



Appeal Decision

No site visit made

by Iwan Lloyd BA BTP MRTPI

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

Decision date: 08 April 2021

Appeal Ref: APP/B1740/X/20/3255228

6 Midgham Farm Cottages, Midgham Road, Fordingbridge, Hampshire SP6 3DA

- 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 Nikki Manston against the decision of New Forest District Council.
 - The application Ref 19/11586, dated 24 January 2020, was refused by notice dated 25 February 2020.
 - 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 'existing use as a residential dwelling being in breach of an agricultural occupancy condition'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition which is considered to be lawful.

Procedural issue

2. The parties have treated the LDC as a breach of a condition of an agricultural occupancy condition and this relates to Section 191(1)(c) of the Act as amended. I have considered this appeal accordingly. As the appeal would turn on the analysis of the history of the use of the property and interpretation of the law, I consider that no site visit was necessary in this case.
3. The relevant condition was attached to planning permission ref: RFR1052 granted on 4 January 1951 for the erection of three cottages at Midgham Farm and stated: 'subject to the cottages being occupied only by persons whose employment or latest employment is or was, employment in agriculture as defined by Section 119(1) of the Town and Country Planning Act, 1947 or in forestry or in an industry mainly dependent on agriculture and also the dependents of such persons as aforesaid'.

Main Issue

4. The main issue is whether the appellant has shown, on the balance of probability, that the agricultural occupancy condition was breached for a continuous period of 10 years immediately preceding the date of the LDC application. The relevant date is 24 January 2010.

Reasons

5. The case made by the appellant is that since 2005 when No. 6 Midgham Farm Cottages was purchased neither Mrs Manston nor Mr Manston were employed in agriculture. The appeal is accompanied with sworn statutory declarations witnessed by a solicitor empowered to administer oaths from Mr and Mrs Manston and Nicola Annie Hirst.
6. Mr Manston declares that prior to 2005 he undertook some agricultural work, but since 2005 Mr Manston has not worked in agriculture being a self-employed carpenter between 2004 and 2007, and was re-employed by Whitsbury Farm and Stud Limited working in general maintenance and estate properties from 2007 onwards. Mr Manston moved out of the appeal property in January 2019. A letter on 19 December 2019 from Whitsbury Farm and Stud Limited corroborates Mr Manston's declaration that he was not employed in agricultural work.
7. Mrs Manston was employed as a supply teacher when the property was purchased. In 2007 she retrained as a veterinary nurse and has since worked in several practices and currently works full-time for a vet practice in Fordingbridge.
8. Nicola Hirst who is a family friend of the Manston family corroborates the declarations of Mr and Mrs Manston that they have not held jobs in agriculture or received any income from agriculture.
9. The Council refers to a letter from Mrs Manston in August 2005 to the local planning authority indicating their compliance with the agricultural occupancy condition prior to the purchase of the property. The Council also refers to a letter from Whitsbury Farm and Stud Limited on 27 July 2005 indicating that Mr Manston worked for the company full-time from January 1994 until August 2004. The Council asserts that the evidence is contradictory and points out that Mrs Manston indicated that Mr Manston "never received any income from agricultural means".
10. The letter from Mrs Manston in August 2005 indicates that Mr Manston was employed in agriculture up until 1999 and refers to a letter from his latest employer. Mr Manston also declares that he undertook some work in agriculture prior to 2005. However, by 2007 Mr Manston in his current employment (general maintenance and estate manager) or his last employment (carpenter) was not working in agriculture for the relevant period. Mrs Manston was not involved in agriculture throughout the relevant period being a teacher and then a veterinary nurse.
11. Although the Council may have considered the appellant to have complied with the restriction at the time of purchase of the property by 2007 the condition was breached because neither person in occupation of the property whose employment or latest employment is or was, employment in agriculture.
12. The concern over contradictory statements is clarified given that Mrs Manston indicated that Mr Manston did not receive "any income through agricultural means nor has worked in any form of employment connected to agriculture since purchasing the property in 2005".
13. I therefore conclude on the available evidence that the appellant has shown, on the balance of probability, that the agricultural occupancy condition was

breached for a continuous period of 10 years immediately preceding the date of the LDC application.

14. The condition has not been complied with since 2007, being an uninterrupted period of 10 plus years prior to the date of the application, because the dwelling was occupied by persons not working in agriculture. The occupation of the dwelling by any person continuing the same breach of condition is thereby immune from enforcement action under Section 171(3) of the Town and Country Planning Act 1990.
15. For the avoidance of doubt, the lawful development certificate does not have the effect of discharging the condition, which remains in force. The lawful development certificate provides protection against enforcement for as long as the current breach continues, but not in the case where the condition is complied with again before a fresh breach commences in the future.
16. For the reasons given above I conclude, on the available evidence, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Iwan Lloyd

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 matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission ref: RFR1052 was granted on 4 January 1951 for the erection of three cottages at Midgham Farm subject to a planning condition which stated, 'subject to the cottages being occupied only by persons whose employment or latest employment is or was, employment in agriculture as defined by Section 119(1) of the Town and Country Planning Act, 1947 or in forestry or in an industry mainly dependent on agriculture and also the dependents of such persons as aforesaid'.

The condition has not been complied with since 2007, being an uninterrupted period of 10 plus years prior to the date of the application, because the dwelling was occupied by persons not working in agriculture. The occupation of the dwelling by any person continuing the same breach of condition is thereby immune from enforcement action under Section 171(3) of the Town and Country Planning Act 1990.

For the avoidance of doubt, the lawful development certificate does not have the effect of discharging the condition, which remains in force. The lawful development certificate provides protection against enforcement for as long as the current breach continues, but not in the case where the condition is complied with again before a fresh breach commences in the future.

Signed

Iwan Lloyd

Inspector

Date 08 April 2021

Reference: APP/B1740/X/20/3255228

First Schedule

Existing use as a residential dwelling being in breach of an agricultural occupancy condition

Second Schedule

Land at 6 Midgham Farm Cottages, Midgham Road, Fordingbridge, Hampshire SP6 3DA

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, 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 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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: 08 April 2021

by Iwan Lloyd BA BTP MRTPI

**Land at 6 Midgham Farm Cottages, Midgham Road, Fordingbridge, Hampshire
SP6 3DA**

Reference: APP/B1740/X/20/3255228

Scale: Not to scale

