

ADVERTISEMENT CONSENT

REF NO: Y/77/08/CLE

LOCATION: 16 Bilsham Court
Bilsham Road
Yapton

PROPOSAL: Application for a Lawful Development Certificate for an existing use - of one small room in flat for office/storage, business use.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Use of one room in flat which was formerly a bedroom for office.
SITE AREA	Approximately 42 square metres.
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat
TREES	None.
BOUNDARY TREATMENT	Dwarf brick wall to front boundary of flats, south side boundary close boarded fencing approximately 1.8m in height, north side boundary wall approximately 1.8m-3m in height.
SITE CHARACTERISTICS	Two storey flat development, flat 16 is on the upper level. The property has red brickwork, brown window frames with a brown tiled roof. Parking area to the front of the flats.
CHARACTER OF LOCALITY	Main road with residential comprising flats, terraced, semi-detached and detached properties of various styles and designs.

RELEVANT SITE HISTORY

None

REPRESENTATIONS

Representations received:

Yapton Parish Council
Awaited.

1 Letter of Objection.

Property is being used as a business and the applicant resides at another address No 18 with his partner. He has a member of staff working every day and on occasions two. In the last week he has had two staff working for him on two days and he has been working on Saturday and Sunday. The applicant is obviously aware of the noise he is making and he has approached us regarding sound proofing and wanted us to pay half the cost.

Comments on Representations received:

This is an application to provide evidence that the use has been taking place in excess of ten years, other matters are therefore not material.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

GENERAL RECOMMENDATION

I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

This may not even qualify as "development". Use of part of a dwelling for an office provided that it is ancillary to the main C3 dwelling use is within S55(2)(d) TCPA 1990 and so exempt from control.

Accepted that a flat isn't a "dwelling house" per S336 but I think that conduct of business as an insurance agent as confirmed to me is such to qualify. You tell me that no customers visit. If none do then this fortifies this point. It is neither A1 use with public callers nor B1 use being of such a scale as to be.

DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

(1) Time: SS171 (1)-(3) and S191 TCPA 1990

The application is for a material change of use so the time limit is 10 years under the above.

The time period is 20th November 1998-20th November 2008, ie 10 years to date of the application.

The evidence satisfies this test. For the record I believe that the flats were built under planning permission Y/90/90 and Y/18/92/B in circa 1992/93.

(2) Sufficiency of Evidence: para 8.12-8.22

The evidence is judged on a balance of probability and the above criteria is sufficient and precise and unambiguous. The applicants own evidence is in a series of letters.

Accountants letter is of weight as a professional letter but lacks any details about use but gives general evidence about use since 1994 and the base being the address at No 16.

Mrs Street confirms she worked for applicant from 1998 to circ 2001, i.e. 3 years.

On face of it the movements and activities in evidence are unlikely to generate any activity beyond normal flat use.

Letter of permission from Southern Housing Group dated 9th August, 1994.

Other Evidence

Register of Electors confirms that the applicant is the resident of No 16.

All this serves to confirm the exempt use as office ancillary to the main use as dwelling and/or an established use since circa 1994.

Comments on Consultation responses:

Comments noted.

DEVELOPMENT PLAN AND/OR 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.

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.

OTHER MATERIAL CONSIDERATIONS

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

CONCLUSIONS

The first floor flat is located to the rear of the site in block of flats numbers 7 to 19. The material change of use of one room which was formerly a bedroom for use as an office for insurance agent with part time secretarial use.

The application is for material change of use so the time limit is 10 years. The time period is from 20th November 1998 to 20th November 2008. The evidence submitted satisfies this test, ie the evidence shows on balance of probability that the use as an office has been ongoing since July 1998.

RECOMMENDATION

APPROVE

- 1 The Arun District Council hereby certify that on the 27th February, 2009 the land hereby described in the First Schedule hereto in respect of the use 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. That the evidence when judged on a balance of probabilities for the material change of use covered the time period from 20th November, 1998 to 20th November, 2008 i.e. 10 years to date of the application.

- 2 Use of one room (formerly a bedroom) for office/storage use as insurance agent. carrying out report writing and correspondence to include part time secretarial support with no customers calling.
- 3 16 Bilsham Court, Bilsham Road, Yapton.
- 4 The room in the flat, which is shown hatched on the plan attached to this certificate, within the area edged boldly in black.