The Planning Inspectorate

# Appeal Decision

Hearing Held on 18 January 2021

**by Roy Curnow MA BSc(Hons) MRTPI**

**An Inspector appointed by the Secretary of State**

**Decision date: 15 February 2021**

**Appeal Ref: APP/Y9507/X/19/3232691**
**Buryfield Cottage, Sheepwash, Elstead, Midhurst, West Sussex GU29 0LA**

- 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 A Shaxson against the decision of South Downs National Park Authority.
- The application Ref SDNP/18/05093/LDE, dated 28 September 2018, was refused by notice dated 25 April 2019.
- 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 occupation of a dwellinghouse without complying with an agricultural occupancy condition.

## Decision

1. The appeal is dismissed.

## Application for costs

2. At the Hearing an application for costs was made by Mr A Shaxson against the South Downs National Park Authority (the NPA). This application is the subject of a separate Decision.

## Procedural Matters

3. Given the subject of the appeal, I was of the opinion that there would be no need to visit the site, as no benefit would arise from doing so. The parties were consulted on this. The NPA responded prior to the Hearing, setting out their agreement to this course of action. The appellant agreed to this during the Hearing. In the circumstances, and as no-one would be prejudiced, I did not visit the site prior to making my decision.

4. The application that forms the subject of this appeal was initially 'determined' by Officers of the NPA on 7 January 2019. However, as Mr Shaxson was a member on CDC, its standing orders required the decision to be taken by the Planning Committee. The appellant requested that the application be referred to that committee and, thus the NPA withdrew the 'decision'. The application was subsequently put before the Planning Committee where the decision to refuse the application was made.

5. In the Hearing I was provided with a copy of what was referred to there as the "erroneous decision". The outcomes were the same and the wording of the two decisions was not materially different. In the circumstances, there would be no

prejudice to either party to determine the appeal on the basis of the 'second' decision.

**Reasons**

6. The evidence shows that Buryfield Cottage is a detached dwellinghouse that is set in the open countryside close to agricultural buildings. Outline planning permission was granted for its erection by Chichester District Council on 14 August 1984, by virtue of planning permission ES/12/84 (the permission).

7. Condition 3 attached to the permission reads

*"The occupation of the dwelling shall be limited to a person solely or mainly employed or, having ceased employment, last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry including any dependants of such person residing with him or her or a widow or widower of such a person."*

The reason for the condition reads

*"The site lies in a rural area and an Area of Outstanding Natural Beauty where, in accordance with Structure Plan policy, development unrelated to the essential needs of agriculture and/or forestry would not normally be permitted."*

8. The appellant sought a certificate of lawfulness under section 191 of the 1990 Act for the use of Buryfield Cottage without complying with condition 3 ('the application'). The date of the application was 28 September 2018. Amongst other things, section 191(3) sets out that a failure to comply with any condition is lawful at any time if: (a) the time for taking enforcement action in respect of the failure has then expired; and (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

9. Section 171B of the Act sets out the time limits for enforcement action to be applied in breaches of planning control. Breaches of conditions are addressed in section 171B(3) which defines the time limit as 10 years.

10. As there is no enforcement notice relating to the breach, the appellant has to demonstrate on the balance of probability that condition 3 had been breached continuously for a period of 10 years at the date that the application was made. Whether this was the case is the main issue in the appeal.

11. Buryfield Cottage was built in 1985-6 and was then occupied by a cowman until 25 November 1991. Following his departure, the appellant moved into the house on 24 December 1991. He did so as a tenant of Slate House Farms, an agricultural business of which he was a director. This company ceased agricultural activity on 30 June 1995. Save for a 6-month break in 1997, he has lived in the house ever since. During that break, the appellant said that the dwelling was occupied by a couple that were not employed in agriculture, a point that was not contested by the NPA.

12. Details of the employment of the only other person reported to have lived in the house during the relevant period, Ms Jane Whittaker, were given by the

appellant at the Hearing[1]. The NPA did not argue that she complied with the condition, and I have no reason to find that she did.

13. At the Hearing, the NPA said that the appellant ceased employment in agriculture in 1999. He clarified the position, stating that he retired from agriculture in 1995 with the demise of Slate House Farms. However, from then until 1999 he considered his activities as a councillor on Elsted and Treyford Parish Council ('ETPC') to be a 'part time interest'. As such, he was of the opinion that he still complied with the condition as he was last employed in the locality in agriculture. The Council accepted that this was the case.

14. The appellant's view was that this changed, and he no longer complied with the condition, from May 1999 when he was elected to Chichester District Council ('CDC'). From that time on, in addition to the 'normal' duties of a councillor on ETPC and CDC, he represented CDC on the Sussex Downs Conservation Board and South Downs Joint Committee from 2003 to 2011 and, from 2010 to 2015 was CDC's representative on the NPA. In addition, he was elected as a councillor to Harting Parish Council ('HPC') in May 2015. He was a councillor on CDC, ETPC and HPC on the date of the application.

15. A substantial amount of evidence was submitted showing the nature of the appellant's commitments to CDC, (including the bodies he represented for it), as well as ETPC and HPC, and the time these took up. The NPA agreed at the Hearing that its decision did not challenge the appellant's claim to immunity on the grounds that the time that he had committed to the activities was insufficient to breach the condition. Its position was, rather, that these activities did not equate to the words "employed" and "employment" in condition 3. The parties agreed at the Hearing that this was the crux of the main issue.

16. Although there is no definition of these words in the Planning Acts, I was supplied with various definitions for them from other sources and it was agreed that there is more than one meaning to each.

17. Essentially, the appellant's argument was that there is no need for a person to be paid to be employed. In this regard, my attention was drawn to appeal decisions made by the Secretary of State for the Environment, Transport and the Regions in a letter dated 8 March 1998. The first of the appeals the letter refers to[2] related to an application for a lawful development certificate regarding the failure to comply with agricultural occupancy conditions. I refer to this as the 'Tandridge decision'. The second appeal[3] related to an enforcement notice aimed at the use of land as a caravan site and has no relevance to my decision.

18. I was not provided with the full text of the Tandridge decision. However, what I have been given is clearly relevant to the appeal and has been referred to in both parties' submissions. Paragraph 12.2 of the Annex to the Tandridge decision letter states that "*'employed' can take the meaning of spending time doing something for pleasure or out of interest, such as a hobby, regardless of the financial outcome, or of doing something with the intention of a financially*

[1] Including the submission of a 'Personal Tax Computation' for Ms Whittaker for the year 5 April 2017
[2] APP/X/96/M3645/2599
[3] APP/C/96/M3645/645617

*beneficial outcome, such as paid work"*. This accords with the arguments put forward in the Hearing and I see no reason to disagree.

19. The question is whether the activities carried out by the appellant for the various councils represents employment in terms of the condition. The Secretary of State's position in that appeal, which concerned a matter similar to that before me, is of considerable importance. He agreed with the Inspector's view that *"'employed' in the condition is to be given a reasoning more akin to the latter rather than the former"*, that is to say he favoured the "financially beneficial outcome" argument. I give great weight to this part of the Secretary of State's decision.

20. The context in which the permission was granted was discussed at the Hearing. It was agreed that application ES/12/84 would have been assessed using tests of functional need and financial viability. The purpose of these tests was directed at avoiding an abuse of the planning system. In terms of the latter test, it would have been necessary to have demonstrated that the farm busines would provide the occupant of the house with an appropriate level of income. That is to say, that it would be occupied by a person who was genuinely employed in agriculture as a paid occupation. This lends further weight to the finding in the Tandridge decision regarding a *"financially beneficial outcome, such as paid work"*.

21. I take the point made by the appellant that circumstances on a farm change over time. Be that as it may, my finding is that the meaning of employed and employment, in terms of the condition, is found in those parts of their definitions relating to paid work.

22. From this, two points follow. Firstly, that in order to show a breach of the condition, it is necessary to show that the employment undertaken by the appellant during the relevant period was paid employment. Secondly, that the NPA took an appropriate approach to determining the application.

23. In support of his contention that his activities for the various councils amounted to employment, the appellant submitted the Court of Appeal decision in *Parker v Yeo* [6 October 1992] and a letter[4] which references this decision. This case related to whether the respondent was qualified to hold office as a member of a local authority, in that case a city council, on the basis that his activities as a councillor equated to 'work' in section 79(1)(c) of the Local Government Act 1972 ('LGA'). The letter, which was appended to the appellant's statutory declaration, addressed a similar matter.

24. The appellant states that *Parker v Yeo* contains a 'very strong inference' that being a district councillor is work and, this being the case, then it must equate to employment. Whether or not this is so, the case was based firmly on the terms of the LGA and, as such, can only be seen through that prism. I have not been given substantive reasoning to show that the decision from *Parker v Yeo* has to lead to the conclusion that it applies in a case regarding the 1990 Act and involving an agricultural occupancy condition.

25. The structure of CDC was discussed at the Hearing, as was the financial reward/remuneration for councillors. The appellant stated that, in 2012-13 the "ordinary rate" was around £4000pa and that the current figure, shown on the

[4] Dated 16 May 2012 - from the Chief Executive of East Hampshire District Council

CDC website, was £5200pa. A document showing the latter was submitted at the Hearing[5]. The Council accepted these figures to be correct. From this, the appellant described his position as being "in essence dependent on" Ms Whittaker.

26. I was told that as CDC and NPA meetings were undertaken in the daytime this was the equivalent of full-time employment and, in addition, that CDC provided such things as insurance for members and was responsible for their health and safety. However, during this discussion, I was particularly taken by the appellant's statement that members were paid the same amount, irrespective of how much work they undertook. To my mind, a situation where the amount of work undertaken is a matter for an individual is not reflective of what would normally be held to be full-time paid employment. This gives credence to the NPA's submission that this is why what members receive is referred to as remuneration for the service they give.

27. This is not to say that the appellant did not give a substantial amount of his time to his councillor activities. This he has clearly demonstrated to be the case. The point is, though, to put it bluntly, it seems that he did not have to. I take the appellant's point that his activities as a community representative were markedly different from those of people undertaking voluntary work. However, this does not alter my finding that this did not equate to employment in the manner of condition 3.

28. In support of his position, the appellant submitted a Tax Return[6] that refers to 'Earned Income' from both CDC and the NPA. The Council remarked that this term was likely to be that given by the accountant compiling the return. In response, the appellant informed me that this is how the Inland Revenue describe it. However, I was not given any document to show this to be the case, or that the Inland Revenue would not have accepted this if described simply as 'Income' or even 'Remuneration' for the basis of a tax calculation. Therefore, it does not change my position on the appellant's activities for the various Councils and other organisations.

29. The Officer's report to the NPA Planning Committee made reference to the appellant's role with Raymed Limited. It appeared to suggest that the company's business was agricultural. The NPA submitted a screen shot of a Companies House document, relating to Raymed Limited. Whilst undated, I was told that it had been taken from the current internet record for the company. The reason for the document's submission was that it showed the appellant to be a Director of the company and his occupation was listed as "Farmer". The appellant informed me that his listed occupation reflected his position at the time of the company's incorporation. This was not countered by the NPA and I take it to be the case.

30. The appellant said, both in his statutory declaration and at the Hearing, that as he was not involved in agriculture the company had to pay Annual Tax on Enveloped Dwellings to enable him to live there. In his statement of case, he says that the company's business is owning and letting land and buildings, rather than "agricultural operations". No further evidence relating to the suggested agricultural nature of the company's business was brought forward at the Hearing by the NPA. Overall, the evidence before me does not show that

[5] Chichester District Council, Revised Scheme of Members' Allowances (2020)
[6] Self-Assessment Tax Return 06/04/12-05/04/13, Mr A M Shaxson

Raymed Limited is a company involved in agriculture. Therefore, the appellant's involvement with it does not conclusively indicate compliance with the condition.

31. The evidence shows that the appellant has not been employed in agriculture since 1995. His extensive engagement in activities relating to his various councillor and NPA roles, whilst these equate to work in terms of the LGA, my finding is that they do not accord with the words 'employed' and 'employment' in condition 3. As such, from the information before me, I find that the appellant was last employed in agriculture in the ten years up to the date of the application. Therefore, he has been unable to demonstrate, on the balance of probability, that there has been occupation of Buryfield Cottage without complying with the agricultural occupancy condition for a period of ten years.

*Other Matters*

32. I understand the appellant's comments regarding the time that it took the NPA to make its decision on the application. However, these have no relevance to my decision on the main issue. I agree that each application for a certificate of lawfulness has to be assessed on its merits, as is the case here.

**Conclusion**

33. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of occupation of a dwellinghouse without complying with an agricultural occupancy condition 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 Curnow*

Inspector

**APPEARANCES**

FOR THE APPELLANT:

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| Mr Ian Ellis BA(TP) MRTPI | Associate Director, Southern Planning Practice |
| Mr Andrew Shaxson | The appellant |

FOR SOUTH DOWNS NATIONAL PARK AUTHORITY:

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| Miss Nicola Golding | Principal Solicitor, Chichester District Council |
| John Saunders BA(Hons)TP Dip Tp MRTPI | Development Manager, Chichester District Council |

**DOCUMENTS**

1. 'Withdrawn' Decision Notice – Application NPA Reference SDNP/18/05093/LDE
2. Self-Assessment Tax Return 06/04/12-05/04/13, Mr A M Shaxson
3. Personal Tax Computation 5 April 2017, Mrs J Whitaker
4. Chichester District Council, Revised Scheme of Members' Allowances (2020)