DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO./ADDRESS

10/1068/CLE

Treatment Room
52 Charmandean Road
Worthing

DESCRIPTION OF DEVELOPMENT

Application for Lawful Development Certificate for use of part of property as nail salon operating as an ancillary use to the C3 dwellinghouse.

The proposal is supported by a Planning Statement describing the site and background; planning history; and advancing why the use is lawful in terms of its ancillary relationship to the residential use and the residential character of the site. It cites case law and Government policy and in a supplementary submission references an appeal decision regarding a certificate of lawfulness. A site plan and floorplan of the house/treatment room and a letter from the applicant explaining the business. I have also visited the site when the business was operating and interviewed the applicant.

The key features of the use are:

a) The nail salon is confined to an attached converted garage to east side of the house and flush with front of house and adjacent to its drive. The room has one window facing the front and is linked internally to the hall of the house by a door. Access is exclusively from the front door of the house thorough the hall to the room itself. The room is rectangular and small and the applicant states it has a floorspace of 8 sq metres. The room contains a couch, small nail table and cupboard for stock. The room appears to be used for no other purpose but could double as a spillover guest bedroom or study.
b) The nail salon business started in October 2009 but evolved into its current operation from April 2010. Previously the applicant worked for a beauty shop, then set up her own business visiting clients in their own home before moving to the current business model.
c) Hours of operation are generally Tuesday and Saturday 8am to 1pm; Thursday and Friday 8am to 5pm. This balances with care duties for her child.
d) On average 20 to 25 clients per week visit premises. One client at a time. There are occasional home visits to other clients.
e) The services provided are limited to provision and appliance of false nails and eyelashes and extensions and allied nail cosmetics/grooming.
f) The business is run by the applicant who lives at the house with partner and children and no other staff are employed.
g) The business is appointment only, spaced at hour intervals.

h) The business is not advertised in any medium and there is no signage at the house. Business is by word of mouth and client base kept since left beauty salon.
i) Clients park in the drive of the property or across crossover or on street.
j) Nail varnish and affixatives are limited in use and the room is simply ventilated by the window.

DATE OF SITE VISITS: 3.2.10

NEIGHBOURS CHECKED : Y / ~~N~~

ADDITIONAL NEIGHBOUR NOTIFICATIONS (LIST ADDRESSES):

SITE AND SURROUNDINGS:

The property which is the subject of this application is a medium sized semi detached inter war family dwelling house (C3 use) with reasonable rear garden and modest front garden, including drive with space for one car. It is set in a residential suburb of similar, reasonably close to Broadwater and local shops/facilities as well as the A27.

The house sits on the SW corner of Charmandean Road and Shandon Road, close to a pronounced kink in Charmandean Road. Immediately to the east are some independent lock up garages and forecourt. To the west, is the paired semi which benefits from a significant forecourt which allows for at least two car parking spaces. Many of the houses in the area also enjoy off street parking. Charmandean Road serves as a bus route and is a local distributor road.

RELEVANT PLANNING HISTORY:

The property is a purpose built dwelling house with no planning history. Building Regulations records indicate it was extended at the rear in 2009 and the garage now used for the nail salon was converted to a "bedroom" in October 2009.

The current application is in response to complaints over unauthorised use of the garage by the current business and subsequent investigations by the Enforcement Team.

REPRESENTATIONS AND RELEVANT CONSULTATION RESPONSES :

Five representations have been received from neighbours.

50 Charmandean Road: No objections to principle and treatment room has been designed in keeping with the property. However, parking generated adds to safety problems in pulling out of drive where there are two blind spots due to kink in road. Measures are necessary to prevent client parking becoming a nuisance.

Nearby neighbour - no address given;

I had been advised by one of my other neighbours that this application had been made. I have not had any formal notifications from yourselves that this application had been made which I though was normal when applications are made in the close vicinity of my property.

I have to say I must formally object to this application as although the parking outside does fluctuate there are still times when I cannot safely get out of my drive. I am aware that the neighbour between me and 52 has even more of a problem as I have seen his 12 year old son standing outside to see their car clear of the traffic.

This awkward bend in Charmandean Road has always been troublesome, it is a bus route and I have seen the walls down opposite me on several occasions, I have also seen cars through these walls and fences. I have said before it is only a matter of time before a pedestrian is hit walking on the pavement by a car travelling too fast around this bend. I was very instrumental in getting speed humps and other traffic calming measures along the length of Charmandean Road having had several Meetings with our MP Tim Laughton about the traffic rat running down Charmandean Road and Leigh Road.

I have mo problem with anyone making a living but when this impacts directly on me when I have lived here for 10 years before these folks arrived, I think I have the right to at least have my say. These folks could improve the situation by turning the front garden and drive of the property into a parking area where they could easily get 3 vehicles off the road. They could also park just around the corner in Shandon Road either north or south of Charmandean, where there is usually plenty of parking.

I have today resumed taking pictures as this very afternoon I came back from lunch to find three vehicles parked outside 52 which makes line of sight down into Leigh Road impossible without taking a risk and pulling out into oncoming traffic which could well include a bus. Coupled with a restricted view to the west as well and this makes pulling out of my drive a very dangerous process.

These vehicles parking out here are not always your average hatchback or saloon, they are often big 4 x 4 BMW's and Range Rover type vehicles, also often parked part on the pavement. If the planning application is successful without restrictions then I will have to apply to West Sussex for yellow lines down at least the south side of the road.

I will mail on to you any pictures that are relevant.

41 Chandon Road; Cannot see why application should not go ahead as there is not much traffic in the day; it s not noisy and is not every day. It is better for a mother with young children to be working form home than going out to work with child minder.

42 Charmandean Road: No objections and fully support.

Head of Legal Service

I have been asked to advise in connection with an application or a certificate of lawfulness for the existing use of premises as a nail salon at a residential property. I apologise for the delay in responding to you.

I have considered the planning statement submitted on behalf of the applicant and have researched the cases and issues concerned.

The crux of the application is that the nail salon business, is so small in scale that it is therefore ancillary to the primary residential use of the dwellinghouse. Accordingly, planning permission is not required as the residential character of the dwellinghouse has not been changed.

Having considered Government guidance and the statement submitted I am of the opinion that a certificate should be granted in the terms sought provided you are satisfied that the extent and the nature of the business are as outlined to you.

Circular 3 of 2005 provides at paragraph 78, that a fact and degree approach needed in determining whether the carrying on of business activities at a dwellinghouse requires planning permission. It confirms the prior position that planning permission for working at home is not normally needed where the use of part of the dwelling for business purposes does not change the overall character of its use as a residence. It refers to the step by step guide to planning permission for small businesses which contains more detailed advice.

Having considered the advice contained within the step by step guide, I would refer to the following paragraph.

Working from Home.

You do note necessarily need planning permission to work from home. They key test is whether the overall character of the dwelling will change as a result of the business. If the answer to any of the following questions is yes then permission will probably be needed;

1. *Will your home no longer be used mainly as a private residence?*

2. *Will your business result in a marked rise in traffic or people calling?*

3. *Will your business involve any activities unusual in a residential area?*

4. *Will your business disturb your neighbours at unreasonable hours or create other forms of nuisance such as noise or smells?*

The guide refers to numerous businesses including bed and breakfast accommodation and providing a childminding service and stresses that the key test is whether the house is still mainly a home or whether it has become business premises.

There are not many reported cases on this point although I would refer you to the decision in Skerlock v SSE (1976) 33 P & CR 202 which involved a property in which the appellant lived in the upper part of the house and used the two downstairs front rooms for her business. In this case an Enforcement Notice was served on her to remove a single window she had installed on the ground floor to replace it with two sash windows. Within the context of the appeal she contended that the house was a dwellinghouse within the meaning of the general permitted development order and accordingly the development was permitted. It was held in this case that the Tribunal should have regard to the use to which the building in question is in fact put. In Skerlock, the two ground floor front rooms were being used for business purposes and it was held that looking as a matter of fact as to what the property was being used for, it was apparent that the building was in mixed use and could therefore not be a dwellinghouse for the purposes of the GPDO.

In the case before us, it would appear that the vast majority of the downstairs is still being used as a dwelling, and as such this continues to be the main use of the premises.

I have also considered a similar decision in a recent appeal decision in respect of 12B Pound Hill, Corsham, Wiltshire reference APP/J3910/X/09/2096909, where a former double garage was fitted out as a fully equipped office with at least two desks and as part of a Damp-proofing Company. It was acknowledged in this case, that although a significant business use at a property can produce a mixed use, that this stage had not been reached in relation to the converted garage and the Inspector agreed that the use remained that of ancillary to the dwellinghouse.

For the reasons outlined in the planning statement, I agree that this business can properly be described as ancillary to the residential use particularly in view of the scale of the operation and the fact that the salon is an integral part of the house.

I also agree that the salon as described, does not appear to change the overall character of the dwellinghouse especially as there is absence of signage. You also kindly confirmed that there does not appear to be a significant increase in traffic as a result of the use of the converted garage as a salon.

Whilst I understand that it is often your preferred course to request that planning permission be sought, I consider that a certificate should be granted in this case. I would also advise that it is open to you to carefully word the certificate of lawfulness to ensure that the certificate it details the extent of the business at the premises to ensure that the Council are protected against any unwanted intensification of this use in future.

HUMAN RIGHTS:

Article 8 (Right to Respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application. It is accepted that the proposal, if approved, would have some impact on the neighbouring properties. However, it is considered that the level of development proposed would not cause undue harm in terms of additional noise, disturbance and loss of privacy and that, on balance, existing residential quality of life would not be adversely affected as a result of the proposal. Accordingly it is considered that it is acceptable with regard to Article 8 and Article 1.

PLANNING ASSESSMENT: (Include any impact on Crime & Disorder and Issues identified above)

The determination of applications for Certificates of Lawfulness is restricted to consideration of the lawfulness of the proposal. Effectively, the issue for consideration is whether the proposal needs planning permission by means of an application, or, alternatively may be carried out without any such need because it is not development or is permitted development or is *de minimis* or is not a material change of use or is immune from enforcement and so has achieved lawfulness. The, otherwise, planning merits or de-merits of a proposal are outside of the scope of the determination and, to this extent, the representations received on such matters should be disregarded, except as where they illuminate whether the nature of the use is incidental to the enjoyment of the dwellinghouse (i.e. a material change of use has occurred) .

The relevant test for such an application is whether, on the balance of probabilities, the applicant has proven the proposed use is lawful. The onus is upon the applicant to demonstrate proof.

The main issue appears to be whether the current property is a C3 Dwellinghouse use as set out in the Use Classes Order 1987 in itself and secondly if use of the property for the stated nail salon business purposes and on the basis of the terms set out in the application and other information received remains a C3 Dwellinghouse use as set out in the Use Classes Order 1987 as Amended and, as appropriate, would not breach S.55 2(d) Town and Country Planning Act 1990 which excludes from the definition of development : *the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;* .

In other words; Does the host property enjoy C3 use rights and secondly has a material change of use occurred such that the business use is not ancillary/incidental to the residential use and residential is no longer the primary use?

In making such a judgement, Government guidance in Circular 03/2005 advises:

78. A fact and degree approach is also needed in determining when the carrying on of business activities in a dwelling house requires planning permission. The amended Order does not alter the current position: planning permission for working at home is not usually needed where the use of part of a dwelling house for business purposes does not change the overall character of its use as a residence. The Step-By-Step Guide to Planning Permission for Small Business contains more detailed advice about the planning issues to consider in relation to working from home.Considering the application proposal in this light, only one room would be used and this would and could revert to living accommodation easily as required. The vast bulk of the house would remain in use as living accommodation and no part of the garden would be affected.

The Step-By-Step Guide to Planning Permission for Small Business 2006 (Planning Permission: A Guide for Business) indicates;

WORKING FROM HOME

You do not necessarily need planning permission to work from home. The key test is whether the overall character of the dwelling will change as a result of the business. If the answer to any of the following questions is 'yes', then permission will probably be needed: ***u***

Will your home no longer be used mainly as a private residence? ***U***

Will your business result in a marked rise in traffic or people calling?

u *Will your business involve any activities unusual in a residential area?*

u *Will your business disturb your neighbours at unreasonable hours or create other forms of nuisance such as noise or smells?*

Whatever business you carry out from your home, whether it involves using part of it as a bed-sit or for 'bed and breakfast' accommodation, using a room as your personal office, providing a childminding service, using rooms for hairdressing, dressmaking or music teaching, or using buildings in the garden for repairing cars or storing goods connected with a business – the key test is: is it still mainly a home or has it become business premises?

Case law and appeal judgments by Inspectors have also illuminated the question by interpreting the law and accumulating a powerful body of evidence and precedent. Relevant evidence is cited by The Head of Legal Services and the applicant's agent. The Encyclopaedia of Planning Law and Development Control Practice have, additionally been independently consulted.

The business use is assessed in this light below.

From observation and the planning history the property is clearly in, itself, a C3 use.

In terms of physical relationship to the dwelling house, it is clear the business use occupies a very small area both proportionally and in actuality. It remains fully physically integrated with the residential parts of the house, without any independent access. The room contains only a few items of bespoke furniture and very limited equipment /materials characteristic of the business but could be very quickly and easily reinstated as living accommodation if required. The vast majority of the property continues to be used for residential purposes.

The business is of a very modest scale in terms of numbers of customers; length of working day and working week (i.e. part time and not at unsocial hours) and employment is limited to the applicant herself. There is no external advertising.

There is nor external evidence of the business by means of signage, plant or equipment and the converted garage so the use appear for all intents and purposes as a residential extension.

There is no evidence of any pollution associated with any of the business activities through noise or smell. In particular, because of its siting, the converted garage is physically remote from any neighbour, separated by the lock up garages; width of the house itself and roads.

Due to the appointment system, length of the working day and week and employment restricted to the applicant herself, numbers of clients visiting the house are limited. This works out at a maximum of 9 per day on the two full working days she operates. This is higher than might normally be expected for a modest residence but does not compare unfavourably to the levels of activity which might be expected if the house were used for childminding where practice has established that up to 6 children may be minded without the need for an application and is compatible with a recent appeal judgement cited by the applicant.

The impact of the clients on the locality and neighbours in terms of traffic and parking is limited due to the numbers and spread of customers over the working day and week appointment system and the character of the area itself. Most properties enjoy their own off street parking, the applicant possesses a drive and there is substantial scope for on-street parking. This is not an especially quiet residential suburb as it is on a bus route and a recognised cut through for traffic. Two complaints have been received over parking problems created by the business use. However, no obvious evidence of any problems were noticeable on the two site visits made and it is always difficult to confidently identify the origins of parkers. In any event, this level of spill over parking is not so significant as to change the residential character of the property.

As such, no material change to the character of the dwellinghouse has resulted. The Head of Legal services concurs with this view and this is consistent with case law and appeal judgments viewed. A Certificate of lawfulness should accordingly be issued.

RECOMMENDATION:

Issue Certificate

REASONS FOR RECOMMENDATION:

It has been accepted that on the balance of probability that the use of the attached converted garage on the east side of 52 Charmandean Road Worthing as a nail salon is ancillary to the use of the property as a dwelling under Class C3 of The Use Classes Order 1987 as Amended 1990.

This certificate relates only to the use of the attached converted garage on the east side of 52 Charmandean Road Worthing as outlined in yellow on the submitted floorplan and the site as outlined in red in the submitted site plan and the precise use referred to below which represents the state of affairs at the date of the application:-

a) The nail salon is confined to an attached converted garage to east side of the house and flush with front of house and adjacent to its drive. The room has one window facing the front and is linked internally to the hall of the house by a door. Access is exclusively from the front door of the house thorough the hall to the room itself. The room is rectangular and small and the applicant states it has a floorspace of 8 sq metres. The room contains a couch, small nail table and cupboard for stock. The room appears to be used for no other purpose but could double as a spillover guest bedroom or study.
b) Hours of operation are generally Tuesday and Saturday 8am to 1pm; Thursday and Friday 8am to 5pm; This balances with care duties for her child.
c) On average 20 to 25 clients per week visit premises. One client at a time. There are occasional home visits to other clients.
d) The services provided are limited to provision and appliance of false nails and eyelashes and extensions and allied nail cosmetics/grooming.
e) The business is run by the applicant who lives at the house and no other staff are employed.
f) The business is appointment only, spaced at hour intervals.
g) The business is not advertised in any medium and there is no signage at the house. Business is by word of mouth.
h) Clients park in the drive of the property or across crossover or on street.
i) Nail varnish and affixatives are limited in use and the room is simply ventilated by the window.

Accordingly, use of the attached converted garage on the east side of 52 Charmandean Road Worthing is incidental to use of the dwellinghouse within Class C3(a) of The Town and Country Planning (Use Classes) Order 1987 (as amended).

The use is not liable to enforcement action under Section 172 of the Act. However, if any further development/intensification and change in circumstance is carried out subsequent to the issue of this certificate, it may be liable to formal enforcement action by the Local Planning Authority.

This certificate only makes lawful the uses referred to above and does not provide immunity from enforcement for any other activity.

IS RECOMMENDATION CONTRARY TO LETTER(S) OF REPRESENTATION?

Y / ~~N~~

DELEGATED

Case sign..... Date..... 16 3 11 Officer

Authorising sign..... Date..... 21-3-11 Officer