

Appeal Decision

Hearing held on 24 August 2016

Site visit made on 24 August 2016

by Paul Dignan MSc PhD

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

Decision date: 22 September 2016

Appeal Ref: APP/D0840/X/16/3144238

Tregenna, St Minver, Wadebridge, Cornwall, PL27 6RH.

- 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 Philip Henry Polkinghorne against the decision of Cornwall Council.
 - The application Ref. PA15/09974, dated 23 October 2015, was refused by notice dated 18 December 2015.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the existing use of the dwelling in breach of an agricultural occupancy condition.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition which is considered to be lawful.

Application for costs

2. At the Hearing an application for costs was made by Mr Polkinghorne against Cornwall Council. This application is the subject of a separate Decision.

Reasons

3. The appeal property, a dwellinghouse, was built in 1994 pursuant to planning permission E1/91/0789. The permission was for a retirement bungalow for the appellant's parents, retired farmers, and was subject to an agricultural occupancy condition, Condition 2, as follows: *The occupation of the dwelling hereby permitted shall be limited to a person wholly or mainly employed, or last so employed, locally in agriculture, as defined by Section 336(1) of the Town and Country Planning Act 1990, or in forestry or a dependant of such a person residing with him, including a widow or widower of such a person.* The reason given for imposing the condition was: *"The site is within the rural area in which it is intended to provide primarily for the needs of agriculture."*
 4. Mr Polkinghorne lived at Tregenna with his parents and inherited the property when his mother died in January 2005. He has lived there ever since. Up until April 2008 he worked in the hotel industry as his whole or main employment. From June 2008 to the present he has been a self-employed gardener, maintaining domestic gardens. About 80% of his work is lawn mowing, the rest
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- is trimming hedges, pruning fruit trees and tending flower and vegetable beds. In the winter he also does some handyman work. He has never done any work for farmers. None of his evidence is disputed.
5. The basis of Mr Polkinghorne's application is that his occupancy of Tregenna is in breach of Condition 2, and has been for at least 10 years and is therefore immune from enforcement by virtue of section 171B(3) of the 1990 Act, which provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
 6. The Council, however, considers that his occupation as a gardener means that he does in fact comply with the condition. Briefly, the Section 336(1) definition of agriculture includes horticulture, and the definition of horticulture adopted by the Chartered Institute of Horticulture (CIH) includes garden tending or maintenance, and Mr Polkinghorne's occupation as a domestic garden maintenance worker clearly falls within the CIH definition of a Professional Horticulturist.
 7. However, the CIH definitions relied upon by the Council are very widely cast. For example, activities such as garden design, plant conservation and horticultural therapy are included. It would not be sensible in my view to consider all workers carrying out such activities to be agricultural workers. Given that the use of land and certain buildings for agriculture is excluded from the definition of development by section 55(2) of the 1990 Act, to extend the definition of agriculture at Section 336 so as to include activities that have no relation whatsoever to the farming of land could have nonsensical consequences. As Lord Parker pointed out in the case of *Belmont Farm*¹, which looked at another aspect of the definition of agriculture², the terms of the definition cannot be viewed in isolation. The definition of agriculture in the 1990 Act is concerned with the use of land for production, rather than, for example, recreation, sport or domestic garden, and the term 'horticulture' must be limited accordingly. In this context it seems to me that Mr Polkinghorne's self-employment in his garden maintenance business, which is solely concerned with maintaining residential properties, cannot be construed as employment in agriculture.
 8. It is noteworthy also that his business does not provide for the needs of agriculture, nor is there any need for it to be located in a rural area. Put simply, it is not the type of employment that the exception to planning restraint in the countryside is intended to cater for.
 9. For these reasons I conclude that Mr Polkinghorne's occupation of Tregenna is in breach of Condition 2 of planning permission, and has been for the 10 years preceeding the application date. It is too late to take enforcement action against that specific breach, and it follows that the Council's decision to refuse to grant the LDC in the terms applied for was not well-founded. The appeal therefore succeeds.

Paul Dignan

INSPECTOR

¹ *Belmont Farm Ltd v Minister of Housing and Local Government* (1962) 13 P. & C.R. 417 QDB

² The definition in the Town and Country Planning Act 1947 is unchanged.

APPEARANCES

FOR THE APPELLANT:

Sarah-Jane Williams	Stephens Scown LLP
Sinead Lowry	Stephens Scown LLP
Philip Polkinghorne	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Felicity Coppleson MA MRTPI	Planning Officer, Cornwall Council
James Holman MRICS MRTPI	Principal Planning Officer, Cornwall Council
FAAV	

DOCUMENTS

- 1 St Minver Highlands Parish Council meeting minutes 8/12/15
- 2 Costs application – Council's response

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 23 October 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

by virtue of immunity under section 171B(3) of the 1990 Act, no enforcement action could be taken in respect of the existing use of the Tregenna as a dwelling in breach of an agricultural occupancy condition (Condition 2 of planning permission E1/91/0789) because on the application date, and for the period of 10 years prior to the application date, it had been used as such.

Signed

Paul Dignan

Inspector

Date **22 September 2016**

Reference: APP/D0840/X/16/3144238

First Schedule

Use of Tregenna as a dwelling in breach of an agricultural occupancy condition, Condition 2 of planning permission E1/91/0789, which states: *The occupation of the dwelling hereby permitted shall be limited to a person wholly or mainly employed, or last so employed, locally in agriculture, as defined by Section 336(1) of the Town and Country Planning Act 1990, or in forestry or a dependant of such a person residing with him, including a widow or widower of such a person.*

Second Schedule

Tregenna, St Minver, Wadebridge, Cornwall, PL27 6RH.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **22 September 2016**

by Paul Dignan MSc PhD

Land at: Tregenna, St Minver, Wadebridge, Cornwall, PL27 6RH.

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