
Appeal Decision

Site visit made on 1 December 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 07 December 2017

Appeal Ref: APP/H1840/X/17/3178558

The Old Orchard, Haselor Lane, Hinton-on-the-Green, Evesham WR11 2QZ

- 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 and Mrs N Brennan against the decision of Wychavon District Council (the LPA).
 - The application, Ref 17/00494/CLE, dated 8 March 2017, was refused by notice dated 14 June 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use or development for which a certificate of lawful use or development is sought is the occupation of the dwelling without complying with the agricultural occupancy condition of permission W/83/1345/0 and reserved matters application W/86/1244.
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Decision

1. The appeal is allowed and a Lawful Development Certificate is issued as attached to this decision. See formal decision below.

Background information

2. The outline permission, W/83/1345/0, granted on 19 January 1984, was for a new dwelling on what was then known as 'Parcel 3350, off Haselor Lane'. The reserved matters approval, W/86/1244, was granted approval on 17 September 1986. The following condition was attached to both permissions; *'the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 290 (1) of The Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person'*.

3. The appeal property, 'The Orchard', was then built. The Appellants purchased the property in December 2006 and the title was registered on 12 January 2007. Before their ownership there is evidence of vegetables being grown on the site and in 2003 the conversion of a former *'vegetable pack house and shop'*, for use as a stables and hay/straw store, was withdrawn (W/03/00142/CU). Under reference W/04/01907/CU, an application for conversion of a barn to agricultural workshops was refused on 13 January 2005. On 30 March 2006, another application, W/05/02277/CU, for a proposed *'change of use of agricultural workshop to include horticultural and garden machinery /tractor repairs'*, was refused permission.

4. An application was made in 2006 (W/06/01782/PN) for the erection of a new barn to include two stables. This was refused permission just after the appellants became owners of the property on 13 February 2007. Later that year, in May, a

retrospective approval was granted under reference W/07/00060/PN for two field shelters supposedly for cattle, horses and a chicken coop. On 13 June 2007 approval was granted (W/07/00740/PN) for the removal of an existing barn and the erection of a new one and in March 2008 the erection of a lean-to, on the end of a barn, was granted approval (W/08/00245/PN).

5. During my site visit I inspected the barn and stable building and noted that bales of hay and straw were being stored. The building also provided stabling and there were three horses grazing on the land between the house and the dilapidated greenhouses. On inspection it was evident that the latter had not been in use for many years.

Main issue

6. The main issue is whether or not the Council's decision to refuse to grant a LDC was well founded and, therefore, whether or not a certificate should be issued under section 195 (2) of the Act

Reasons

7. An appeal relating to a refusal for a LDC is confined to the narrow remit of reviewing the Local Planning Authority's (LPA's) reason for refusal and then deciding whether the reasons are, or are not, '*well-founded*'. The planning merits of the case do not fall to be considered. This LDC was applied for on the basis that the appeal property had not been occupied in accordance with an agricultural occupancy condition (see above) for a continuous unbroken period of 10 years prior to the date of the application. The relevant date, therefore, is 14 June 2007.

8. In their Statutory Declarations Mr and Mrs Brennan confirm that that they purchased The Old Orchard dwelling and the land in December 2006 and that they have resided there continuously since that date. They both confirm that, since the purchase, the land has not been used as a working farm or smallholding at any time. Mr Brennan confirms that he had retired in 2004 and has not been employed since then. Mrs Brennan was also retired at the time of purchase. Both confirm that their sole incomes have been their state pensions, plus rental income from a property in Evesham. They also indicate that neither of them has been solely or mainly employed in agriculture, either before or after they purchased The Old Orchard and the adjoining land.

9. These facts are corroborated in the Statutory Declarations of Mrs Carol Long, Mr Gerald Brown and Mr Graham Mullen who have known the Brennans since 2004, 2005 and 2006 respectively.

10. The Council indicates that the 2006 application was refused in part because the barn was for a stable use as opposed to agricultural use. It is then stated that the 2007 application addressed the concerns of the Council and that it was reasonable to assume that the machinery to be stored (tractor, bailer, haybob, roller, fertiliser, seed and compost) were to be used for agricultural purposes. At that time it was indicated that a hay crop, albeit of low value, was taken from the land and this was put forward as the main agricultural justification for the new barn in 2007. The officer report for the application referred to this as being agricultural activity being carried out on the holding.

11. The LPA has acknowledged that there has been no evidence of cattle being kept on the land and also accepted some time ago that the greenhouses had not been used in the last 10 years. But the LPA considers that the regular taking of a hay crop, as well as evidence relating to the previous applications (W/07/00060/PN and W/08/00245/PN) indicated that the land had been used agriculturally within the

relevant 10 year period. However, objections to both of these applications by the Parish Council were made on the basis that the proposed buildings were not for agricultural use, but for a use for the keeping of recreational horses. This is what the appellants are contending.

12. There is no evidence that that the Brennans have ever farmed the land. No crops have been grown, they have not been using the land for horticultural purposes and the only activity that bears any resemblance to an agricultural use has been the taking of the hay crop. I acknowledge the LPA's references to the taking of a hay crop and the fact that the applications had referred to the barn being needed for agricultural purposes. However, it is evident from all of the submissions that the hay and straw were simply related to the keeping of the horses. Even if some of the crop had been sold, as a matter of fact and degree, I do not consider that this could be construed as being an agricultural income for Mr and Mrs Brennan.

13. Thus, irrespective of the various applications for agricultural buildings on the land, I do not consider that, on the balance of probabilities, The Old Orchard dwelling has been occupied since 14 June 2007 by '*a person solely or mainly employed, or last employed in the locality in agriculture*'. The last persons to occupy the dwelling as such appear to be the previous owners who clearly operated the horticultural operation associated with the greenhouses. On the basis of the evidence submitted in support of the LDC application, I consider that the condition attached to the 1984 and 1986 permissions (see above) must have been breached in December 2006 when the Brennans moved into the dwelling. The time limit for the Council to take enforcement action in relation to the breach of condition has expired and the condition is, therefore, unenforceable.

14. For the relevant 10 year period, from 14 June 2007 until 14 June 2017, the dwelling was continually occupied in breach of the agricultural occupancy condition. I conclude, therefore that the Council's refusal to grant a LDC was not well-founded and that the appeal should succeed. A LDC will be issued. The LDC will certify that, on the date of the application, it was lawful for the Brennans to occupy the dwelling without complying with the agricultural occupancy condition. However this does not mean that the condition is removed. If a future owner complies with the condition then a later breach would not be lawful unless the fresh breach of the condition lasted for another continuous 10 year period.

Formal Decision

15. The appeal is allowed and a Lawful Development Certificate is attached to this decision.

Anthony J Wharton

Inspector



The Planning Inspectorate

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that, on 14 June 2017, the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto, was lawful within the meaning of section 191(1) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken against the occupation of the dwelling in breach of an agricultural occupancy condition.

Signed

Anthony J Wharton

Inspector

Date: 07 December 2017

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First Schedule

The development certified to be lawful is the occupation of 'The Old Orchard' in breach of the agricultural occupancy condition attached to outline permission (W/83/1345/0) granted on 19 January 1984 and the reserved matters approval (W/86/1244) granted approval on 17 September 1986. NOTE: The condition stated: 'the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 290 (1) of The Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person'.

Second Schedule

The Old Orchard, Haselor Lane, Hinton-on-the-Green, Evesham WR11 2QZ

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the occupation of the above property without complying with the agricultural occupancy condition.

It certifies that the use described in the First Schedule 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 development described in the First Schedule and to the land specified in the Second Schedule. Any use of the land 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.