

Officer Report

Application No.	Y19/1379/FH
Site Address	The Breakers The Riviera Sandgate Folkestone Kent CT20 3AB
Officer Name	Isabelle Hills
Proposal	Certificate of Lawful Development (existing) for the internal re-configuration of the boat house with flat above as approved under application reference 98/0320/SH, conversion of the existing roof space to provide additional living accommodation and the addition of x5 Velux roof lights.

Recommendation

Report Number	RD-421429
Recommended Decision	Recommended to be Lawful
Recommendation Date	30 April 2020

Report

Performance data:-

Date application valid: 16.12.2019

Applicable 8/13/16 week target date: 16.02.2020

Planning Performance Agreement (PPA) or Planning Extension Agreement (PEA) ? Y

If Yes, revised 8/13/16 week target date: 01.05.2020

Is the application being determined after 26 weeks without a PPA or a PEA? N

SITE

The application site is located within the defined settlement of Sandgate and is located to the eastern end of Riviera Road adjoining the shingle beach.

The building was granted planning permission in 1994 for a boathouse with a flat above. The building is a detached dwelling with a low pitched roof extending to the ground floor facing onto the beach, with a first floor balcony. There is a low boundary wall located to the south facing elevation which adjoins the coastal pathway.

The site is located within the Sandgate High Street Conservation Area, and identified as having archaeological potential and an Area of Special Character.

SITE VISIT

A site visit was carried out and the site was viewed from the public domain.

PLANNING HISTORY

98/0320/SH Erection of a boathouse, garage and swimming pool with flat over. Approved with conditions.

PROPOSAL

This application seeks an existing certificate of lawfulness for the internal reconfiguration of the boat house with flat above (hereby referred to as "The Breakers") contrary to what was approved under application reference 98/0320/SH along with the conversion of the existing roof space to provide additional living accommodation and the addition of x5 Velux roof lights. The application suggests that the works carried out to the property resulted in its use as a single family unit opposed to a boat house with a flat above which was granted planning permission in 1998.

The application claims that these changes made to the property were completed in 2007 and have remained in situ to present day.

The application has been accompanied with five statutory declarations and floorplans illustrating changes made to the internal layout and roof additions. The statutory declarations have been made by Anthony Nevill and Daniella Nevill, the son and daughter in law of the owners who carried out the work, Marcus Tatton, an electrician who carried out work in the property, Lawrence Alan Davis, a carpenter and builder who carried out work in the property, and Ruby Malek, a family friend who visited the property during the period that the said works were being carried out.

APPRAISAL

Legal Background

The law relating to Lawful Development Certificates (LDC) can be found in sections 191 and 192 of the Town and Country Planning Act 1990. The current application falls under section 191 as it relates to an existing rather than a proposed development.

NPPG 'Lawful Development Certificates' confirms that an LDC is a statutory document certifying, in the case of an application under section 191, the lawfulness, for planning purposes, of 'an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition'.

The law relating to immunity of existing development from enforcement action relates to specified time periods that need to have elapsed for different circumstances. These time periods are specified under Section 171B of the Town and Country Planning Act 1990.

In the current case the assessment of this, under Section 171 of the TCPA 1990, to be able to be immune from enforcement action the applicant would need to demonstrate a use of the premises, in breach of the condition, for a continuous period of 10 years.

The NPPG advises that the applicant is responsible for providing sufficient information to support an application and the LPA is entitled to canvass evidence if it wishes before determining an application.

The NPPG continues, in cases of applications for existing use (which seems in the spirit of the guidance to apply also to breach of condition cases) 'if the LPA 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 that the applicant's evidence alone is sufficiently precise and unambiguous to justify grant of a certificate on the balance of probability.'

In this case the relevant period is 10 years back from the date of the valid application being received in December 2019 – making the 10 year date December 2009.

EVIDENCE

The submitted statutory declarations provide statements testifying that the property has been used as a single family unit since the year 2000, however between the years 2006 – 2007 works were carried out to the property to amend the internal configuration and install x5 roof lights. The statements confirm that the originally approved swimming pool on the ground floor was built over and a new room was created along with the installation of a kitchen and change to the bathroom and foyer layout. The statement provided from Mr Davis, who worked on the property between 2006-2007 also states that works were carried out to the top floor, to add windows and 'create a bedroom and bathroom'.

The evidence submitted demonstrates that a continuous use of at least 10 years for the use of the boathouse as part of the main dwelling through alterations and the addition of rooflights. On the balance of probability, the evidence submitted is considered to prove that this is correct. On this basis, it is deemed acceptable to grant the certificate.

HUMAN RIGHTS

I have also taken into account the human rights issues relevant to this application. In my view, the Assessment section above and the Recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

PUBLIC SECTOR EQUALITY DUTY

In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

RECOMMENDATION

In light of the above, the existing development would be lawful and a certificate can be granted.

Case Officer: I.Hills

Report and draft decision notice completed and passed to senior officer.

Name: I.Hills Position: Planning Officer Date: 30.04.2020

Report and draft decision notice agreed and passed to admin to issue decision.

Name: D Campbell Position: DM Team Leader Date: 01.05.20

Suggested Informatives (1)

1

On the balance of probability, 'The Breakers' which is the subject property of this application, based upon the submitted evidence, is considered to have been lawfully used as a single dwelling unit as a result of lawful internal re-configurations and the installation of x5 Velux windows.