
Appeal Decision

Site visit made on 23 August 2016

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 September 2016

Appeal Ref: APP/J1860/X/16/3150418

Appelgaard Farm, Knowle Bank, Suckley, Worcestershire WR6 5DJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs Stephen and Rhianna Rudman against the decision of Malvern Hills District Council.
 - The application Ref 15/00817/CLE, dated 13 June 2015, was refused by notice dated 17 November 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use as a dwelling in breach of agricultural occupancy condition (condition 6 of planning permission 99/01450/FUL).
-

Decision

1. The appeal is dismissed.

Main Issue

2. An application for an LDC is not an application for planning permission. As such, the planning merits of any development are not relevant to the determination of this appeal. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

3. Government advice, set out within the Planning Practice Guidance (PPG), identifies that the onus is on the applicant to provide sufficient information to support an application for a certificate of lawful use or development. The appropriate test is whether, on the balance of probability, the development would be lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.
 4. In this case, the appeal relates to Appelgaard Farm, a modern dwelling for which planning permission was granted in 2000. Condition 6 of that planning permission stated that: *The occupation of the dwelling shall be limited to a person solely or mainly working or last working in the locality in agriculture as defined in section 336(1) of the Town and Country Planning Act 1990 or forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person).*
-

5. In order for the appellant to demonstrate that the condition was no longer enforceable it would have been necessary for the appellant to demonstrate that the dwelling had been occupied continuously for a period of ten years in breach of the condition, at the time the application was submitted to the Council in June 2015. The Council do not dispute that Mr and Mrs Rudman have lived at the property continuously for a period of ten years or more but the principal issue in dispute is whether Mrs Rudman was employed in agriculture during that time.
6. There is no dispute between the parties that Mr Rudman had not been employed in agriculture from 2003 up to the point the fruit growing business ceased to operate in 2008. From the limited information before me I have no reason to dispute that agreed position. Little information has been presented as to Mr Rudman's terms of employment post-2008, save for a Directors' Report, for the period ending 29 February, relating to Kinman Developments Ltd, a property development company. Mr Rudman is identified as a director of the company and the information submitted with the appeal indicates that property development has been his main source of employment since 2008 up to the present day. No information has been submitted that would lead me to doubt that account and, consequently, on the balance of probability, Mr Rudman has not been employed in agriculture since at least 2003.
7. Very little information has been presented to the appeal regarding the employment of Mrs Rudman. A letter from a Consultant Otolaryngologist, dated 06 June 2005, identifies that Mrs Rudman had suffered from a medical condition referred to as BPPV, albeit that the condition was 'well controlled' at the time of the letter. Notwithstanding that, the consultant described continuing symptoms of unsteadiness and disorientation. What is not clear is how the condition affected Mrs Rudman's involvement in the fruit growing business either prior to 2005 or for the period from 2005 until 2008 when the parties agree that the business ceased to operate.
8. Mrs Rudman suggests that the condition restricted her involvement in the physical activity of the agricultural business with activity limited to ferrying student workers to a local supermarket. The fact that students were employed would suggest that agricultural activity continued up until 2008 as suggested by the parties. Moreover, whilst the physical involvement of Mrs Rudman may have been limited, running an agricultural business is not limited to physical input alone. As with any business, administrative tasks would require a significant amount of time and effort from paying any employees, sorting out tax returns, ordering stock, selling produce etc. No information has been provided as to the extent of work in the agricultural business or who was responsible for specific tasks. Given that Mr Rudman was employed elsewhere the balance of probability would suggest that Mrs Rudman was likely to have had some input into the business between 2005 and 2008. It is not clear who else would have undertaken the administrative tasks associated with running the business.
9. The Council have referred to a review of the fruit farming business from 2008 in which Mrs Rudman was identified as a sole trader. However, that report has not been submitted by either party and I can attach little weight to any reference to it. Consequently, on the information presented I consider it likely that Mrs Rudman was involved in agricultural activity whilst living at the

dwelling between 2005 and 2008 but the extent of her involvement is not clear.

10. No financial information relating to the agricultural business has been submitted with the appeal. As such, the information before me provides no insight as to the nature and scale of the business, the extent to which Mrs Rudman was employed in the business, or the level of income that was generated. The appellants contend that the business did not make a significant contribution to the income of the household between 2006 and 2008. However, no corroborative evidence, such as tax returns or details of company accounts, has been submitted to support that claim.
11. As noted above, advice in the PPG makes clear that the onus is on the applicant (or the appellant) to provide sufficient information to support their application. In the absence of any corroborative information regarding the business, the information presented does not demonstrate, on the balance of probability, that Mrs Rudman was not employed in agriculture whilst living at the dwelling between 2005 and 2008. It follows that the information presented does not demonstrate that the dwelling had been occupied in breach of condition 6 for a continuous period of 10 years or more at the time the application was made.
12. In the case of applications for existing use the PPG states that: *If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.* In my view, that is not the case in this instance. The information before me is ambiguous as to the nature and extent of the fruit growing business at Appelgaard Farm between 2005 and 2008 and Mrs Rudman's involvement in that business.
13. Again, with reference to the PPG, a refusal is not necessarily conclusive that something is not lawful; it may mean that to date insufficient evidence has been presented. In determining an appeal I can only base my decision on the information provided. For the reasons given, based on that information, I conclude that the Council's decision to refuse to grant a certificate of lawfulness was well-founded. Accordingly, I conclude that the appeal should be dismissed.

Chris Preston

INSPECTOR