DELEGATED APPLICATIONS ASSESSMENT SHEET

APPLICATION NO./ADDRESS: 291 Tarring Road WB/11/0105/LDC

DATE OF SITE VISIT: 24.11.2009

NEIGHBOURS CHECKED: Y

ADDITIONAL NEIGHBOUR NOTIFICATIONS: N

PROPOSAL, SITE AND SURROUNDINGS:

The application property comprises a 2-storey, brick-built building (220 square metres) with a slate roof set back from the Tarring Road frontage, dating from the late 19th or early 20th Century. The U-shaped site includes an 'in' access drive from Tarring Road (shared with Cedar Court) and an 'out' drive via a walled private car park with approximately 10 car parking spaces.

Permission is sought for a lawful development certificate for the existing use of the property in light industrial use. The application is accompanied by a sworn statement by Mr Smith, one of the Trustees of the freehold, listing the occupiers and uses of the building since 1946.

RELEVANT PLANNING HISTORY

The earliest planning records date from 1978 granting temporary use of the premises as a garden centre with the display and sale of 'garden sundries and portable buildings'. Subsequent records in the mid-1990s relating to the formation of a vehicular access and the car park indicate that the building was used as offices and workshop at that time. The building is currently empty, but until recently was used by The Deaf Association of Sussex for 6 years, primarily as offices but with group workshops. [N.B. not industrial workshops.]

590/89	Outline application for permanent building for use as Class A1 or B1. Officer's report identifies former use as garden centre. Proposed use accepted in principle, but application refused owing to lack of accurate information concerning proposed building.
93/0732	Application forms identify as vacant with former use as 'workshop' Owner identified as Mr Smith
94/0164	Application forms identify use as offices/workshop. Notice served on the owner, Mr Smith.
09/0905	Vacant, with former use identified as offices by Deaf Association of Sussex (see photos).

10/0573 Vacant, with former use identified as offices by Deaf Association of Sussex (see photos).

PLANNING ASSESSMENT:

The consideration is related solely to matters of evidence and law. [The planning merits of the application are not relevant.] The relevant test is the 'balance of probability'. LPA's are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application providing the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

Internal inspection of the vacant building suggests the building was last used primarily as offices within Class B1(a). It is understood that the Deaf Association of Sussex also held group workshops from time to time (but not a 'workshop' in the industrial sense of the word). This is supported by the written comments of the estate agent submitted at the time the earlier application for a change of use to a performing arts centre within Class D2 (WB/09/0905/FULL).

Prior to occupation by the Deaf Associated of Sussex, the building was occupied as a workshop and offices by Structured Systems Limited for the manufacture of computer equipment. The EHO (Environmental Protection Team) has confirmed that there is no record of complaints relating to the property concerning loss of amenity to residents. It is 'probable' that the use constituted a B1 Use (a) and (c), being a use that was one carried out in a residential area without detriment to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

The building has been vacant since October 2009. However, case law established by *Panton and Farmer v Secretary of State for the Environment & Vale of White Horse District Council (1990)* suggests that when dealing with a ten year rule case it is not sufficient to examine only the precise period of 10 years before an application for a certificate of lawfulness but to look at the whole of the planning history. If the history suggests, as in this case, that in the past the use has been in operation for ten years then the fact that in more recent times the use has gone into 'dormancy' does not take away those rights. The courts have determined that a use right could only be lost by abandonment, a change in the planning unit or the introduction of a new use.

RECOMMENDATION

ISSUE CERTIFICATE for the use of the building identified on the submitted plan for offices and/or light industry within Class B1 (a) and (c) of the Town and Country Planning Use Classes Order 1987 (as amended) with ancillary parking and access/egress onto Tarring Road.

REASON FOR APPROVAL

The applicant has provided sufficiently precise and unambiguous evidence that the building has been used for a continuous period of 10 or more years for offices and/or light industry within Class B1 (a) and (c) of the Town & Country Planning use Classes Order 1987 (as amended) with ancillary parking and access/egress onto Tarring Road.

IS RECOMMENDATION CONTRARY TO LETTER (S) OF REPRESENTATION? No neighbours consulted

Case Officer
Sign.....Date.....7.4.11.....

Authorising Officer
Sign.....Date.....7/4/11.....