

FROM:

Delwyn Jones Planning Solicitor
Resources Department
Tel Ext 737737
Dated 6 October 2017

TO:

Richard Temple Planning Officer

REF:CLE/CLP CONSULTATION -AL/99/17/CLE

ADDRESS : Land adjacent to Crunchy Cottage Park Lane Aldingbourne PO20 3TJ

NATURE OF USE : Retention of land as garden.

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo now returned together with your file on which alone plus the authorities cited this is based.

2.GENERAL RECOMMENDATION

I recommend you not yet grant this application for reasons that follow subject to your finding any contradictory evidence.

I add some provisos to this recommendation because the registered freeholder is a Guernsey Channel Islands registered company [who does it enjoy a garden?] and it would be useful to have evidence for the 4 years period 2013 – 17.

The land appears quite large for garden use and there is reference to Mr Wilard keeping chickens ---- [query agricultural use not garden] and its detachment from a house [apparently on sale of Keymer Cottage] requires addressing and clarification –eg by statement from Andrew Smith.

I rely on you to tell me of any evidence indicating otherwise.

3.DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND NPPG GUIDANCE ON LAWFUL DEVELOPMENT CERTIFICATES[LDCs]

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

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

The time period is 4/9/07 – 4/9/17 ie 10 years to date of the application.

The evidence does satisfy this test ie there has been garden use since circa 1989/1994 [Mr Willard] but there is an unexplained break in 2013, where a new use/no use may have occurred to break this continuous period.

I have at this date seen no contradictory evidence of this position. I explain why below.

(2) Sufficiency of Evidence: NPPG Guidance LDCs Part 3 Application and Determination

The evidence judged on a balance of probability and the above criteria is at present insufficient and is imprecise and ambiguous.

Para 3 NPPG says that “...if an LPA has no evidence itself ,nor any from others, to contradict or otherwise make the applicant’s version less than probable , there is no good reason to refuse provided the applicant’s evidence alone is sufficiently precise and unambiguous”.

Para 3 in NPPG cited above and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity.

S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

There is no evidence of an extant enforceable Enforcement Notice issued and affecting the Land

The evidence analysis with comments is

Number	Item of Evidence	Comment
1	Title no WSX 147939	Provided by me It shows the freeholder a Guernsey company Jenai Ltd – so I suggest you query this and seek a statement from Andrew Smith as to the 4 years 2013-17 of his ownership
2	Aerial photos	Not provided but you should look at them to determine active garden use if any
3	Application -	Shows claim of garden use since 1994 circa but no specific details
4	Letter Mr Willard	There is a break in 2013 Andrew Smith is not the registered owner ASmith hasn’t given evidence for the period 2013-17
5	Letter Mr Jupp	Comprehensive but hearsay and relies on officer report from 2009 –ie only 2007-09 2 years of the relevant 10 years period Does contain plenty of references to “garden use” - hence my not refusing immediately but more information required and ambiguity clarified
6	Officer report from 2009	Does contain plenty of references

		to “garden use “- hence my not refusing immediately but more information required and ambiguity clarified only 2007-09 2 years of the relevant 10 years period covered

I suggest these questions be pursued :-

[a] will ASmith give a statement

[b] where has he lived during 2013-17

[c] what has he used the land for ?

[d] is the land too large for a garden use ?

[e] is there a house the land is used in connection with eg the plan on Mr Willards statement shows Crunchy Cottage some distance away from the land and detached from it

[f] what specific areas of the land were used as garden – show on a plan

[g] what specific garden uses occurred – specify – eg flowers, domestic veg, quiet enjoyment, picnics, games, sunning etc –these garden uses usually are referred to in these CLEUDs applications for this use

Without adequate answers the evidence doesn't on balance of probability prove the claim

4.FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice .

5.TERMS OF CLEUD

I will address this on site of answers or fresh evidence on the above.

ref

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



Official copy of register of title

Title number WSX147939

Edition date 09.09.2013

- This official copy shows the entries on the register of title on 06 OCT 2017 at 11:09:09.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 06 Oct 2017.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 (06.06.1929) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land lying West of Hook Lane.
- 2 The mines and minerals below a depth of 200 feet are excepted.
- 3 The land has the benefit of the following rights reserved by the Transfer dated 13 June 1977 referred to in the Charges Register:-

"1. A right to the free passage and running of water soil gas and electricity and other services to and from the remainder of the land comprised in the above mentioned Title in by and through all sewers drains channels gutters pipes watercourses wires cables apparatus and mains passing over through along and under the land hereby transferred.

2. A right without making any payment therefor of entering upon the land hereby transferred so far as this is necessary and upon giving reasonable notice (emergency purposes excepted) for the purpose of installing inspecting repairing maintaining improving connection into or replacing the said sewers drains channels gutters pipes watercourses wires cables apparatus and mains or any of them doing by such entry no unnecessary damage and making good any damage thereby occasioned."

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (09.09.2013) PROPRIETOR: JENAI LIMITED (incorporated in Guernsey) of Les Echelons Court, Les Echelons, St Peter Port, Guernsey, GY1 2JF.
- 2 (09.09.2013) The price stated to have been paid on 2 September 2013 was £150,000.
- 3 (09.09.2013) RESTRICTION: No disposition of the registered estate other than a charge by the proprietor of the registered estate or by the

B: Proprietorship Register continued

proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by Paul Willard of Brambles, 2 (b) Sherbourne Road, Chichester, West Sussex P)19 3AA or his personal representatives that the provisions of clause 4.1 of a Deed dated 2 September 2013 made between (1) Paul Willard and Jenai Limited have been complied with.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 The land is subject to the following rights granted by a Transfer of land lying to the North East of the land in this title dated 13 June 1977 made between (1) Alfred Austin Finnamore and Hilda Mary Finnamore (Transferors) and (2) Daphne Ray Legge-Willis (Transferee):-

"1. A right to the free passage and running of water soil gas electricity and other services to and from the land hereby transferred in by and through all sewers drains channels gutters pipes watercourses wires cables apparatus and mains now passing through along and under the remainder of the land comprised in the above mentioned Title.

2. A right without making any payment thereof of entering into the remainder of the land comprised in the above mentioned Title upon giving reasonable notice (emergency purposes excepted) for the purpose of inspecting installing repairing maintaining improving connection into or replacing the said sewers drains channels gutters pipes watercourses wires cables apparatus and mains."

End of register

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 06 October 2017 shows the state of this title plan on 06 October 2017 at 11:09:10. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by the HM Land Registry, Durham Office .

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H.M. LAND REGISTRY

TITLE NUMBER

WSX 147939

ORDNANCE SURVEY
PLAN REFERENCE

S U9205

Scale
1/2500

COUNTY

WEST SUSSEX

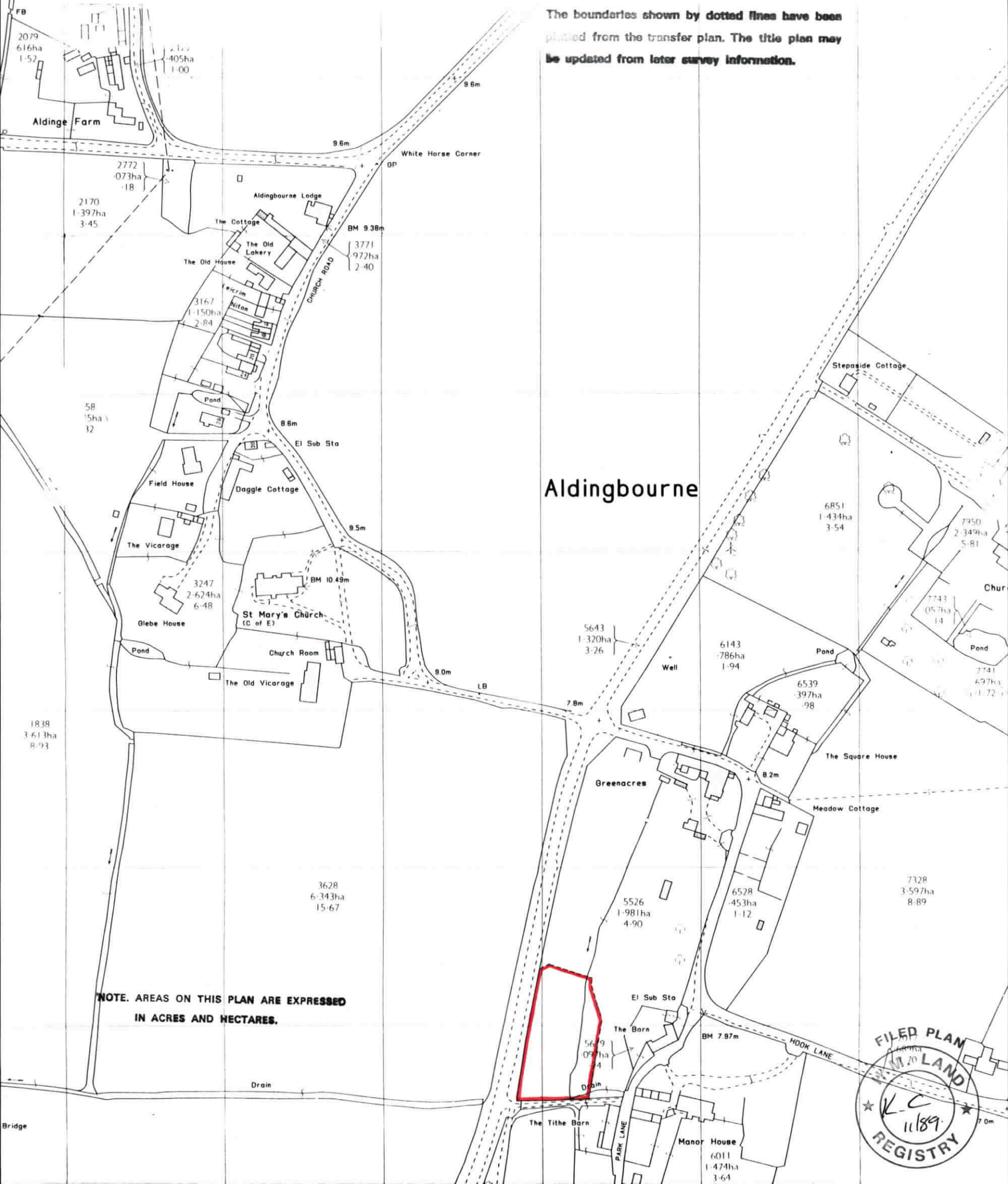
DISTRICT

ARUN

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The boundaries shown by dotted lines have been
plotted from the transfer plan. The title plan may
be updated from later survey information.



NOTE. AREAS ON THIS PLAN ARE EXPRESSED
IN ACRES AND HECTARES.

