

FROM:

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TO:

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REF:BR/228/12/CLE/ CONSULTATION

ADDRESS : PICTUREDROME CINE MA BOGNOR REGIS PO21 1DW

NATURE OF USE : SELF CONTAINED INDEPENDANT FLAT

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 should explain that I proceed on the basis that :-

[a] what exists according to the evidence is a managers flat ancillary to the cinema

[b] what the CLEUD application seeks is an independent flat separate from the cinema

This is unclear in the application, but alternatively ,rather than refusing you could seek to clarify what in fact is sought or issue the using a CLEUD for an ancillary cine ma managers flat under S193(4 (b)) TCPA 1990 .

That would leave the onus on the applicant to reapply for a flat independent and separate from the cinema.

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 4 years under the above .

The time period is 17 October 2008 – 17 October 2012 ie 4 years to date of the application.

The evidence doesn't satisfy this test. Reasons are set out 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.

There are two items of evidence viz :-

Evidence item	Comments
C Alsopp	Known flat since 1964 when the flat was occupied by a succession of managers Ambiguous statement referring to the flat being empty as one owner didnt want tenants ---unless this means that he allowed only cinema managers to occupy the flat?
A Cunard	Only familiar with flat since August 2011 so only addresses last 12 months or so of use so insufficient to fulfil 4 years requirement Aware that a tenant occupied the flat for “18 months” ending August 2011 ,which again fails to fulfil the 4 years requirement.

The common theme is therefore a restricted use for cinema managers only and use of the flat only ancillary to the cinema as a managers flat.

On this evidence a CLEUD could be issued for a cinema managers flat only but not an independent flat with no connection to the cinema. See case of Wakelin v SoSE 1978 JPL 769 .

4.FURTHER EVIDENCE

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

5.TERMS

1. Refuse
2. The evidence is vague ambiguous and imprecise and doesn't identify precisely what is sought
3. The 4 years period for independent flat use is not fulfilled
4. There is no evidence to establish unambiguously and precisely as required an independent flat use separate from the cinema

Alternatively, issue a CLEUD but for a cinema managers flat only listing a plan and accommodation provided.

ref/lgdr/lprec/pl/cleudetcmodelmem

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