Exp 19/11

Development Control – Delegated Officer Report

Application Number: ADC/0585/07 **Recommendation – that Certificate of lawfulness be granted**

Site: **Land East of 30-40 Dolphin Road, Shoreham-by-Sea**

Proposal: **Use of the area of land for parking cars and other vehicles (application for certificate of lawfulness for existing use)**

The Application

The application is a resubmission with additional evidence following the refusal of the previous application SU/255/05/TP (submitted on 29 November 2005).

It relates to a site of 0.35 hectare, being the sole remaining undeveloped part of land adjoining Evershed Way/Dolphin Road (part of former 30-40 Dolphin Rd). It is loose surfaced and currently used as a car parking area by BOC Edwards.

Consultations

On the previous application, the adjacent owners/occupiers were asked for any info they had and BOC Edwards replied in December 2005 stating that they had leased the land for parking (the lease dating from 19 December 1995) and were also again using it for parking. No reply was received from Barnes DAF.

Relevant Guidance

Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Guidance' (DoE July 1997)

Planning Assessment

Under section 191 of the Town and Country Planning act 1990 (as amended), the Council is obliged to grant a Certificate if, on the balance of probability, the use was commenced more than 10 years ago (in this case before 24 September 1997), thereby rendering it outside the scope of enforcement action under section 171B of the Act).

This type of application has to be decided solely on the basis of whether it was commenced more than 10 years ago and not on the basis of whether there are any planning or highway objections.

The planning records show that the present application site was the subject of a temporary 'personal' planning permission to McNicholas (cable TV contractors) for temporary parking of their vehicles and plant, storage of materials and ancillary transfer of excavated material with associated structures granted in June 1994 and expiring 1 May 1995 (SU/199/94/TP). A letter from the applicants states they cleared the site in May 1995.

A letter from BOC Group on the previous application file states that they leased the site for parking from 19 December 1995 until 18 December 1997 (extract of lease supplied by BOC). No planning application was made.

The previous file also contains evidence of a series of leases granted by the applicants to Barnes for use of the land for parking from 3 November 1998, expiring 24 December 2004. No planning application was made.

BOC stated in their letter of 23 December 2005 that they were again using the site for parking.

In July 2001, the Council's enforcement officer sent a letter about the apparent unauthorised use of the land for parking. The applicants claimed more than 10 years usage and were advised to apply for a certificate of lawfulness but did not wish to do so. No complaints were received and there were no planning objections to the use at that time so the breach was not pursued.

The previous application was not granted because the first lease to BOC commenced 3 weeks less than the relevant 10 year period prior to the application being made. There was also a gap of 11 months between the BOC lease expiring in December 1997 and the Barnes lease commencing in November 1998. There was also a more recent break during 2004-05. The Council's solicitor advised that the available evidence from the leases alone was insufficient to grant a certificate. Satisfactory statutory declarations were also needed.

The present application is accompanied by a Statutory Declaration dated 31 August 2007 from Neville Andrew, managing director of Vanstian Ltd, the owning company. He declares that the site is part of the land purchased in 1988 and that it "has been continuously used for parking of vehicles from 19 December 1995 up to and including the present time". It lists the leases/licences 1995-97 to BOC, 1997-98 to Hargreaves, 1998-2004 to Barnes, 2004-06 to Hargreaves, and 2005 to present to BOC.

It is known by the case officer, having seen the site regularly since April 2001, that the site has been used for parking lorries and vans and more recently for parking cars. Its total area has not been fully occupied by the vehicles but use for parking of vehicles has clearly been the predominant use.

It is considered that there is now sufficient evidence from the above statutory declaration, leases/licences and the planning officer's knowledge to grant the certificate.

Recommendation

That a Certificate be granted for the reason that:-

1. The use constitutes 'development' as defined by section 55 of the Act but commenced more than 10 years ago (in this case before 24 September 1997), thereby rendering it outside the scope of enforcement action under section 171B of the Act.

Case Officer.....

Date....12/11/07.....