



Appeal Decisions

Site visit made on 16 September 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal A: APP/B3438/C/20/3249454

Appeal B: APP/B3438/C/20/3249455

Land at Barncroft, Dunwood Lane, Longsdon, Stoke on Trent ST9 9QW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Andrew Mark Webster and Appeal B is made by Tracy Webster against an enforcement notice issued by Staffordshire Moorlands District Council.
 - The enforcement notice was issued on 20 February 2020.
 - The breach of planning control alleged in the notice is failure to comply with condition No 4 of planning permission Ref 2350/62T granted on 30 May 1962.
 - The development to which the permission relates is for a farm workers cottage at Dunwood House Farm. The condition in question states that: the occupation of the house shall be limited to persons employed or last employed locally in agriculture as defined in Section 119(1) of the Town and Country Planning Act 1947, or in forestry, and the dependants of such persons. For the avoidance of any doubt Section 119(1) of the Town and Country Act 1947 definition 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 this use in farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly."
 - The notice alleges that the condition has not been complied with in that the house at Barncroft is being occupied by persons not employed or last employed in agriculture or in forestry.
 - The requirement of the notice is:
Cease the occupation of the house 'Barncroft' which is shown edged red on the attached plan number EN1 by any persons not employed or last employed locally in agriculture as defined in Section 119(1) of the Town and Country Planning Act 1947, or in forestry and the dependents of such persons.
 - The period for compliance with the requirements is 12 months.
 - The appeals are proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Mr and Mrs Webster against Staffordshire Moorlands District Council. This application is the subject of a separate Decision.

Background Matters

3. The bungalow at Barncroft was constructed following the grant of planning permission for a farm workers cottage at Dunwood House Farm in 1962. Condition 4 states that occupation of the house shall be limited to persons employed or last employed in agriculture as defined in Section 119(1) of the Town and Country Planning Act 1947 or in forestry and the dependents of such persons. Whilst the original farming enterprise at Dunwood House Farm was made up of around 30 acres, subsequent sales of land and property have split the original farm into smaller units and in July 2017, the appellants bought the appeal site which consists of Barncroft and around 1.7 acres of surrounding land.
4. The appeal site was sold to the appellants subject to the original agricultural condition but without any ongoing agricultural enterprise. A complaint was made to the Council in December 2018 alleging that the appellants were in breach of the condition limiting occupation to persons employed in agriculture or their dependents. The complaint referred to the appeal site making no money from farming, social media pages of plant sales and Mr Webster owning a motorcycle shop.

The appeal under ground (b)

5. An appeal on ground (b) is that the breach of planning control alleged has not occurred as a matter of fact. To succeed on this ground, the appellants need to show on a balance of probabilities that the breach has not occurred. The alleged breach in this case is non-compliance with the agricultural occupancy condition.
6. The wording of the condition does not contain the additional wording used in conditions imposed in more recent times which refers to persons being "solely" or "mainly" employed in agriculture. The condition in this case simply refers to being employed. The appellants state that the absence of the wording "solely" or "mainly" employed in agriculture suggests a lower degree of employment than that required if the extra wording had been used. Whilst the wording is different, it still requires employment in agriculture. The condition has to be read in a straightforward manner and in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood.
7. The reasons for the conditions in the planning permission include that the site is within the North Staffordshire Green Belt in which development is not normally permitted for purposes other than those appropriate to green belt land. As a new building in the Green Belt, the dwelling would not have been permitted unless the dwelling fell within a defined listed exception such as agricultural use. The appellants state that no harm to the Green Belt is proposed and the dwelling has been part of the landscape for over 50 years. However, in the absence of any application to remove the condition, it remains in force. With regard to the wording of the condition, the issue in dispute relates largely to whether the activities carried out at the appeal site fall within the definition of agriculture. Consideration would then need to be given to whether any agricultural use constitutes "employed in agriculture".
8. Agriculture encompasses horticulture and the full definition is given at Section 336 of the Town and Country Planning Act 1990 as amended "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 the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly". The preceding 1947 Act definition is the same and neither contains a separate definition of horticulture.

9. The appellants have referred to a number of decisions and judgements to support their appeal including "the Handyman case¹." The issue before the Inspector in that instance was whether the work carried out by the appellant constituted "horticulture". In the absence of a statutory definition, the Inspector referred to three definitions including the Oxford English Dictionary which defines a horticulturalist as "one who practices the art or science of cultivating or managing gardens, including the growing of flowers, fruit and vegetables." The appellants were referred to that dictionary definition in exchanges with the Council prior to the service of the notice.
10. The Council's view is that the activities that take place at the appeal site do not satisfy the condition as the buying and selling of plants does not constitute horticulture and that the keeping of a modest number of chickens and sheep is no more than a hobby. The appellants also rent a greenhouse of around 50 feet long which is to the rear of the appeal site on land owned by the previous owner of Barncroft. The onus is therefore on the appellants to show that the activities undertaken at Barncroft do fall within the definition of agriculture on the balance of probabilities. The appellants have referred to the Council wrongly applying a test of beyond reasonable doubt in assessing the evidence prior to making to a decision to serve the enforcement notice. Nevertheless, the Council did set out clearly the reasons as to why they did not consider the condition had been met.
11. The appellants state that they bought Barncroft with the intention of setting up a horticultural business to operate from the appeal site. At the time of the purchase, Mr Webster was employed as a Director of a motorcycle business known as Websters of Stoke on Trent. Mr Webster states that it was his intention to cease this employment once the horticultural business had been established and he ceased this employment on the 31 December 2019.
12. On 26 July 2019, two years after the purchase by the appellants, the Council visited the appeal site. At that time, only half of the greenhouse was in use for storage of potted plants and hanging baskets and also had some tomato plants. The other half of the greenhouse was not in use and was overgrown with ivy. There was a large concrete slab in the grounds with potted plants on it. There were trees and some flower beds to the front of the appeal site but no evidence of cultivation of the grounds to produce plants for sale. The Council refers to the ground being untouched and covered with grass other than the large concrete slab.
13. Following this visit, the appellants were asked to provide evidence that they produced the plants that they sold together with any business accounts and itemised invoices and sales. They state that they use the land at Barncroft to produce plants which they sell at local markets and online. The appellants have

¹ APP/B6855/X/16/3159582

around 12 chickens which roam freely around the appeal site and the eggs are also sold locally.

14. Between May 2019 and February 2020, various exchanges took place between the Council and the appellants. The Council was provided with a series of photographs and around 65 invoices for purchases largely from plant nurseries. Sales are said to consist of market stall sales, online and telephone sales and egg sales. Whilst the appellants have provided sales figures, there is limited evidence to show that any horticultural process takes place in between the buying and selling. The purchase of plants from nurseries which are then sold on at market stalls or online or by telephone sales does not involve horticulture. Whilst, the appellants state that plants are grown from seed, purchased in a poor state, tended, cultivated, grown on, there was limited evidence of that process at the time of the Council's visit. The purchase receipts and sales figures provided after the Council's visit are largely for the purchase of plants. There are some photographs of some packets of seeds but no evidence for example of regular suppliers of horticultural products or seeds to be used as part of an ongoing enterprise. There is limited evidence to show that the internet sales or market sales are part of a horticultural business as opposed to simply the sale on of plants.
15. The appellants state that a significant amount of work was required to be undertaken to clean and clear the land and greenhouse. However, there was limited evidence of land being cleared and the greenhouse was only half in use at the time of the Council's visit. The appellants refers to different areas being cleared at different times with a photograph supplied of dug up land but any clearing that has taken place has not provided land for the purpose of cultivation as the appearance of the appeal site is of the bungalow largely surrounded with lawns. It is therefore unclear how the clearance of the land related to agriculture particularly when plants are largely stored on either the large concrete slab or in the greenhouse.
16. I agree that the appellants do not have to have registered a business at Companies House or produce full business accounts but nevertheless, there appears to be limited records kept by the appellants to show how their business operates and the information that has been provided does not support any horticultural process. The modest income apart from egg sales comes from the buying and selling of plants both online and at markets rather than horticulture.
17. In terms of changes since the Council's visit in July 2019, but before the service of the notice in February 2020, the appellants did subsequently buy 6 acres of nearby land in October 2019 and purchased 10 Grey Faced Dartmoor sheep with the intention of building up to a flock over time to 30 sheep. The appellants do not clarify what is meant by "the rare breed flock is continuing to be developed" and the appellants still have 10 sheep. The appellants consider that the Council served the notice prematurely. However, the enforcement notice was served some 14 months after the initial complaint and more than 2 and a half years after the appellants purchased the land. The Council also allowed the appellants the opportunity to provide evidence to support the alleged agricultural use after the Council's visit in July 2019 and at any point the appellants could have made an application for a Certificate of Lawful Use.

18. Whilst the relevant period in respect of a ground (b) appeal is the period leading up to the issue of the notice, I did undertake a site visit which enabled me to see the areas described by the Council as part of their site visit including the greenhouse, the slabbed area and the sheep and chickens. I accept that there was a gap of several months between the Council's visit and the service of the notice but within that time, the appellants were given the opportunity to provide evidence to support compliance with the condition. The Council has taken into account the purchase of the 10 sheep and the land after their visit but the appellants have not referred in their evidence to any other significant changes that occurred in the period prior to the service of the notice. It is unclear for example whether any changes occurred to the nature of the activities undertaken following Mr Webster no longer being involved at the motorcycle shop from December 2019. It may be the case that the appellants business plans have now progressed and that the enterprise has expanded since the notice was served in February 2020 but that is not a matter before me for consideration.
19. The appellants seek to rely upon a number of appeal decisions and court judgements to support their case. However, each case will have been assessed upon its own facts and circumstances. For example, in a number of the cases provided, there is no dispute that the various enterprises were in agricultural use which is not the case here. In the Shortt decision and Court of Appeal judgement², there was an agricultural enterprise of a farm and no dispute that Mrs Shortt did satisfy the condition, the issue was whether or not her husband and children were dependants. In the Grithill Farm decision³, again there was a long standing farming enterprise which included sheep and cattle but the enterprise was then affected by BSE which reduced the extent of the business. However, the Farm was still registered as an agricultural holding and audited accounts were kept and the Inspector found that the agricultural condition was still being met.
20. In the Wood decision⁴, there was no dispute between the parties that Mrs Wood spent half of her working week in agriculture. There is no similar agreement in this case where the parties are not in agreement as to which of the activities undertaken by the appellants constitute agriculture. Schedules are provided of monthly, weekly and seasonal work although the nature of the business which includes internet sales will not have a pattern of hours. Nevertheless, the modest number of animals and the degree of care that they are likely to require does not, in my view, by itself meet the requirement of "employed in agriculture."
21. Of the decisions referred to, only the Handyman case previously referred to deals specifically with horticulture. In that case, the Inspector had to consider whether the appellants business was horticultural and a similarly worded condition to the condition in this appeal had been imposed in the 1960s. the Inspector drew a distinction between providing basic gardening maintenance and horticulture and found that there was limited documentary evidence to support the assertion that horticulture was part of the appellant's employment. The appellants have referred to the Shortt decision for being authority that dictionary definitions are not helpful but that comment has to be seen in

² Shortt v Secretary of State for Communities and Local Government and Tewkesbury Borough Council 2015 EWCA Civ 1192

³ APP/J1860/A/04/1161455 /1149430

⁴ APP/C/92/U2615/624549-50

- context. The appellants consider this definition to be somewhat broad in the context of an agricultural occupancy condition and that horticulture is more concerned with the use of land for production be that of flowers, shrubs, herbs or fruit and vegetables. It is unclear as to why the appellants consider the substitution of "cultivation" with the "use of the land for production" to be appropriate and whether in practical terms that imposes a lower threshold for the appellants to meet. Nevertheless, it is the case that the buying and selling of plants requires a horticultural element to fall within the definition of agriculture.
22. With regard to the nature of the work being undertaken in this case, I have not been provided with any evidence from the appellants of any practical horticultural experience or any qualifications. There is no information about Mrs Webster's previous employment so it is not known if she had previous experience of horticulture before buying Barncroft. The only information with regard to the appellants' employment is of Mr Webster's previous long term employment in the motorcycle business.
23. The appellants refer to the nature of the "start-up partnership" at Barncroft being unlikely to be of a scale that would justify planning permission for a new dwelling and that the Council is unreasonably asking the appellants to meet a higher bar and undertaking a complete re-consideration of the 1960s application. Instead, the appellants refer to a clear intention on their part to set up a horticultural business from the outset. I agree that an assessment of whether or not the relevant condition is being complied with is not an application for a new dwelling but equally an intention to establish a business is not sufficient to meet the ongoing condition. I do not share the appellants view that the Council did not give them reasonable time and space to develop the business which was in its first three years or that it was appropriate to delay serving a notice when a complaint had been made and investigations made. There is limited evidence as to how the start-up partnership proposed to develop from the time of purchase in July 2017 and more significantly how the condition was being complied with at the time of the issue of the notice.
24. On the evidence before me, on the balance of probabilities, I find that the breach of planning control as alleged has occurred as the appellants are not persons employed or last employed locally in agriculture. The appeals under ground (b) must therefore fail.

Other Matters

25. The appellants are critical of the Council's investigation and the subsequent decision to serve the enforcement notice which they considered not to be expedient. However, my remit within this appeal is limited to consideration of the ground(b) appeal before me.

Conclusion

26. For the reasons given, I conclude that the appeals shall not succeed and I shall uphold the enforcement notice.

E. Griffin

INSPECTOR