

FROM:

Planning Solicitor
Resources Department
Tel Ext

TO:

A Gardner
Planning Officer
Dated 21 March 2012

REF:PA/5/12/CLE/CONSULTATION
ADDRESS : MYRTLEGROVE FARM PATCHING
NATURE OF USE : EQUINE USE ON LAND

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

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

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 ie 10 years [from date of commencement being 18 January 2002 to date of the application 18 January 2012].---this being a change of use.

The evidence does satisfy this test. Indeed the claim is that the use started in January 1992 and is backed by evidence [see para 10 Application Form].

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 sufficient and is precise and unambiguous---to a degree it is even supported by the objectors evidence.

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 is :-

No	Evidence	Comment
1	Statement This refers to the Planning History and a range of consents for equine uses –I suggest that these should be studied as the files may contain site visit notes PA/27/09 stable approved PA/13/09CLE –stables approved	On a balance of probability suggest equine uses subsisted at time of applications 2009 and for CLE to 1999
2	Letter A Jenkin – 14 December 2011 land owned by her in 1991 and used for equine uses Sold to Mr and Mrs Williams and the to present applicant Mr McArthur	Continuous use since 1991 but vague but helps in general terms of horses being present on land since 1991 ---presumably for “keeping horses” in general terms
3	Letter dated 13 December 2011 from E Penn Kept her horse on the land from 15 years ago circa 1997 for “grazing and riding” and since 2005 a sand school was created	Precise as to dates and uses

The Objectors Evidence in fact tends to supports the claim for equine uses :-

I note the Parish Council offer no contradictory evidence even if they do object to the uses.” we will not cavil with the facts put forward with reference to length of usage

EA Viner –13 February 2012 –“ It is not disputed that this land has been grazed by horses and sheep since 1991 “ which tends to suggest some equine use though “grazing “ would not be a change of use [See EPL Vol 2 para 55 56 Sykes v SoSE 1981 JPL 285]

C Hutchinson –refers to use of land “since 2001 “-and requests its “ return to its pre 2001 status” .

Mr T Taylor – owns adjacent land -“pursued equestrian activity all the time I have known them” .

4.FURTHER EVIDENCE

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

5.TERMS

1. grant
2. identify precise land boundaries on plan for extent of use.
3. describe number of horses and precise uses of horses eg riding ,exercising ,jumping ,dressage etc
4. limit persons in occupation /at work?
5. limit hours ?

ref/lgdr/lprec/pl/cleudetcmodelmem

ref