

FROM:

Delwyn Jones Planning Solicitor
Resources Department
[REDACTED]

TO:

Damian Sullivan Planning Officer

Dated Friday 29 November 2013

REF:WA/47/13/CLE/ CONSULTATION

**ADDRESS : THE BARN BROOKFIELD FARM EASTERGATE LANE WALBERTON
BN18 OBA**

**NATURE OF USE : FORMATION OF TWO COTTAGES FROM ONE S55(3)(A) TCPA
1990**

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.

I identify several issues within this case, in order to identify and isolate the main issue:-

1.Change of use of one cottage, approved under ref WA/50/96 into two –S55(3)(a). This is the sole issue that I address in this memo.

2. Agricultural occupancy condition [called AOC]. The evidence provided is of compliance by several occupations by farm managers and the applicant's son; Statement page 3 para 2.5 and page 4 para 2.9. So breach of this does not arise. The AOC applies to both cottages, because when the single cottage was approved, the AOC applied to the whole structure.

3.S106 Agreement from 1996 applies the same AOC to the whole structure.

Item 1 is the only issue I address in this memo. Items 2 and 3 appear to be matters that the applicant will ask us about later, dependant on the results of the CLEUD application, and will be judged at that time, according to the relevant criteria. So I need make no further reference to items 2 and 3, in this memo.

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 ie S55(3)(a) change of use of one cottage into two. So the time limit is 4 years under the above, ie creation of single dwellinghouse.

The time period is 8/10/09 to 8/10/13 ie 4 years to date of the application.

The evidence does satisfy this test. I explain why 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 sufficient and is precise and unambiguous.

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.

No	Item	Comment
1	Statement of History	Signed and subject to S193 TCPA 1990 obligations Proves 4 years separate occupation
2	Application	Says 2000 was date of subdivision
3	Annexes A and B Council Tax Bills	These date from 2003/2004 and c2009 to 2010 and 2012 and refer to different Band Ratings and different addresses at Brookfied –Stable cottage and The Barn , indicating a separate address
4	Annex C Mike Carter	Not seen but probative if as described
5	Annex D Sam Coates	Not seen but probative if as described
6	Annex E Mr Gillbard	Not seen but probative if as described

I have not seen some of these Annexes –as indicated. I do not know why they are excluded. I have relied on the descriptions given of them for comment.

Your site visit will confirm degree and methods of separation of the cottages. I note you refer to a “wall” dividing the cottages, in your notes.

The claim is proven on a balance of probability.

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 accommodation ie number of rooms etc
4. describe any car parks or other curtilage uses/space

ref/lgdr/lprec/pl/cleudetcmodelmem

ref