



Appeal Decision

Inquiry Held on 16 May 2018

Site visit made on 16 May 2018

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2018

Appeal Ref: APP/Z1510/X/17/3180174

Scriveners Field, Old Road, Wickham St. Paul CO9 2PU

- 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 F Lambert against the decision of Braintree District Council.
 - The application Ref 17/00508/ELD, dated 21 March 2017, was refused by notice dated 16 May 2017.
 - 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 described on the application form as: Confirmation that the occupation by Mr Lambert as an agricultural worker is in compliance with condition 3 of permission 12/01177.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. An application for a certificate of lawful use is not an application for planning permission. The planning merits of any use or development are not relevant to the consideration of such applications, the assessment of which must be based upon relevant statute and judicial authority. The main issue in the consideration of the appeal is whether the Council's decision to refuse to grant a certificate was well founded.
3. More specifically, the application was submitted under section 191 of the Town and Country Planning Act 1990 (the Act). Under that section, an applicant seeks confirmation that an existing use or development is lawful. It is distinct from an application under section 192 of the Act under which is made to ascertain whether a proposed use or development would be lawful. The relevant date in considering an application under s191 is the date upon which the application was submitted to the Council.
4. In effect, the application sought confirmation that the existing use of the property by Mr Lambert was lawful, in accordance with condition 3 of planning permission 12/01177 which is an agricultural occupancy condition. In order to succeed it would be necessary to demonstrate that the dwelling was occupied by Mr Lambert *at the date the application was made* and that he was mainly or wholly employed in agriculture, locally, as required by the condition.

5. The condition has a continuing effect and the fact that occupation by a specified individual was or was not lawful on a specific date does not necessarily entail that future occupation by that person would necessarily be unlawful. The question of whether an occupier complied with the requirements of the condition would need to be assessed depending on the specific circumstances that existed at the given point in time.
6. At the Inquiry Mr Collins, the agent for the appellant, stated that the application was submitted under section s191(c), as opposed to s191(a). Sub-section (c) applies to situations where a person seeks to establish whether "any other matter constituting a failure to comply with any condition or limitation subject to which a planning permission has been granted is lawful". The Council did not defer from that assessment but, having considered the terms of s191 of the Act, I am not satisfied that is the correct limb under which the application, or the appeal, should be considered.
7. As explained at section 191(3) the premise of an application under s191(c) is that there has been a breach of condition (or some other limitation) relating to a planning permission but that breach has become lawful due to the fact that the time period for taking enforcement action has expired (unless an enforcement notice or breach of condition notice is in force). That is not what is being suggested in this case because the appellant contends that no breach of condition has occurred. The dwelling is newly constructed and there is no argument that occupation had become lawful due to the passage of time. Consequently, it appears to me that the correct limb under which to consider the appeal is s191(a), under which an applicant may seek confirmation that an existing use is lawful. In other words, that the use of the dwelling by Mr Lambert was lawful at the given date.
8. Even if I were wrong on that point it does not affect the outcome of the appeal because the main issues would remain the same whichever limb was considered. In order to grant an LDC I need to be satisfied that Mr Lambert was in occupation of the dwelling on the respective date and that he was mainly employed or last employed, locally, in agriculture.

Reasons

Whether Mr Lambert Was Living in the Dwelling at the Time the Application was Made

9. According to his proof of evidence Mr Lambert moved away from Scriverners Field in 2015 and took up residence at a property in Acton, Suffolk, when he separated from his ex-wife (now Miss Elizabeth Moore). He also states that he "moved back to the property" in November 2017 when Miss Moore moved out¹ and that he "completed the building of the agricultural dwelling in October 2017". A statutory declaration signed by Mr Lambert in the presence of a solicitor in July 2017 also stated that he was living in Acton at that time.
10. The application for an LDC was made to the Council on 21 March 2017. Given that the proof of evidence and the statutory declaration indicated that Mr Lambert was living elsewhere at the time I wrote to the parties in the lead up to the Inquiry to draw their attention to the nature of an appeal under s191

¹ Paragraph 3.1.1 of Mr Lambert's proof of evidence

and to question whether it would be possible to issue an LDC on the basis of the information presented².

11. In a letter of response Mr Collins confirmed that the house had been completed before the application was made and that Mr Lambert and his partner, Ms Crane, stayed at the property most evenings to decorate it, eating meals there but sleeping at the property in Acton. At the Inquiry itself he also noted that there is no definition of the word "occupy" in the Act and sought to argue that occupation of the dwelling did not entail that it must be "lived in". In his view there is a distinction between the two terms. In particular, he drew on a dictionary definition which, amongst other things, included the terms to fill, take up, situated in, take possession of and take control of.
12. Having regard to a personal copy of the Oxford dictionary³, the verb can have multiple meanings depending on the context:

Occupy *v. tr.* **1** Reside in; be the tenant of. **2** take up or fill (space or time or place). **3** hold (a position or office). **4** take military possession of (a country, region, town, strategic position). **5** place oneself in (a building etc) forcibly or without authority. **6** (usu. in *passive*; often foll. by *in, with*) keep busy or engaged.
13. The meaning of the word will be dependent upon the context within which it is used. In this context, the object is the dwelling and the words "to reside in; be the tenant of" would be most applicable. Thus, in view of the residential use for which permission was granted it appears to me that the term "occupied" means much the same as being "lived in".
14. The appellant may well have had possession of the keys to the property and spent time in the evenings decorating it in preparation for moving in. From the accounts of Mr Lambert and Miss Moore I have no reason to doubt that the main shell of the building was complete when the application was submitted but further decoration was required to bring it up to a comfortable standard. Whilst Mr Lambert undertook that work in the evenings, he was clearly occupied elsewhere during the day (presumably in his normal employment as a farrier) and slept in the property at Acton each evening. Presumably, the Acton property was his main address for Council Tax and other billing purposes and personal effects and belongings were still at that property, given that the new dwelling was in the process of being decorated to a standard that would enable it to be lived in comfortably. In July 2017 Mr Lambert stated that "I currently live at 14 Vicarage Lane, Acton, Suffolk". Thus, in his own words, he clearly considered that his home was elsewhere at that point in time.
15. In my view time spent decorating the property does not amount to occupation of the property and could be compared to a landlord who may redecorate during a gap between tenants. Having regard to the ordinary meaning of the word it seems to me that Mr Lambert had not "occupied" the dwelling in the meaning of condition 3 at the time the application was made.
16. It is useful to ask whether the Council would have been able to take enforcement action in respect of a breach of condition 3 on the basis of the use of the dwelling at that point in time, assuming, for the purpose of argument, that Mr Lambert was not employed in agriculture. Given that he was residing

² Letter dated 11 May 2018

³ The Oxford Dictionary and Thesaurus, Oxford University Press, 1995.

at an alternative address, that he worked elsewhere during the day, and that his main purpose for being at the property was to decorate it as opposed to live in it, I find that would not have been possible for the Council to claim that he had occupied the dwelling in breach of the condition.

17. Therefore, on the balance of the evidence before me, I find that Mr Lambert had not occupied the property on the relevant date. For that reason alone, an LDC should not be granted.

Whether Mr Lambert was Employed in Agriculture

18. At the time the application was made it would appear that the agricultural activity at the appeal site was being scaled down due to the divorce proceedings and that Miss Moore was in the process of reducing stock levels. There is no suggestion that Mr Lambert was engaged in farming activities at Scriverners Field at the time the application was made and, consequently, the question of whether he was employed in agriculture is dependent upon his work away from the appeal site.
19. Mr Lambert's employment is undertaken through his company FL Equestrian Ltd. As noted within his proof of evidence and reiterated when questioned at the Inquiry, the vast majority of his time is spent as a farrier. Whilst he refers to other activities such as 'ad-hoc' relief tractor driving and trimming the feet of goats and sheep there is nothing to suggest that those are anything other than a small almost incidental side-line. If his work as a farrier did not constitute agricultural employment it is clear that he could not have been "wholly or mainly" employed in agriculture.
20. The argument presented on behalf of the appellant is that his services as a mobile farrier would represent agricultural employment if the locations where the work took place were themselves in agricultural use. For example, if he was occupied shoeing horses on a farm which was in agricultural use then he would be engaged in an agricultural activity. I disagree with that assumption for reasons that I shall set out below. However, even if my conclusions in that regard are incorrect, the evidence presented does not demonstrate that the majority of Mr Lambert's work was undertaken on units that were in agricultural use.
21. The list at Appendix 5 of his proof provides a snapshot of the locations visited in January 2018, with a list of post codes and a description of what type of property it was. The description of 'farm' is used in the majority. However, without further information it is not clear if those 'farms' were actually in agricultural use. A property used for the stabling of horses or as a riding school may retain the name 'farm' as a historical reference to its origins but it does not follow that it remains in agricultural use.
22. I appreciate that case law has held that the use of land for the grazing of horses falls within the definition of agriculture at s336 of the Act (or s290 of the 1971 Act as applied at the time)⁴. However, the *Sykes and South Oxfordshire* judgement draws a clear distinction between the use of land for grazing, where grazing is the primary function, and the use for keeping horses for recreational purposes or as a riding school where grazing of the land is the secondary purpose, having regard to the use of the planning unit as a whole.

⁴ *Sykes v. Secretary of State for the Environment and Another*; *South Oxfordshire District Council v. Secretary of State for the Environment and Others*

In view of that judgement it seems likely that riding schools, livery stables, or other uses involving the breeding of horses or keeping and training non-agricultural horses such as showjumpers or racehorses would fall outside the definition of agriculture. Given that the information presented in Appendix 5 gives no detail of what activities were taking place within the respective sites I cannot conclude that any or all of them were all engaged in agricultural activity.

23. In fact, the evidence of Mr Lambert would appear to suggest the contrary. For example, reference is made to work shoeing the horses for a local hunt and two Suffolk Punches that are used in historical shows/re-creations. Both of those would appear to be recreational uses as opposed to agricultural, particularly given current hunting legislation which would preclude any argument that there is a related agricultural function of pest control. Moreover, given that horses are only rarely used for agricultural work in the present day, it seems likely that the majority of Mr Lambert's work would not be directly related to agricultural activity.
24. In any event, the question of whether a planning unit at a particular site visited by Mr Lambert is in agricultural use seems to me to be beside the point on the question of whether he himself was employed in agriculture. The definition of agriculture at s336 of the Act is as follows:
- "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in farming the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of woodlands where that use is ancillary to the farming of land for other agricultural purposes, and agriculture shall be construed accordingly.*
25. In effect, a farrier is not engaged in any of those activities but he/she provides a service as a metal-worker for the primary purpose of shoeing horses. It may be a service to those employed in agriculture, depending on the use of the land and the horses, but, of itself, the shoeing of horses is not an agricultural activity. If a farrier had a workshop it would not be an agricultural building but an industrial use in planning terms for the making and fitting of metalwork items. The fact that Mr Lambert provides a mobile service does not mean that the fundamental nature of his work changes depending on the use of the planning unit that he visits. I do not accept the premise that he would be employed in agriculture if visiting a farm but employed in the race horing industry if working at a stud. In either case he would remain employed as a farrier.
26. One could draw a similar analogy to a mobile tyre fitter. The nature of his job would not change depending on whether he was fitting a tyre on a tractor – the modern day equivalent of the horse – or on a domestic vehicle. The same could be said for any tradesman who may occasionally be required to work at a farm, such as a plumber, electrician etc. In other words, those tradesmen would not be employed "in" agriculture themselves but would be employed, temporarily, to provide a secondary service by someone who is.
27. In the case of Mr Lambert, I do not accept that employment as a farrier falls within the definition of agriculture as set out above. The vast majority of his

work, at the time the application was made, did not involve any of the activities listed within that definition.

28. Mr Coward, on behalf of the appellant, made reference to an appeal decision which, in his view, identified that persons working at a boarding kennels were employed in agriculture. If that was the case, he suggested that work as a farrier should also fall within the definition. Firstly, the nature of a boarding kennels is fundamentally different to services as a farrier so I see no reason why the same conclusion would apply to both. In any event, upon reading the decision it is clear that the Inspector did not conclude that a boarding kennels was an agricultural use.
29. The dwelling to which that appeal related was constructed in 1979 and was subject to an occupancy condition which limited the occupation to those employed at the boarding kennels at the site *or* those employed locally in agriculture or forestry. That did not imply that the boarding kennels was an agricultural use. The recent appeal sought to remove the condition on the basis that the dwelling was no longer needed in association with the kennels. The Inspector agreed on that point but was not satisfied that sufficient attempts had been made to market the dwelling for an agricultural or forestry worker. Accordingly, she allowed the appeal and granted planning permission but on the basis of a revised occupancy condition which removed reference to the kennels but retained the requirement that the dwelling should be occupied by those employed in agriculture or forestry. That decision offers no support to the case that a farrier is an agricultural occupation. For the reasons given I conclude that Mr Lambert was not employed in agriculture at the time the application was made.

Whether Mr Lambert was Employed Locally

30. Given my conclusions on the other two issues, the question of whether Mr Lambert was employed locally is not determinative. Appendices 6 and 7 of his proof depict where he travelled to work in January 2018. He maintained that snapshot was a reasonable portrayal of the average distances travelled although he did accept that two of his regular clients, including Euston Hall in Suffolk, were further away; the drive to Euston Hall being estimated to be approximately 50 minutes. Mr Lambert's evidence was given under oath and I have no reason to doubt that the snapshot is reflective of his normal working pattern.
31. No convincing or established method of calculating what constitutes 'locally' was presented by either party and, therefore, a judgement is required based on matters of fact and degree in any given case. I am not satisfied that the use of administrative boundaries would be particularly helpful because a site on the edge of one district could be closer to towns and villages within the neighbouring district and may rely on those towns for business. Looking at the specific details presented, the vast majority of Mr Lambert's visits were less than 20 miles away from Scriveners Field and, likewise, most were reachable within under half an hour. In the context of the rural nature of the roads in the area those travel times are not unduly excessive. It would appear that he has a number of regular clients and I consider it likely that people are likely to be aware of his services on the basis of word of mouth and local reputation, as opposed to any wider marketing campaign. It appears to be small scale local

business where clients “mainly” derive from the local area. In terms of location his work would not fall outside the requirements of the condition.

Conclusion

32. For the reasons given above I conclude, on the balance of probability, that Mr Lambert had not occupied the dwelling at the time the application was made. Moreover, he was not “wholly or mainly” employed in agriculture as defined by s336 of the Act. Nor was he a widower or dependent of such a person. For those reasons, the Council’s decision to refuse to grant an LDC to confirm that the occupation by Mr Lambert as an agricultural worker was in compliance with condition 3 of permission 12/01177 was well founded.
33. Accordingly, the appeal should fail and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Tony Collins MRICS MRTPI MCIT MILT MEWI

He/She called

Mr Fred Lambert

Ms Tina Crane

Mr Ian Coward MRTPI

Appellant

of Collins Coward Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Ms Ruchi Parek

Of Counsel

He/She called

Mrs Julie Kirkaldy BSc PGDip MRTPI

Planning Officer

INTERESTED PERSONS:

Miss Elizabeth Moore

Documents Submitted at the Inquiry

- 1) Completed Statement of Common Ground