



MEMO

14 December 2007

FROM:

Delwyn Jones
Planning Solicitor
Resources Department
Tel Ext 37737

TO:

M Porter
Planning Officer

REF: BN/40/07/CLECONSULTATION

ADDRESS : 43 HILL LANE BARNHAM

NATURE OF USE : AGRICULTURAL LAND TO CURTILAGE

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 refuse for reasons that follow subject to your finding any contradictory evidence .

I rely on you to tell me of any evidence indicating otherwise. I suggest that you as a planner need to assess after a site visit the size and arrangements of the site but solely on the papers seen by me we have a case to refuse.

3.DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

(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 7/11/97 ----7/11/07 ie 10 years to date of the application.

The evidence does' nt satisfy this test.

The time limits are not fulfilled due to the analysis of the evidence below

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

(2) Sufficiency of Evidence: para 8.12-8.22

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

Para 8.15 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.

The evidence consists of 2 statutory declarations by GR Strotton son of the last owner who knew the land from 1955 – 2006 . He refers to the land being used as smallholding ,then as childrens play ground ,recreation area and orchard ,vegetable garden .

The other is a statutory declaration by the present owner J Harmston who knows the property 2006 to date who refers to areas of the land used as "laid to grass with vegetable area " , and then refers to Strottons evidence.

Neither file presented has a planning history though BN/1/07 does have letters referring to parts of the land being mowed by friends of the elderly previous residents .

PRINCIPLES OF CURTILAGE

I refer to EPL Vol 5 para 3B-2055 in full for these.

In essence a cartilage is a small area around a dwelling or other building and used in connection with it . "Small " will vary with each case . Curtilage is not co terminous with ownership nor with boundaries and boundaries/barriers and markers are not needed to define it . The cases listed illustrate tennis courts (Mc Alpine and James) swimming pools and "grassed recreation areas " which were held on the facts not to be cartilage .

In the present case the land has areas used as orchard, recreation area ,vegetable garden ie areas perceived or defined as having certain clear uses within the larger boundary of the whole .Consequently it must follow that cartilage cannot cover the whole site as a matter of fact and degree if the areas are so defined or have such an appearance.

The case is not made out for the whole area to be used cartilage.

4.FURTHER EVIDENCE

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

In particular your site visit should help you to use planning judgement to assess degree and fact of uses within the land including cartilage orchard vegetable garden recreation area

5.TERMS

1. refuse
2. the applicant has failed to prove on a balance of probabilities ten years use of the whole land as cartilage
3. the applicant has failed to prove on a balance of probabilities that the whole of the land edged red is used as cartilage having regard to case law ,general principles and the facts of the case including appearance and varying uses of the land

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