The Planning Inspectorate

Appeal Decision

Site visit made on 18 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2019

Appeal Ref: APP/G2713/X/18/3210262
Sexhow Park Farm, Sexhow Lane, Hutton Rudby TS15 0ER

- 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 Mrs Judith Kitching, Miss Martha Kitching & Mrs Annie Stather against the decision of Hambleton District Council.
- The application Ref 17/00022/CLE, dated 4 January 2017, was refused by notice dated 9 February 2018.
- 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 domestic occupation of the farmhouse without compliance with an agricultural occupancy condition.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the appellants have shown that the dwelling has been continuously occupied in breach of an agricultural occupancy condition for more than ten years prior to the date of the application, such that the application of that condition would no longer be lawful.

Reasons

3. From the evidence provided by the parties, planning permission was granted for the extension and sub-division of the farmhouse on 24 October 1985[1]. This permission was subject to Condition 3 which states:

   "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 (i) 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."

4. The effect of s191(2) of the Act is that a breach of this condition would be lawful if no enforcement action could be taken in respect of it because the time for taking enforcement action had expired. Having regard to s171B(3) of the Act, the time limit for taking enforcement action in respect of a breach of

[1] Ref 2/130/IE/PA

condition 3 is ten years from the date on which the breach began. For the purpose of this appeal the breach would need to have begun on or before 4 January 2007 and been continuous thereafter. The onus is on the appellants to show that an LDC should be issued, with the standard of proof being the balance of probability.

5. This appeal turns on the meaning of the word "dependant". It would appear from the evidence provided that historically the land was farmed by Mr Kitching. When Mr Kitching died in 1985, and following the implementation of the aforementioned planning permission, the farmhouse was occupied by his widow, Judith Kitching, and two young daughters, Martha and Annie. It is undisputed that this arrangement was in accordance with the requirements of the planning condition.

6. Moving on in time, the daughters became financially independent and moved away from the farmhouse to live elsewhere. Statutory declarations are provided by the appellants, dated 9 December 2016, with the declaration of the eldest daughter stating that she returned to live at the farmhouse on a continuous basis, as a permanent place of residence, in 2005 and that this arrangement continued to exist at the time the statutory declarations were made.

7. There is no dispute that Judith Kitching, as the widow of Mr Kitching, occupies the property in accordance with the subject condition. Nor do the appellants seek to argue that the children needed to be specifically 'dependants' of their father.

8. The appellants' case, in essence, is that on returning to live at the property in November 2005, her employment status and age meant that Martha, the eldest daughter, was no longer dependent on her mother in terms of financial and emotional care and support. Accordingly, from this time the eldest daughter was in breach of the restrictive condition as she no longer met the definition of a 'dependant'. Indeed it is argued that since re-occupying the property, dependency roles have reversed, with Mrs Kitching being cared for by her eldest daughter, during times of poor health.

9. The Council, by contrast, considers that it would be unreasonable to form the view that the wording of the condition means the eldest daughter could not live at the property, given that such an arrangement would be commonplace and not limited to minor children; that even though the relationships between family members have evolved, this does not preclude emotional interdependency between those people and the Council would not seek to take enforcement action against family members living with Mrs Kitching.

10. Both the appellants and Council have referred to a case which was decided in the Court of Appeal, in support of their respective positions[2]. This case also involved an alleged breach of an agricultural occupancy condition and explored the meaning of the term 'dependant'. The Court found that as a matter of ordinary language, "dependants" is capable of referring to relationships involving emotional support /care without financial dependency. There was no requirement of financial dependency on the face of the condition, and the inclusion of the reference to widows /widowers shows that the condition was intended to include spouses without financial dependency.

[2] Shortt & Shortt v SSCLG & Tewkesbury BC [2015] EWCA Civ 1192

11. The purpose of granting planning permission subject to an agricultural occupancy condition is to provide accommodation that is needed for an agricultural worker, and it is reasonable to expect that such workers with a family will want to live in that accommodation with their family, hence the inclusion of "dependants" in the condition.

12. The Council say that the *Shortt* case supports its position that the concept of dependency can encompass the emotional support needed by family members on each other. However, the appellants distinguish their case from that in *Shortt*, stating that even though the Court case recognised dependency could extend beyond financial dependency, the further dependency was recognised as the family services and care provided to minor children. By contrast, they say, the care of minor children is not the issue in this case.

13. Following the appellants' reasoning, there would come a point in time where a child living in the appeal property, reaching adulthood and gaining financial independence, would quite abruptly face the prospect of having to reside elsewhere, or else be in breach of planning control. I am firmly of the view that this cannot have been the intention of the condition. Indeed the Council has indicated that it would not consider enforcement action in these circumstances.

14. Moreover I am not persuaded that a financially dependent adult can be considered as having broken all ties of dependency on a parent. Indeed in this case it is apparent from the statutory declarations submitted that, notwithstanding the health care requirements of the mother, the change in personal circumstances of the eldest daughter also suited a return to live at the farmhouse. It seems to me, on the balance of probability, reasonable to interpret this as part and parcel of the emotional support, however limited this might have been, that would naturally have been provided to her in a family setting, and which I have no reason to believe would not have continued thereafter.

15. Furthermore the declaration of the younger daughter, Mrs Stather, refers to the occupants living as a single household and sharing responsibility for the payment of household bills. I am not persuaded that in an arrangement where members of the same family live together as a single household, it can be said that there is no dependency whatsoever, in terms of care and support, on the mother from the eldest daughter.

16. Accordingly the daughters would not simply lose the status of dependants, in a broader planning policy context, and would continue to be able to occupy the farmhouse under the present arrangements without breaching the subject planning condition. I consider that to interpret otherwise would result in excessive interference with ordinary family life. To my mind this is consistent with the judgement in *Shortt*, in which it was recognised that within a family home, spouses can sensibly be described as dependent on each other. This supports the position that a 'dependant' is not limited to describing a child depending on an adult but may also be identified by the interdependency between adults. Likewise, it does not seem unreasonable to me to regard a mother and daughter, as in this case, as dependent on one another.

17. The fact that the eldest daughter would appear to have since moved out of the premises would not have a bearing on the above considerations.

18. There has been a representation made by a third party, indicating that there is demand to purchase the appeal property, notwithstanding the agricultural occupancy condition in place. This, however, is not relevant to my deliberations about whether the application of the subject restrictive occupancy condition would be lawful.

19. Therefore 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 domestic occupation of the farmhouse without compliance with an agricultural occupancy condition at Sexhow Park Farm, Sexhow Lane, Hutton Rudby TS15 0ER was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Merrett

INSPECTOR