



MEMO

28 April 2008

FROM:

Planning Solicitor
Resources Department
Tel Ext

TO:

J Searle /J Baeza
Planning Officer

REF: Y/16/08 CLE CONSULTATION

ADDRESS : OAKTREES LITTLE MEADOW BILSHAM ROAD YAPTON

NATURE OF USE : C/U FROM FARM OUTHOUSE TO DWELLING

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.

I have also scanned previous file ref Y/81/06/CLE when an application in the same terms was refused due to insufficient evidence ie evidence did not link to the address precisely enough .Some of this evidence on the 06 file contradicts the evidence on the 08 file .

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.

In general the evidence is evenly balanced and such as to require challenging at an inquiry on oath if they still think they can discharge the burden of proof which I don't believe they have .

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 10/3/04 -10/3/08 ie 4 years to date of the application. I note that an Enforcement Notice now subject to appeal was issued in 2007 so under S191 there is a need to prove that the use achieved legitimacy before then.

The evidence does not satisfy this test .

On face of it they claim occupation for 4 years . However in the interim in 2007 an Enforcement Notice was served now subject to appeal and they need to show they

acquired immunity pre 2007 ie say 2003/2007 . The evidence is such that they cannot as explained 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. Family members evidence can be taken account of .

Evidence Analysed

No.	Item	Comments
1	<u>A Greenwood letter dated 6/3/08</u>	<u>He was not sopecifically employed to deal</u> with the application dwelling and fails to address /explain the source /degree of his knowledge . He seeks to explain the alleged error in plans describing the building as “ workshop ” “ office ” but only by stating this claim without elaboration. The error/misdescription tends to undermine the claims about knowing the land well . Not specific or detailed enough to prove a case The alleged misdescription casts doubt on other claims as one can only assume that this witness carried out his plan drafting competently and accurately with due care S Leeson Planning case officer in circa 1995 can contradict these claims and that the claimed dwelling was used as an outhouse in 1990s on her site visit
2	L Hyams	<u>Previously submitted no plans and no</u> <u>specific details of eg moving in</u> <u>redecoraton pictures photos CT</u> <u>registration or services supply</u> <u>The last sentence</u> “ happy to supply more information “ begs the question why haven’t you already ? <u>Being dated 2006 does not add to</u> <u>previous evidence</u>

3	P Stancomb	<u>Same as 2006 so seen before</u> No specifics about moving in or dates or visits as basis or exclamations for the claims The last sentence begs the same question
4	S Hyams	<u>Dated 18/2/08</u> Unspecific bar the general claim No details of refurbishment etc
5	Rutter and Co Accountants	<u>Specific and detailed as to address only but no site visits to confirm and no business details and must be read in context of much imprecise ambiguous other evidence to contradict</u>
6	<u>Barnham taxis</u>	<u>No details of interior and "pick up /drop off " spot is still in region of Little Meadows plus no details of whether author is herself taxi driver with direct knowledge of this or if its hearsay</u>
7	T Wesson postman	<u>Dated 2006 same as before</u> <u>He delivered letters to oaktrees the claimed dwelling it is not official Why should he recall so specifically Treat with caution</u> <u>This does not refer to dwelling –could be a business use ambiguous</u>
8	DB Shayne window cleaner	<u>Ambiguous does note refer to dwelling use</u> <u>Treat with caution could be business use</u>
9	<u>Amanda Fraser</u>	<u>2006 same as before</u> <u>clear precise evidence about a daughter staying at oaktrees in circa 2000 but no details about eg accommodation there, rooms set up and must be weighed against contradictory evidence</u>
10	<u>Mercado ? name unclear and undated</u>	<u>No evidential value as we dont even know the persons name</u> <u>We are given no details of accommodation or precise dates</u>
11	Deacon painter /decorator	<u>Undated</u> <u>No details of work done and whether for business /residential</u> <u>No details of accommodation set up</u>
12	Rockall carpenter bill	<u>No details if for business /residential or nature of work</u> <u>Address is still "Little meadows " not Oaktrees which suggests a link between the two and that oaktrees is not separate</u>

<u>13</u>	Fontwell Flooring	<u>Bill</u> Dated 2003 –address is “Little meadows”
<u>14</u>	<u>Ashcroft Flooring</u>	<u>2002 works done to dining room and hallway</u> 2002 + 4 = 2006 so may not be within the 4 years when Enforcement Notice could be served precise with dates but read in context of the rest Also fails to refer to set up of accommodation and explains why dining was so described ie so furnished
<u>15</u>	Noble Autos 2006	<u>No help at all</u> Makes no reference at all to living accommodation
<u>16</u>	<u>AT Hard</u>	Undated On face of it precise but ambiguous if read in context of other evidence
<u>17</u>	Emblen	<u>Undated</u> <u>Imprecise as to detail ,set up ,accommodation ,layout and links or not to main house</u> <u>Unsatisfactory in context of whole</u>
<u>18</u>	<u>Dore T/A Art of Stone</u>	<u>2003 billl for supply /installation of fireplace and refer to Oak trees</u> <u>ambiguous as to precise accommodation ,layout ,and doubted by context of other evidence</u>
<u>19</u>	<u>Pascoe Dentist</u>	<u>Dated 2007</u> Precise as to date lived at oaktrees ie 2000 but imprecise when set in context of whole

Overall comments

Overall the evidence analysed above is evenly balanced at best .Consequently they have failed to prove a case judged on “balance of probabilities “ . They have failed to discharge the onus of proof on them under para 8.12 of 10/97 Annex 8 .

The evidence overall is contradictory imprecise ambiguous .

I am told that they are not registered for Council Tax even since 2006 ! All services are via the main house Little Meadows . This suggests that the accommodation at Oaktrees is not truly an independent dwelling but rather an annexe given the nature of the arrangements viz overspill ,emergency provision for family , joint service provision ,joint Council Tax payments . The same set up as per Wakelin v SoSE 1978 JPL 769 appear to apply .

Advocacy at Inquiry 24/25 June

I am away on holiday then .In any event I believe that such a case justifies use of counsel as some Cross examination of Mr Greenwood may allege breaches of RTPI code which are best put by Counsel due to our regular dealings with this agent.

I can suggest Counsel .

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. failure to prove on balance of probability that independent dwelling existed for 4 years +
3. failure to prove on balance of probability that separate dwelling existed for 4 years +
4. evidence taken overall and compared with past applications for same use is vague ambiguous imprecise and contradictory

PS I will copy you the Wakelin case and some others for interesting comparisons

ref/lgdr/lprec/pl/cleudetcmodelemem