The Planning Inspectorate

Appeal Decision

Site visit made on 7 August 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 29 August 2017

Appeal Ref: APP/P1133/X/16/3163304
The Bungalow, Rollsbridge Farm, Ide, Exeter, Devon EX2 9SU

- 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 Miss Ann Barradine against the decision of Teignbridge District Council.
- The application Ref 16/02098/CLDC, dated 27 July 2016, was refused by notice dated 22 September 2016.
- 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 a Class C3 use in breach of a condition.

Summary of Decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by Miss Ann Barradine against Teignbridge District Council. This application is the subject of a separate Decision.

Background and agreed matters

2. Planning permission was granted on appeal[1] in 1981 (the 1981 permission) for the erection of a 3-bedroom bungalow for occupancy by a person or persons engaged in agriculture at Rollsbridge Farm. The occupation of the dwelling was limited by Condition 3. The dispute between the parties is the interpretation of the 1981 permission and whether or not the current occupation has breached this condition.

3. Condition 3 says "the occupation shall be limited to:

   (a) Mr David Ernest Frederick Martin (including any dependents residing with him), or his widow or

   (b) a person solely or mainly employed, or last employed, in the locality in agriculture or in forestry as defined in Section 290(1) of the Town and Country Planning Act 1971, (as well as any dependents or such persons residing with him), or a widow or widower of such a person."

4. Mr Martin occupied the Bungalow until his death on 27 December 2010. He remained employed in agriculture until the onset of Foot and Mouth in 2001. From about April 2001 he set up a car dealing/repair business and also let out

[1] Appeal reference APP/5181/A/80/6643

some of his agricultural buildings to others. Thus he was employed in agriculture for about 20 years and was subsequently employed in a vehicle enterprise for 9 years and 9 months before his death. Since December 2010 the property has been continually occupied by a series of tenants none of whom are employed in agriculture. There is no evidence of abandonment.

5. The application was made for an LDC on the grounds that "the dwelling has been occupied in breach of Condition 3(b) for a period in excess of 10 years." In order to succeed on appeal the appellant must demonstrate, on the balance of probability, that the relevant condition has been breached for a period of at least 10 years at the date of the application which was 27 July 2016.

6. Planning merits are not considered in an appeal against the refusal of a Lawful Development Certificate (LDC) which must be decided on the facts of the case.

Reasons

7. Section 171B(3) of the Act[2] says that in the case of any other breach[3] of planning control, no enforcement action may be taken after the end of the period of ten years beginning with date of the breach. The appellant's argument is that the dwelling has been occupied by persons not employed in agriculture for more than 10 years and that is therefore a breach of condition 3(b) of the 1981 permission.

8. Relying on a High Court judgment, *St Anselm*[4], the appellant suggests that it is appropriate to submit an LDC application relating to part of a condition only. Consequently I shall consider that case in the context of the appeal before me.

9. In brief, *St Anselm* concerned a breach of condition subject of 5 enforcement notices regarding the use of car parking spaces serving a mixed-use development in Westminster. In that case it was not disputed that the majority of spaces had been let out to others and thus in breach of a condition that said they should be used only in conjunction with the occupation of the subject development. Justice Sullivan found that, although as a whole the car parking condition had been breached, it was "common sense" that the remaining 5 spaces (which had not been used by others for 10 years or more) should be used in the light of the condition which had been drafted to control the use of all the spaces.

10. The appellant also sought to rely on a case concerning working hours where an Inspector modified the terms of an LDC to re-impose restrictions on working hours for Sundays but found that the weekday working hours had been breached for more than 10 years. I have been given no further details of this case and it thus has limited weight in my determination.

11. In neither case do I find similarities with the subject appeal. I accept that there are circumstances where the terms of a condition could be subdivided. For example if a condition required a specified material for a roof covering and another one for the walls it may well be that in the event that the 'wrong' material had been used for the roof but the walls had been erected using, say, the approved brick there would be a breach only in terms of part of the

[2] The Town and Country Planning Act 1990 as amended
[3] Including a breach of condition
[4] *The Queen on the application of St Anselm Development Company Limited v First Secretary of State* [2003] EWHC 1592 (Admin)

condition. In those circumstances it would only be appropriate to take action (if expedient) in terms of the roof and thus part only of the condition. Hence, after a period of 4 years the "wrong" roof tiles would become lawful.

12. All these examples have a common factor because physical and functional elements could be considered separately without prejudice to the purpose of the condition. Thus 5 car spaces out of 19, Sunday as opposed to weekday working and materials for different parts of a building could be treated differently to other elements of the condition without changing its purpose or effect.

13. Coming back to the condition before me compliance with the occupancy condition can be achieved by alternatives, either by the named beneficiary **or** (my emphasis) by an agricultural worker. Compliance would also be achieved by satisfying (a) and (b). Between 1981 and 2001, Mr Martin satisfied both (a) and (b) because he was the named beneficiary and was employed in agriculture. After 2001 and until his death in 2010 he continued to satisfy Condition 3 because he was the named beneficiary. Compliance with the occupancy restriction therefore could be achieved by a variety of scenarios.

14. I acknowledge that the appellant applied for an LDC in respect of what she calls Condition 3(b). But because Condition 3 as a whole says that compliance can be achieved by (a) **or** (b), (or indeed by complying with both) it is wrong to treat the condition as divisible. As a matter of fact there is no such thing as Condition 3b.

15. Even if I had accepted the suggestion that the Condition 3 could be treated as two 'separate' conditions or could be divided into two parts, it remains the case that no action could have been taken against Mr Martin for his continued occupation of the Bungalow after the cessation of his agricultural work; the subject of what the appellant calls Condition 3(b). Because Mr Martin fulfilled the terms of the condition as a whole it follows that there was no breach of subsection (b) of that condition. This is the critical and determining factor in this appeal. The effect of the condition would have been materially different if there had not been a personal element included in its terms but that is not the case in this appeal.

16. As a matter of fact Condition 3 was only breached after 27 December 2010 and the immunity clock started ticking then. Thus at the date of the application for the LDC on 27 July 2016, the condition had been breached for a period of about 5 years and 7 months, a period considerably less than 10 years.

Decision

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the 'Class C3 use in breach of a condition' was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and uphold that decision. Consequently the appeal is dismissed.

Sukie Tamplin

INSPECTOR