashcroft Reclaimed Timber Flooring
 Letter from Noble Autos
 Letter from A T H Contractors
 Letter from Mrs J L Emblem
 Invoice from Art of Stone
 Letter from Chantry House Dental Practice.

Additional information gained by Planning Officer:

Statement from Mrs Susan Leeson, Planning Officer on Y/68/04, noting her observation of the building at the time of her site visit for this application. These comments were originally submitted as part of the previous application Y/81/06/CLE.

Plans submitted as part of Y/68/04.

Letter dated 13th September 1994 from the Council to Mr Hyams from a previous Compliance Investigation on the site.

Letter from Mrs Hyams dated 6.2.07, which was submitted as part of Y/81/06/CLE.

Conclusion:

Refuse:

The quality of the evidence has been judged on the balance of probability and it is not considered to meet the standards required in 10/97, Annex 8 paras 8.15.

This application is for the change to use of an office unit to a single dwelling house. The applicants need to establish the change of use for four or more years. The four year period in this application runs from the 10th March 2004 to 10th March 2008 (the date of submission of the application). However, an Enforcement Notice was served on the 30th August 2007 and under S191, there is a need to prove that the use achieved legitimacy before then e.g. 30.8.03 to 30.4.07.

The main additional evidence submitted as part of this application is the statement received from A Greenwood, planning agent to the applicants and MRTPI. Mr Greenwood states that he has known the Hyams family since he was first employed in 1992, in his capacity as planning consultant.

Mr Greenwood lists a number of planning applications he was connected with e.g. the stationing of 2 residential caravans of the land and an operating centre in connection with a Haulage Transport Business and the parking of HGV's associated with the business. However, it does not appear that Mr Greenwood was specifically employed to deal with the application dwelling and within his statement he fails to address, or explain the source of his knowledge or what his degree of knowledge is. He claims to be familiar with the site and its history but his knowledge does not appear to be directly of relevance to the structure in question until recently when the structure was investigated. Mr Greenwood is a member of the RTPI, and therefore it is presumed that had Mr Greenwood been aware of the need for planning permission for this "dwellinghouse" he would have advised an application was submitted. In the absence of such advice, it can only be presumed that Mr Greenwood did not have sufficient knowledge of the site with regards to the property now being called Oak Trees.

Mr Greenwood claims to be aware that operations to the office building occurred to convert it to residential accommodation, for the occupation of My Hyams's daughter, Carol.

But, Mr Greenwood is not precise in terms of dates and he does not provide details outlining how he was aware of this conversion. Further, a letter from the Council to Mr Hyams dated the 13th September 1994 regarding the building states "I understand the building sited on the north east corner of the approved plan, and described as 'repair/maintenance' and 'office and business' is at present being renovated; you informed [the enforcement officer] that the windows were only replacement and that the whole of the building would be used as an office and display area in connection with your forklift business." This comment made by Mr Hyams to a Council Officer in 1994 questions the accuracy of Mr Greenwood's statement that he is aware "his daughter and family occupied this building as their main residence for periods between 1994 until 2000." In September 1994 Mr Hyams told a Council Official this was not the case. Further, Mr Greenwood claims that Mr Hyams's daughter, Carol, and family, have occupied the building as their main residence between 1994 and 2000. This is not supported by a statement from Carol or her family.

Mr Greenwood also claims to be aware that further works occurred to the property during 2000 but many questions remain unanswered - how was he aware of this fact? What involvement did he have with the site at this time? These questions raise ambiguities and leads to uncertainties in Mr Greenwood's statement.

Mr Greenwood advises that "to the best of his knowledge, Mr John Hyams and his wife, Lynda, and their children have occupied the property continuously as their main residence since 2000" but this statement has to be read in context. Mr Greenwood does not claim to have had direct input with the building in question before the recent investigations - and therefore the "best of Mr Greenwood's knowledge" is arguably quite limited e.g. did Mr Greenwood know they lived independently? Can he provide details of occupation? How was he aware of this information? This is by no means clear.

Mr Greenwood then states that a previous plan he submitted was factually incorrect and was based on an earlier planning applications submitted for Mr Hyams business in 1992. These comments relate to a plan submitted as part of Y/68/04. These plans clearly show that the building, which is now being claimed as a residential building, was indicated on 2004 plans (Y/68/04) as consisting of two workshops (to be demolished) and offices/farm business. Mr Greenwood claims that the plans were factually incorrect but he fails to elaborate how there were factually incorrect, and how this came about. If Mr Greenwood knows the site well, why was this not picked up before e.g. in the previous CLE, Y/61/08/CLE?

Furthermore, and perhaps most crucially, a statement submitted by Susan Leeson, Principal Planning Officer, appears to directly contradict Mr Greenwood's claims. Mrs Leeson was the case officer on both Y/13/07 and Y/68/04 "Mrs Leeson therefore visited the site over time and crucially was the case officer who dealt with the plans that are now being claimed as incorrect. Mrs Lesson advises that her visit in 2007 revealed that the Oaktrees building had "changed quite significantly" and the building has been extended.

Mrs Leeson states that her site visit on the 2nd December 2004, revealed a building that was partly demolished, which was annotated as 'to be demolished' on the plan. This would suggest that the officer checked the accuracy of the plans and considered them to be an accurate portrayal of what was on site, which appears to contradict the claims made by Mr Greenwood. Further, at the time of this visit in 2004, Mrs Leeson was told that the building was to be used for offices, which was considered feasible. The officer claims that the office was empty and the interior did not give any indication that they were being lived in. The statement received from Susan Leeson, Principal Planning Officer places considerable doubt on the validity of Mr Greenwood's statement, which is also considered to be vague and imprecise.

Furthermore, Mr Greenwood has now submitted plans which show a revised red-edge from that submitted as part of Y/61/08/CLE - in this application, the red edge only covers a close area surrounding the building and does not extend to the garden area to the west. This change of the red-edge does not appear to be explained in any of the statements submitted. From this, it is perhaps a valid conclusion that the previous plans were incorrect, and that the claims the garden had been in situ for four or more years was not correct, which in turn questions the validity of the statement in connection with the residential use of the building e.g. if there were inaccuracies about the garden area, is the same true of the main building? This is not clear. Interestingly, Mr Greenwood does state "For the further avoidance of doubt, I cannot confirm that the land to the east of Oaktrees has been used as a continuous basis as garden land since Mr and Mrs s Hyams first occupation in 2000". This comment is made despite Mr Greenwood claiming that he has been familiar with the site for a number of years - if Mr Greenwood is not able to recall the external manifestation of the residential property e.g. a garden approximately 400 square metres, then it is perhaps questionable if Mr Greenwood's knowledge on the actual use of the building can be relied on as strong evidence to support the Hyams claim. Further, no justification has been offered as to why the area at the front of the building is included as residential curtilage - no evidence has been submitted to support this.

The statement from Lynda Hyams is the same statement which was submitted as part of Y/61/08/CLE (dated 14.11.06) and the same comments can be made in respect of this statement. There remain inconsistencies if one compares the statement from Lynda Hyams, with the plans submitted as part of Y/68/04 and the comments received from Mrs Susan Leeson, the case officer on Y/68/04, and more recently Y/13/07. The plans attached to Y/68/04 clearly show the unit in question to be a workshop and offices and business. The officer report on Y/68/04 describes under Character of Locality that "to the right of sheds is a single storey building which appeared empty and is identified on the plans as workshop/repair maintenance office" This statement refers to the unit in question e.g. in 2004 it appeared to be empty. This is reinforced by the statement by Mrs Leeson dated 31st January 2007, when it is stated the officer looked through the windows and noted the building was empty. Further, in the second statement from Mrs Leeson dated 11th April 2007, further information is provided that indicates she was informed that the structure was being used as offices and was being fitted for this purpose. Furthermore, to the side of the building, clearly identified on the plans attached to Y/68/04, the officer recalls a dilapidated structure, which was annotated to be demolished. This dilapidated

structure now appears to form part of the residential unit being claimed - this reinforces the view that this part of the site could not have been in residential use 4 years ago as it was in a dilapidated state, and therefore one can conclude uninhabitable.

Mrs Leeson's second statement, which follows her site visit for Y/13/07 on the 12th March 2007, indicates that the workshop/offices have been extended, retained and converted to a residential use since her site visit for Y/68/04. This remains inconsistent with the statements received from both Mr S Hyams and Mrs L Hyams. When viewed as a whole, the comments made by Mrs Hyams and Mr Hyams appear to be contradicted by the evidence from Mrs Leeson.

The plans now submitted as part of this application do not include the garden area within the red-edge, which is a different from the previous application, Y/81/06/CLE. Mr Greenwood's states in his statement that he can not state conclusively that the garden being there for the relevant period; a memo from Mrs Leeson dated 11th April 2007 also recollects that the garden was not evident in 2004; and in Y/68/04, the plans do not indicate an amenity space and the plans actually propose a new hedgerow to be planted to screen the proposed warehouse - the hedge appeared to cut across the area now being used as garden amenity space. The garden is not being claimed as part of the current CLE - Y/16/08/CLE, but the reason for this omission is not explained. It could therefore possibly be concluded that the applicants offered incorrect evidence on the previous application and has corrected it on this application by withdrawing the garden from the CLE. However, until the reason for this change in the red edge is clarified, a significant question mark remains in respect of the validity of the statements and the plans. The applicant need to clarify why they have now changed the red edge on the application. It is far from clear why the applicants claim the garden has been in situ for four years in Y/81/06/CLE, but do not argue that in Y/16/08/CLE.

The statement from Patricia Stancombe is again the same statement as in Y/81/06/CLE, no further information has been added with regards to the dates the family moved in or any justification for how they know the family have lived there for 6 years. The statement from Patricia Stancomb must also be read in line with the proviso in Circular 10/97, Annex 8, Para 8.12 i.e. site owners will know a site history better than outsiders.

Samuel Hyams' statement has been revised to add more information, namely that his daughter lived in the structure for various periods before his son moved in. A number of comments can be made about Samuel Hyams' statement. The validity and strength of Mr S Hyams' statutory declaration remains doubtful. In his first statutory declaration attached to Y/81/06/CLE, Mr Hyams states that "Following action taken by the Local Authority in 1992, I decided to convert the office buildings into residential accommodation and since that time, both of my children have lived in the bungalow, Oak Trees". This changes to "Following action taken by the local authority in 1993, I decided to convert the offices into residential accommodation". There appears to be slight confusion over the dates between the two statements in the separate CLEs.

Both statements then appear to be contradicted by the correspondence to Mr Hyams from

the Council on the 13th September 1994 regarding the alleged breach of planning control at the site. In referring to the building in question and explaining what was advised on site, the letter states "I understand the building sited on the north east corner of the approved plan, and described as "repair/maintenance" and "office and business", is at present being renovated. You informed [the enforcement officer] that the windows were only replacements and the whole of the building would be used as an office and display area in connection with your forklift business". This reveals uncertainty in Mr Hyams' declaration, as the declaration gives a different recollection of the situation in 1992 than what is documented by the Council following a site visit in 1994. This contradictory evidence therefore casts doubt on the validity and strength of Mr S Hyams statement, which in turn causes doubt to be raised about his statement that his son, Mr John Hyams and his family moved into Oak Trees in 2000.

Mr Hyams' statement does not add any new evidence or details about the refurbishment, which would reinforce his claims that the property has been used as an independent unit. In fact, it perhaps leads us to the conclusion that the structure has been used in an ancillary fashion over the years, as it appears to be a refuge for both his children, when they require accommodation. In the absence of contrary evidence to refute this, e.g. separate utility bills, there is ambiguity regarding the residence status of Samuel Hyams' children.

The letter from Westergate Community School does cover the four year period which is covered by this application e.g. 10th March 2004 to 10th March 2008, and does refer to the occupation of the property known as Oak Trees. However, this still does not necessarily prove independent residential use - especially in light of the ambiguity and contradicting views of the case officer, the agent and the owners; and the absence of evidence which would support independent use e.g. utility bills. It should also be noted that although the letter from Westergate Community College does cover the four year period, to overcome the Enforcement Notice the evidence needs to prove the use was lawful before the enforcement notice was served on the 30th August 2007 (therefore the use has to have occurred for 4 years prior to this). The letter from Westergate Community School does not cover this entire period and therefore would not be sufficient to quash the enforcement notice.

The letter from Rutter & Co Accountants confirms they have acted as Accountants for John Hyams at Oak Trees since 1999 and throughout that time he has resided at the above address and traded from the same address. However, there are no details as to how he is aware John Hyams resided at this address - has he conducted a site visit? It appears that the address has been used as his trading address in the past and therefore further information is needed on how the accountant, someone who need not necessarily visit the site, knows that the building is now being lived in too.

Barnham Station Taxis also enclose a letter confirming that Mr and Mrs Hyams have used Barnham Station Taxis frequently for the past 5 -6 years and during this time, they lived at Oaktrees. However, there is an absence of details which would support this claim e.g. no details of where exactly the family were picked up/dropped off. Little Meadows is relatively close to Oak Trees and therefore it is possible that they could have been dropped outside

Little Meadows; no details are provided of the interior of the house to support the residential claim, plus there is no evidence which supports whether the author of the letter is the actual taxi driver with direct knowledge of the site or whether the comments are hearsay. The letter can therefore only be given limited weight.

The letter from T Wesson, Postman, does support the argument being made but it is not conclusive that Oaktrees is lived in as an independent residential unit. Oaktrees could just as easily have been a business use - there is therefore ambiguity. Plus, the postman's statement that he delivers letters to the claimed dwelling, is not an official declaration that a property is a house, it is evidence which has to be assessed along with the remaining evidence. Comments on the remaining evidence do not appear to support independent residential use conclusively.

The statement from DBS Cleaning Services regarding window cleaning does not conclusively prove that the unit was a separate residential unit rather than an office unit. There is therefore ambiguity.

The letter from Amanda Fraser is the same letter as was previously submitted. This does appear to be clear, precise evidence that their daughter stayed at Oaktrees circa 2000. But the letter has not been supported further by details about the accommodation e.g. the room evident, and it has to be weighed by against the contradictory evidence, which weakens its strength.

A letter has been included from a name which is unclear (Mercado? Fercado?) and the letter is also undated. This is considered to carry little evidential value as the person's name is not clear and we are given no precise dates or details on the accommodation to support the claims.

The letter from P Deacon does not prove that the unit is a residential unit rather than an office unit, the letter is undated and no details are provided of the works which would suggest it was residential work. The letter from Noble Autos does not prove conclusively that Oak Trees was a separate residential unit and it is arguable that a vehicle could be recovered to a work address e.g. an office unit on a site.

The Invoice from Brian Rockall is addressed to Mr J Hyams at Little Meadows not at Oak Trees - therefore can not support the claim that the unit was being lived in as an independent residential unit on the 24th July 2003. This also suggests a link may exist between Little Meadows and Oak Trees. There is no information to confirm if the works were for residential or business purposes - in fact the work which is quoted is relatively generic and could equally apply to residential and business use. This therefore has to be given limited weight. The same comments can be made of the invoice from Fontwell Flooring - the invoice is address to Mr J Hyams at Little Meadow, not at Oak trees and this does not support the use of the unit as an independent residential unit, separate from Little Meadows.

The letter from Dale Ashcroft Reclaimed Timber Flooring does claim that wood flooring

was laid in the dining room and hallway at Oak Trees in February 2002. This is precise but again it is stressed it has to be read in conjunction with the remaining evidence, and on its own, this need not lead to the conclusion that the unit was used as an independent residential unit, rather than an ancillary residential unit.

The statement from A T H Contractors and Mrs J L Emblem is undated and it is therefore unclear for what time period it relates to. Further, there is no information on the details of the accommodation, details on the living set up. It also has to be read in context of other evidence e.g. the comments from the planning officer and the absence of other evidence of independent use e.g. utility bills.

The invoice from the Art Stone is dated 12th April 2003 and this would cover the relevant period for this application. However, without supplementary evidence this could not be used to support independent use of the unit, rather than ancillary. Further, it would be feasible for a fireplace to be installed into an office, as well as a residential unit, and therefore, on its own, this invoice could not support the residential use. It therefore has to be understood in the established context and as highlighted above there appears to be possible validity issues with the statements of Samuel Hyams and Lynda Hyams; the statement of Susan Leeson, planning officer, contradicts the evidence from the Hyams and the evidence from Antony Greenwood, Planning Agent, is not considered to be conclusive for the reasons given above.

The letter from Jayne Pascoe is dated 2007, and does refer to Mr Hyams having been registered at "Oak Tree, Little Meadow" since September 2000. This appears to support the case, but it can not be forgotten that other evidence previously submitted by Mr Hyams, which relate to personal medical correspondence (e.g. from the NHS, from Avisford Medical Group) are addressed to Little Meadow, the main house. Even in the context of the letter from Jayne Pascoe of Chantry House Dental Practice, the letter is addressed to Oak Tree, Little Meadow, which could lead to the conclusion that the structure is being used as an ancillary unit as it is tied to Little Meadow in the postal address the dentist holds. Again, it should be stressed that the wider context the evidence does not appear to be balanced in favour of the unit being seen as independent residential unit.

Council Tax has advised that Oaktrees was banded in March 2007, with a back-dated start date of 01-04-01, which would support the applicants case. However, Council Tax have also advised that they sent out a survey form, which was returned by the applicants with the occupation date of Sept 2000 - therefore Council tax did not investigate this matter separately and this can not be accepted as an independent investigation into the living arrangements at Oak trees. Essentially, Council Tax is just advising what the Hyams advised them on a form, and this appears to have been acceptable to Council Tax, without further investigation.

The applicant has submitted a variety of evidence to try to establish this Certificate of Lawfulness, but it is not considered they have managed to discharge the balance of proof e.g. on the balance of probabilities. The evidence the applicants have submitted has been questioned in terms of its ambiguity, imprecision or inconsistency with other evidence;

further evidence has been found from a Council officer who has visited the site over the years and questions the claims that the unit has been used as residential house and letters from the Council's Compliance department in 1994, question the validity of Mr Samuel Hyams statement. Therefore, it is considered that, on the evidence submitted, the applicants have failed to prove, on the balance of probabilities, that the unit has been used as a separate residential unit for four or more years as the evidence is considered to be vague, imprecise and ambiguous. Further even if some of the evidence could be used to support the four year period e.g. the letter from Westergate Community School, the Enforcement Notice was served on the 30th August 2007 and the use has not been establish for four years before this date.

It also remains a valid argument that the evidence submitted does not support an independent residential use rather than as an ancillary use connected to the main house on site, Little Meadows. As noted in Y/81/06/CLE when the structure was originally approved as stables in Y/34/84, the stables were approved on the condition that the stables were used solely for purposes incidental to the use of Little Meadow. It is therefore arguable that the structure originally fell within the curtilage of the main dwelling house on site and had to be of an ancillary use. Planning permission appears to be needed as the height of the structure was to be over 4 metres in height. As noted above, it is not considered the evidence submitted establishes any type of residential use for four years but it is arguable that, even if more evidence is submitted, the use of the property is ancillary to the main house and not an independent residential use. Reference should be made to appeal decision APP/C3810/X/99/1034859 where a mobile home was held to be ancillary despite being fully equipped and furnished so as to be capable of independent living.

The evidence submitted as part of this application does not provide sufficient information as to the manner of occupation. The statutory declaration of Lynda Hyams does state that she lived at the bungalow with her husband and two children for six years, but specific information has not been provided as to how exactly the property was occupied in relation to the main house, Little Meadows. Further, Mrs Hyams notes in a letter to the Council on the 6th February 2007 that firstly, the services connected to the bungalow e.g. water, gas electricity have been paid for by Mr S Hyams (her father in law and occupier of Little Meadows) and there are no separate utility bills, except for recently when a separate gas connection was made. Secondly, Lynda Hyams explained this set up as being because her husband was ill and was unable to cope with such matters e.g. it is evident Mr Hyams Jnr needed to be near his family who lived in Little Meadows, which does not support the view that Oak Trees was being used as a separate independent residential unit. The Hyams have since enrolled for Council Tax and this was backdated until 2001, but before this, Lynda Hyams states that it was paid for by her father in law, who incorporated it into the running of the yard. It is therefore arguable that the unit is not in independent residential use, but is ancillary to the main house. This doubt has not been resolved since the last CLE.

It is therefore considered that the Certificate of Lawfulness should be refused for the reasons stated overleaf.

RECOMMENDATION**REFUSE**

- 1 The applicant has failed to show with the evidence produced, judged on the balance of probability, that Oak Trees, Bilsham Road, Yapton has been used as an independent dwelling for the four years required to satisfy the issue of Certificate of Lawfulness under Section 171B(3) and 191 of the Town and Country Planning Act 1990.
- 2 The evidence is vague, ambiguous, imprecise and contradictory and fails the test in Circular 10/97 Annex 8 Para 8.12-8.16. In particular, the evidence submitted by the agent is considered to be vague and imprecise with reference to the building involved, whilst the evidence submitted by the agent and the applicants is contradicted by the evidence submitted by the planning officer on Y/68/04.
- 3 The facts of occupation by Mr and Mrs Hyams and their children are capable of being interpreted as occupation ancillary to the main dwelling and within its curtilage under S55(2)(d) of the Town and Country Planning Act 1990.

