

BN/40/07/CLE**CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT REPORT**

DESCRIPTION/ ADDRESS	- Application for Certificate of Lawfulness for an existing use of land as residential cartilage 43 Hill Lane Barnham
-------------------------	---

THE SITE AND ITS SURROUNDINGS

DESCRIPTION OF APPLICATION	As above
SITE AREA	N/A
RESIDENTIAL DEVELOPMENT DENSITY (NET)	N/A
TOPOGRAPHY	Predominantly flat
TREES	N/A
BOUNDARY TREATMENT	Hedging and trees
SITE CHARACTERISTICS	Parcel of shrub land to rear and side of dwelling house
CHARACTER OF LOCALITY	Rural lane. Isolated properties of similar style and design

RELEVANT PLANNING HISTORY

REFERENCE	DESCRIPTION	DECISION
BN/1/07	Demolition of existing dwelling and erection of replacement dwelling	Approved Conditionally 21-03-2007

REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT
Barham Parish Council	Awaited
Local Groups	None
OTHER	None

CONSULTATION RESPONSES

CONSULTEE	SUMMARY OF RESPONSE
Planning Solicitor	<u>GENERAL RECOMMENDATION</u> Recommend refuse for reason that follow subject to your finding any contradictory evidence. Reply on you to tell me of any evidence otherwise. Suggest that you as planner need to assess after site visit the size and arrangements of the site but solely on the papers seen by me we have case to refuse <u>DETAILS AND TEST UNDER SS 191 TCPA 1990 AND</u>

CONSULTATION RESPONSES

CONSULTEE	SUMMARY OF RESPONSE
	<u>CIRCULAR 10/97 ANNEX 8</u> <i>(1) Time: SS171 (1)-(3) and S191 TCPA 1990</i> 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 i.e. 10 years to date of the application. The evidence does not 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. <i>(2) Sufficiency of Evidence: Para 8.12 – 8.22</i> 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 established 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 statutory declaration by GR Strotton son of the last owner who knew the land from 1955 – 2006. He refers to the land being used as small holding, then as children's play ground, recreation area and orchard, vegetable garden The other is a statutory declaration by the present owners J Harmston who knows the property 2006 to date who refers to areas of the land used as "laid grass with vegetable area", and then refers to Strottons evidence. Neither file presented has a planning history through BN/1/07 does have letters referring to parts of the land being mowed by friends of the elderly previous residents. <u>PRINCIPLES OF CURTILAGE</u> I refer to EPL Vol 5 para 3B-2055 in full for these.

BN/40/07/CLE**CONSULTATION RESPONSES**

CONSULTEE	SUMMARY OF RESPONSE
	In essence a curtilage 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 coterminous with ownership or 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 recreational areas" which were held on the facts not to be curtilage. In the present case the land has areas used an orchard, recreation area, vegetable garden i.e. areas perceived or defined as having certain clear uses within the large boundary of the whole. Consequently it must follow that curtilage 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 curtilage <u>FURTHER EVIDENCE</u> I reply on you to show me any fresh evidence which may alter the tenor of this advice <u>TERMS</u> 1. refuse 2. the applicant has failed to prove on a balance of probabilities ten years use of the whole land as curtilage 3. the applicant has failed to provide on a balance of probabilities that the whole of the land edged red is used as curtilage having regard to case law, general principles and the facts of the case including appearance and varying uses of the land

POLICY CONTEXT

DESIGNATION APPLICABLE TO SITE
Outside Built Area boundary

DEVELOPMENT PLAN POLICIES

There are no policies applicable to CLEUDs. Instead the following are guidance: SS191-195 Town and Country Planning Act 1990 Art 24 GDPO 1995 DOE Circular 10/97 Annex 8
--

POLICY COMMENTARY

POLICY COMMENTARY

There are no policies applicable to CLEUDs.
 Instead the following are guidance: SS191-195 Town and Country Planning Act 1990
 Art 24 GDPO 1995
 DOE Circular 10/97 Annex 8

COMMENT ON CONSULTATION RESPONSES

Noted. No fresh evidence to provide.

COMMENT ON REPRESENTATIONS RECEIVED

Noted.

ASSESSMENT OF PROPOSAL**DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND**

Section 191(2) and (3) of the Town and Country Planning Act 1990 states:-

"For the purposes of this Act uses and operations are lawful at any time if:

- (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force".*

"For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if:

- (a) the time for taking enforcement action in respect of the failure has then expired; and*
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force."*

1. Principles

Section 191-195 Town and Country Planning Act 1990 and DoE Circular 10/97 Annex 8 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy:-

- (i) Which is to be judged on a balance of probability
- (ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant
- (c) The relevant time limit for this application is 4 years for the erection of the dwelling and 10 years for the breach of condition under SS171 (1)-(3) and S191 TCPA 1990.

2. Assessment

BN/40/07/CLE**ASSESSMENT OF PROPOSAL****DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND**

2.1 The applicant has submitted the following evidence with their application form :-

- Statutory declaration of Joe Harmston, current joint owner of the property No. 43 Hill Lane, Barnham
- Statutory declaration of Graham Strotton, son of previous owner Mr Richard Valentine Strotton who occupied the property No. 43 Hill Lane, Barnham between 1955 and 2006

3. Conclusion**3.1 REFUSE**

3.2 Evidence has been submitted as part of this application but it is considered that the quality of the evidence, when judged on a balance of probability, does not meet the standards required in 10/97 Annex 8.

3.3 The evidence is based on a claim that the land edged in bold has been used for ten years as residential curtilage

3.4 The applicant has failed to prove on a balance of probabilities that the whole of the land edged bold is used as curtilage having regard to case law, general principles and the facts of the case including appearance and varying uses of the land

3.5 It is therefore considered that the application for a Certificate of Lawfulness should be refused for the reasons stated overleaf.



RECOMMENDATION

BN/40/07/CLE

TOWN AND COUNTRY PLANNING ACT 1990

(AS AMENDED)

APPLICATION FOR A CERTIFICATE OF LAWFUL USE
OR DEVELOPMENT

RECOMMENDATION

Application Ref: BN/40/07/CLE

1

To Addressee

2

Site Address

43 Hill Lane
Barnham

3

Description of Development

Application for a Certificate of lawfulness for an existing use of land as residential curtilage.

4

In pursuance of their powers under this Act and related Orders and Regulations the Council notify you that they REFUSE your application for a Certificate of Lawful Use or Development for the use, uses or development as described in the application for the reasons stated.

22/11

RECOMMENDATION

BN/40/07/CLE

REASON 1

Judged on the balance of probabilities, it has not been established that the land edged in red has been used as residential curtilage for ten years required to satisfy the issue of a Certificate of Lawfulness under Section 171 (1)-(3) and Section 191 of the Town and Country Planning Act 1990.

REASON 2

The evidence is imprecise, ambiguous and vague and fails the tests in Circular 10/97 Annex 8. In particular, there is not adequate evidence to show that the land edged in red has been used as residential curtilage for 10 years .

Case Officer: Mr M Porter