



Appeal Decision

Site visit made on 13 February 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal Ref: APP/D3125/X/19/3235185

Grove Farm, Dean, Chipping Norton, Oxfordshire OX7 3JY

- 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.
 - The appeal is made by Mr Guy Avis against the decision of West Oxfordshire District Council.
 - The application Ref 19/00301/CLE, dated 15 January 2019, was refused by notice dated 10 July 2019.
 - 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 to allow the occupation of the dwelling by a person who is not solely employed in connection with the associated use of the adjoining building for equine or agricultural purposes.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Guy Avis against West Oxfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The issue of a Lawful Development Certificate (LDC) depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal.
4. The burden of proof regarding decisive matters of fact rests on the appellant. An appellant must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability'.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. In 1991, planning permission (ref 1339/91) was granted for development described as change of use of 'covered yard and bungalow from agricultural to equine use; convert covered yard to stables and fodder store'. The appeal site comprises a cluster of buildings, including a bungalow, to the west, and a grazing pasture to the east.
7. The substance of the appeal relates to condition 2 of the 1991 permission, which provided that *'the occupation of the dwelling shall be limited to a person solely employed in connection with the associated use of the adjoining building for equine purposes or by persons solely or mainly employed or last employed in the locality in agriculture as defined by section 336(1) of the Town and Country Planning Act 1990 or in forestry, or a dependent of such a person residing with him/ her or a widow/ widower of such a person'*. The reason for condition 2 was: *'Permission is given as an exception to approved policies and to ensure that the premises remain within the stock of dwellings for agricultural workers'*.
8. The failure to comply with a continuing requirement condition becomes lawful once there has been non-compliance for 10 years. The gist of the appellant's case is that he has occupied the bungalow for more than ten years in breach of condition 2. The LDC decision was made in July 2019, so the period between July 2009 and July 2019 is the relevant time frame.
9. The onus is on the appellant to show that the breach has occurred and has been continuous during this period. There appears to be no dispute between the parties that the dwelling has been occupied for the period in question. With regard to the wording 'solely employed in connection with the associated use of the adjoining building for equine purposes', the appellant argues that this is a very restrictive condition which has continuously been breached on two grounds.

The equine business

10. The appellant says that he is not, and never has been, an agricultural worker. Instead, during the period in question, he ran an equine business on the land. I note that the livery business operated between 1991 and 2009, and continued on a smaller scale after that date. This business made use of the building referred to in the condition but also utilised the manege and the grazing land. Given the wording of condition 2 requiring that employment is limited 'solely' to that connected with the use of the 'adjoining building', the appellant contends that the use of the land in addition to the building constituted a breach of condition.
11. The courts have set out a number of principles regarding the interpretation of planning permissions and conditions. In the case of *Sevenoaks DC v FSS & Pedham Place Golf Centre* [2005] 1 P&CR 13 (QBD 22.3.04), it was established as a planning permission is a public document, any obligation within it should be clearly and expressly imposed. Where the language of the condition is unambiguous, no extraneous words are to be implied to aid construction or for any other purpose.
12. *Trump International Golf Club Scotland Ltd & Another v the Scottish Ministers* [2015] UKSC 74) established that it is necessary to ask what a reasonable

reader would understand the words to mean when reading the condition in the context of the other conditions and the consent as a whole. It is further necessary to have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.

13. The 1991 permission describes the development as 'change of use of covered yard and bungalow from agricultural to equine use convert covered yard to stables & fodder store'. Condition 2 ties the occupation of the bungalow to the equine use on the grounds that the permission is 'an exception to approved policies and to ensure that the premises remain within the stock of dwellings for agricultural workers'.
14. I agree with the Council that it would make little sense for a livery business not to use the available land for grazing. On the face of it, there is little evidence within the 1991 documents to suggest that the Council at that time had any particular concern or reason to ensure that the livery business operated strictly within the confines of the building. Therefore, in my view, a common sense reading of condition 2 within the overall context of the permission suggests that this was not its purpose. Instead, its focus is to retain control over the occupation of housing in the countryside which would otherwise be contrary to policy if unrestricted. It is therefore difficult to conclude that any operation of the business on the appellant's own land outside the building would amount to a breach of condition 2.
15. However, even if I were persuaded by the appellant's interpretation, it would still be necessary to establish that such a breach of condition had occurred continuously for the relevant period. Nonetheless, there is little clear indication that the adjacent land has been in continuous operation in connection with the equine business for ten years.
16. The Council have provided a series of aerial photographs taken on a sequence of dates from 1999 to 2016. None of these photographs demonstrate convincingly the use of the land outside the building for any purpose that might be connected to a livery business. It would be expected that at least some of them would show horses on the land. A few animals are present in some of the images, but it is difficult to discern the presence of horses, particularly in the numbers that might be expected in an active business.
17. Although these photographs are not determinative in themselves, they cast reasonable doubt as to the extent of the use of the land in question as part of the livery. In the absence of any detailed evidence from the appellant, I am unable to be certain that the breach, if it were to be accepted as such, has taken place on a continuous basis for ten years prior to the date of the LDC application.

The additional role

18. The appellant states that he has undertaken additional employment for a third party and has thereby breached the element of condition 2 that requires him to be 'solely employed' in the equine business. A letter dated 3 July 2019 has been provided by Heythrop Hunt Ltd stating that the appellant acted as secretary for them from 1 May 1991 to 30 April 2019. Since 2011 he received £3,500 per annum for this role. It is likely that he was paid a similar amount prior to 2011 but no details are available for this time frame. The appellant

asserts that a significantly larger sum was paid during the previous period from 1991 to 2009, but little evidence has been produced to corroborate this information.

19. In the statutory declaration dated 4 April 2019, Mr Avis says he has been 'engaged on a part-time, self-employed basis' by Heythrop Hunt. The sum of £3,550 is shown as 'expenses' within the documentation and appears to have been paid on an annual basis. They calculate that for example, at an average rate of £10 per hour, this would amount to payment for approximately seven hours a week. The Council dispute whether this amounts to employment within the scope of condition 2.
20. However, although he disputes the Council's interpretation of the evidence, he offers very little more detailed information about the actual level of activity he undertakes. It is clear that the appellant's services are retained on a yearly basis. Nevertheless, in the absence of any clearer information about the terms and conditions of the role, it is simply not possible to reach the conclusion that it constitutes the continuous employment that would amount to a breach of condition 2.
21. I have taken into account the short summary tax returns/tax statements for the time scale in question. However, these documents do not provide any particular illumination of the source of the appellant's employment or income that is relevant to the appeal. In the absence of any sufficiently precise or unambiguous evidence to the contrary, the appellant has failed to demonstrate that he has not been solely employed in the equine business for the duration of the relevant ten year period.

Conclusion

22. Taking all of the available evidence into account, the appellant has failed to establish, on the balance of probabilities, that condition 2 of the 1991 permission had been breached for ten years or more at the date of LDC application. As set out in the Planning Policy Guidance¹, the refusal of an LDC does not preclude another application being submitted later on, if more information can be produced.
23. I therefore conclude that the Council's refusal to grant an LDC in respect of the occupation of the dwelling by a person who is not solely employed in connection with the associated use of the adjoining building for equine or agricultural purposes was well founded and that the appeal should fail. On that element I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Elaine Gray

INSPECTOR

¹ Paragraph: 005 Reference ID: 17c-005-20140306