



Appeal Decision

Site visit made on 11 January 2021

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 22 January 2021

Appeal Ref: APP/K0235/X/20/3257269

New Gains Farm, Bedford Road, Turvey, Bedford MK43 8BA

- 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 John and Mrs Hayley Keyte against the decision of Bedford Borough Council.
 - The application Ref 20/00199/LDE, dated 24 January 2020, was refused by notice dated 28 April 2020.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is occupation of New Gains Farmhouse for a continuous period in excess of 10 years in breach of agricultural occupancy condition.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the matter constituting a failure to comply with a condition which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr and Mrs Keyte against Bedford Borough Council. This application is the subject of a separate Decision.

Reasons

3. In 1964 outline planning permission was granted for the erection of a detached farmhouse at New Gains Farm, and in 1969 reserved matters approval was granted for the same development. Attached to the permission and the approval is a planning condition that limits occupancy of the house to 'persons employed in or last employed in agriculture'. The Appellants claim that they have been living in the house since 1995, firstly as tenants and then from May 2006 as owner occupiers, in breach of the occupancy condition. They therefore claim, given that their occupancy has lasted for in excess of ten years prior to the date of the application, that their occupancy is lawful.
4. National Planning Practice Guidance (NPPG) states, at paragraph 006 of the section on LDCs, that "The Applicant is responsible for providing sufficient information to support an application" and that "...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify a grant of a certificate on the balance of probabilities".

5. The main issue in the appeal is whether the Appellants have provided sufficient information to justify a conclusion that their occupation of New Gains Farm has been in breach of the occupancy condition continuously for in excess of ten years prior to the date of the application.
6. The application followed another submitted in 2017 and sought to address the Council's reasons for refusal of that application, which focused on their view that the applicant's had failed to provide sufficient information on various matters. The Appellants submitted with the appeal application all that had been submitted with the previous application, plus statutory declarations by both Appellants, third party letters of support, letters from the employers of both Appellants, information regarding the Council Tax status of New Gains Farm as a dwelling, the Land Registry title deed for the property, and utility bills.
7. Given the extensive documentation that was submitted with the appeal application it is surprising that it is stated in the Officer Report on the application that "The applicant's resubmission does not provide any new information or evidence to that submitted with planning application reference 17/02635/LDE which would enable the Council to determine the application". But the application was determined and there is no reference to the evidence that was submitted in the Officer Report, and there is no analysis to justify the conclusion that "There is insufficient information of a breach of agricultural occupancy condition for the requisite period".
8. The statutory declarations are compelling and with the other evidence provided are 'sufficient information'. The Council has not provided any evidence, nor have they referred to any evidence of substance from others, to contradict that provided by the Applicants or to make their evidence less than probable.
9. The Appellants have provided sworn and other employment evidence, corroborated by third parties, that only leads to one conclusion, that they have not been employed in agriculture at any time during their occupation of the dwelling. The statutory declarations clearly and unambiguously identify their residential property. This property is clearly identifiable on the ground and is a single planning unit. Their use of land outside the planning unit for equestrian purposes is not relevant, nor is the grazing of sheep on land in Mrs Keyte's ownership by others. There is no evidence to support the Council's comments about the employment status of the Appellants' two children. The circumstances of *R (on the application of Sellars) v Basingstoke and Deane Borough Council [2013] EWHC 3673* are entirely different to the circumstances of this case.
10. The Appellants' evidence is clear, precise, unambiguous, and more than sufficient to justify a conclusion, not even on the balance of probability, that they have lived in the dwelling in breach of the occupancy condition since 1995.
11. For the reasons given above, and on the evidence now available, the Council's refusal to grant an LDC in respect of occupation of New Gains Farm for a continuous period in excess of 10 years in breach of an agricultural occupancy condition at New Gains Farm, Bedford Road, Turvey, Bedford was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector



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 24 January 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwelling has been occupied continuously by persons not employed in agriculture since 1995.

Signed

John Braithwaite

Inspector

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First Schedule

Occupation of New Gains Farmhouse for a continuous period in excess of 10 years in breach of agricultural occupancy condition

Second Schedule

Land at New Gains Farm, Bedford Road, Turvey, Bedford MK43 8BA

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place 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 extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 January 2021

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Land at New Gains Farm, Bedford Road, Turvey, Bedford MK43 8BA

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Scale: not to scale

