

FROM:

Delwyn Jones Planning Solicitor
Resources Department
Tel Ext 737737
Dated 13 September 2017

TO:

Simon Davis Planning Officer

REF:

P/88/17/CLE

CONSULTATION

ADDRESS : The Bungalow Newlands Nursery Pagham PO20 1LL

NATURE OF USE : OPERATION : Lawful development certificate for an existing bungalow to be used as a dwelling that is not occupied in connection with farming.

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 NPPG GUIDANCE ON LAWFUL DEVELOPMENT CERTIFICATES[LDCs]

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

The application is for breach of an agricultural occupancy condition so the time limit is 10 years under the above ie 10 years is breach of condition time limit and this is not a creation of a dwelling – but a condition controlling use of the dwelling. The application is so phrased.

The time period is ; - 23/8/07 to 23/8/17 ie 10 years to date of the application.

The evidence does satisfy this test.

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 sufficient and is precise and unambiguous.

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	Letter identifies condition in ref P/39/49 dated 1950 and breach commenced circa 2001 on sale of surrounding farm/horticultural land This PP is exhibited to the statement by Mr Goemans	
2	Application – time period 10 years to 23/8/07 – 23/8/17	
3	Plans x 2 identify Bungalow location and surrounding land	
4	ref P/39/49 dated 8 /2/1950 –occupy bungalow as farmhouse in connection with farming of at least 35 acres in “immediate vicinity “	Note unusual and no compliant with 2017 model condition of a condition some 67 years old by now
5	12 June 2001 Transfer of Newlands Nursery to Roundstone Nurseries	
6	Statement by FC Goemans to effect condition b breached since 12 June 2001 when most of land sold to Roundstone nurseries so that occupier of the bungalow no longer farmed “35 acres in immediate vicinity”	

Conclusion

The condition was phrased in 1950 in a manner not conforming to model conditions applicable today. le modern conditions simply require “occupiers or dependants work in agriculture or be retired farmers ” thus keeping the condition more flexible and applicable to changing conditions.

But once 35 acres were no longer farmed by the bungalow occupier after the 2001 sale the condition was breached .It Has been breached since then for some 16 years.

The case is proven on balance of probability on the evidence produced and listed above.

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.- see plans
3. describe any car parks or other curtilage uses/space

ref/lgdr/lprec/pl/cleudetcmodelmem