



Appeal Decisions

Site visit made on 19 April 2021

by Katie Peerless Dip Arch RIBA

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

Decision date: 5 May 2021

Appeal A: APP/M2270/X/19/3234897

Lodge Nursery, Lidwells Lane, Goudhurst, Cranbrook, Kent TN17 1EJ

- 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 Patricia Ginn against the decision of Tunbridge Wells Borough Council.
 - The application Ref: 19/00774/LDCEX, dated 27 March 2019 was refused by notice dated 22 May 2019.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the occupation of the dwelling in breach of an agricultural occupancy condition (81/00881/OUT refers).
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Appeal B: APP/M2270/W/19/3243826

Lodge Nursery, Lidwells Lane, Goudhurst, Cranbrook, Kent TN17 1EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Patricia Ginn against the decision of Tunbridge Wells Borough Council.
 - The application Ref 19/02911/FULL, dated 17 October 2019 was approved on 12 December 2019 and planning permission was granted subject to a condition.
 - The development permitted is the erection of an agricultural workers dwelling without complying with a condition attached to planning permission Ref: 81/00881/OUT, dated 28 January 1982.
 - The condition in dispute states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed or, being retired, last so employed in the locality in forestry or in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, and any dependants of that person residing with him, or any widow or widower of that person.*
 - The reason given for the condition is: *The site of the dwelling is outside any area in which development would normally be permitted if it were not required for occupation by a person employed locally in agriculture or forestry.*
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Decisions

Appeal A

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.

Appeal B

2. The appeal is allowed and the planning permission Ref 19/02911/FULL for the erection of an agricultural workers dwelling without complying with a condition attached to planning permission Ref: 81/00881/OUT, dated 28 January 1982 at Lodge Nursery, Lidwells Lane, Goudhurst, Cranbrook, Kent TN17 1EJ granted on 12 December 2019 by Tunbridge Wells Borough Council, is varied by deleting condition 1.

Procedural matters

3. Planning application 19/02911/FULL was granted by the Council but this permission substituted another condition for the one that the appellants sought to have removed. The original condition stated: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or 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 a person residing with him), or a widow or widower of such a person; provided that the period of such past employment or employment prior to retirement shall have been a minimum of three consecutive years or to the reasonable satisfaction of the District Planning Authority.*
4. This condition was clearly similar to the one now imposed, as set out in the bullet points above, although it included the requirement for a 3 year period of past employment or employment prior to retirement to have been completed in order for a retired worker or their widow/er or dependents to comply with the condition. However, the application for the LDC that is the subject of Appeal A was made before the planning permission subject of Appeal B was issued and it is therefore the original condition that the appellant claims has been breached for 10 years.
5. Nevertheless, whether or not the original condition had been breached, there is now a new planning permission that requires the occupant to be employed, or to have been last employed in agriculture or forestry. If this permission has been implemented it would now apply to the property and run from after the date of the Council's decision in October 2019. If that were to be the case, the new condition cannot have been breached for 10 years whether or not Appeal A succeeds.

Main Issues

6. I consider that the main issue in Appeal A is whether the Council's refusal to grant the LDC was well founded or whether the evidence submitted demonstrates that the condition has been breached for a period of at least 10 years prior to the date of the application. On Appeal B, the main issue is whether the disputed condition continues to serve a useful purpose in respect of current planning policy on development in the countryside and the provision of agricultural workers' dwellings and meets the tests set out in the Government's Planning Practice Guidance.

Planning History

7. Planning permission for an agricultural worker's dwelling was granted in 1982 under reference 81/00881/OUT. The condition limiting the use to a person employed or mainly employed in agriculture is set out in full above.

8. Since that date there have been several attempts to gain permission to occupy the dwelling without complying with that condition, to have the condition removed or to use various buildings on the site for other purposes, such as a holiday let. These include the application for a LDC for the occupation of the dwelling without complying with the condition that is the subject of Appeal A.

Site and surroundings

9. The appeal site is a plot of land sited outside the village of Goudhurst in land designated as an Area of Outstanding Natural beauty (AONB). Parts of the site are steeply sloped but there are also flatter areas where, I am told, several polytunnels used to be located. There are some of these remaining to the west of the site, albeit in a degraded condition. The site contains a 3 bedroom bungalow and another building being used as living accommodation, as well as a storage barn.

Appeal A

10. Planning permission for a new dwelling for an agricultural worker was granted under refs: 81/0881/OUT and 81/1238/FULL and, I am told the building was completed and occupied by 1983. The appellant's father and mother, Mr and Mrs Greengrow, lived in the property from the outset and there is no dispute that the site was, for some time, used as an agricultural business growing fruit on a commercial basis. Indeed, the appellant has submitted 2 statutory declarations setting out her knowledge and understanding of the history of the site in which she states that she worked for her parents on the smallholding for a time on a full time basis, but for minimal pay, until about 1987/1988 by which time she had taken other employment. She confirms that she was married with children and not living on the site.
11. However, the appellant's father also had a full time job as a self-employed audiologist until he retired in 1989 and her mother was also employed full time, as a tax inspector. Mr Greengrow passed away in 1994 and Mrs Greengrow continued to live in the property until she too passed away in 2017, when the property was rented to tenants, who appear to be in breach of the condition as I am told they are not employed in either agriculture or forestry. The appellant's case is that the business on the site ceased in 1990 and that neither of her parents ever complied with the occupancy condition.
12. There is no dispute that Mrs Greengrow did not meet the AOC in her own right but the Council's case is that Mr Greengrow complied and was '*last mainly employed*' in agriculture in the years between his retirement from his audiology employment in 1989 and his death in 1994. If this was the case, then Mrs Greengrow, as his widow, would have been entitled to remain in the property without breaching the condition.
13. Mr Greengrow's health declined from 1985 and, as noted above, by 1989 he had retired from his audiology business. A letter from his doctor's surgery confirms that it would have been unlikely that he could personally have been able to work on the land in any meaningful way from around 1985 onwards. This is confirmed in the statutory declarations where it notes he was increasingly reliant on a mobility scooter to move around. I see no reason to question this assessment from a member of the medical profession when it is supported by other evidence submitted by the appellant.

14. Nevertheless, Mr Greengrow could still have been running a business in a managerial role, rather than a 'hands-on' physical one, after his retirement and, if this had continued for 3 years after 1989, then he would have complied with this element of the condition and Mrs Greengrow would then be a qualifying person.
15. The appellant, however, submits that any agricultural production on the land after 1990 was at the level of a hobby at most and there was no commercial activity carried out. In 1990, there had been a theft of much of the equipment used on the land and the polytunnels used to shelter the soft fruit had been badly damaged in the storms of 1987 and 1989.
16. This is independently confirmed by a neighbouring occupier in his comments on an application, made by Mr Greengrow around that time, for an additional agricultural worker's dwelling on the site. The neighbour states that there was no justification for such a dwelling, as there was so little activity occurring on the land at the time.
17. In the Officer's report for the LDC application it is accepted that Mrs Greengrow did not meet the terms of the condition in her own right and that Mr Greengrow had not met the 3 year '*solely employed*' definition. The Council does, however, submit that he could be considered to be '*mainly employed*' in an agricultural business for the qualifying 3 years. As it does not appear to be disputed that he was not '*mainly employed in agriculture*' whilst he was also operating his audiology business, it is, as previously noted, the years between 1989 and 1994 that are significant.
18. The Council refers to a letter submitted by a firm of solicitors in support of another application for the conversion of a building on the site into a holiday let which appears to indicate that there was a business, in which Mr Greengrow was actively involved, operating on the site in 1994. The letter claimed that the business employed 4 full-time workers including Mr Greengrow and his daughter and 4 part time workers including Mrs Greengrow and was at its peak in 1987/1988.
19. This is disputed by the appellant who has submitted draft accounts from the period which show only minimal wages being paid, that could not equate to 4 full time and 4 part time workers, and the business returning a loss. I accept that an agricultural business does not have to be showing a profit for its employees to meet an AOC such as this but the accounts nevertheless show the claim made in the letter there were 8 employees in 1987/1988 to be inaccurate. It is also the case that Mr and Mrs Greengrow were both employed elsewhere at this time and there are a considerable number of claims made in the letter which the appellant lists as being inconsistent with the other evidence she has submitted and this therefore casts doubts on the rest of its content.
20. It seems to me that the appellant's interpretation of how the solicitor's letter came to be written is the most plausible explanation. She believes it was likely to have been drafted at the instigation of Mr Greengrow in the months before his death when he was trying to obtain permission for the residential use of a building on the site. This letter is the only real evidence that suggests that Mr Greengrow was running a commercial venture on the land during the relevant period between 1989 and 1994 and his daughter suggests that he was unwell, suffering from some confusion and had long held a somewhat fanciful dream that he could run a business at a profit on the land.

21. The evidence from his daughter is that, during the relevant period, Mr Greengrow was retired, with health problems that were increasing and which prevented him from carrying out any physical activity on the land. He was receiving no income from any agricultural business and, apart from the 1994 letter, there is nothing to show that he was even operating such an agricultural business from the land. I consider that the letter was an attempt to persuade the Council that what was essentially now a self-funded hobby was, in fact, a longstanding business that had only very recently fallen on hard times, in order to justify an application for a diversification of that business.
22. I therefore attach little weight to the letter and place more reliance on the significant amount of evidence that suggests that, in reality, Mr Greengrow could not be said to be '*mainly employed*' in agriculture during the years from his retirement from his full time work in 1989 and his death in 1994, both in terms of actual time spent running any commercial agricultural activity or obtaining any income from it.
23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect the occupation of the dwelling in breach of an agricultural occupancy condition (81/00881/OUT refers) 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.
24. However, it should be noted that the issue of a LDC confirms only that the use (i.e. the occupation of the dwelling without complying with the condition attached to permission 81/00881/OUT) has been found to be lawful only on the date of the application and that, should the dwelling subsequently be occupied by a person that fulfils the terms of that condition, the breach would cease. Any further occupation that was then in breach of the condition would 'reset the clock' and would then only become lawful after a further period of 10 years.

Appeal B

Reasons

25. Following on from the above Decision, it is also the case that a further planning permission has been issued, which is the subject of Appeal B. This has a different condition attached and, if implemented, any breach of the new condition would need to run for 10 years from the date of implementation in order to then be lawful.
26. To justify the removal of the condition limiting the occupation of the dwelling to a person employed in agriculture or forestry, or last employed if retired, or to a dependent of such a person, the appellant needs to demonstrate that the condition is no longer serving any useful purpose, or fails to meet the six tests set out in the Government's Planning Practice Guidance. This states that conditions on planning permissions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.
27. The appellant's case appears to rest on the first criterion, in that she claims that the condition is no longer necessary and that the dwelling should be allowed to be sold on the open market without any agricultural tie. She notes that the Council does not have a 5 year housing land supply at present and that the property would bring a small dwelling into the wider market.

28. She also notes that there is at present no policy in the Council's Development Plan that deals with the lifting of agricultural occupancy conditions or sets criteria against which to judge whether they are still necessary in any particular case. Nevertheless, this was raised in another appeal Decision¹ in the Borough and the Inspector in that case concluded that it is a common requirement that a marketing exercise is undertaken before an AOC is lifted, whether or not there is any planning policy dealing with the issue. I find no reason to disagree with this view.
29. In this case, no such recent marketing exercise has been carried out and little evidence submitted to show any lack of need for a property of this type in the locality. The appellant, however, makes the point that the dwelling is in existence, it is likely to be beyond the financial reach of the average farm worker and there is a shortage of housing in the Borough.
30. I note that the property was valued for probate and that it was marketed in 2014, but I consider that this is insufficient to demonstrate that there is no likelihood for it being used as originally intended. The viability of the small holding is, again, not a relevant consideration as the condition does not tie any occupier to employment on the appeal site.
31. It is also the case that relevant national and local planning policies strongly resist the development of new residential properties in the AONB. Although there is sporadic residential property in the vicinity of the appeal site, and it is under a mile from the nearest village of Goudhurst, the location is rural and accessed by narrow country lanes.
32. At present an unrestricted dwelling on this site would conflict with policy LBD1 of the Tunbridge Wells Borough Local Plan 2006 and policy 14 of the Tunbridge Wells Core Strategy 2010 which aim to prevent encroachment of built form into the countryside. Policy H9 of the Local Plan limits development outside development boundaries and notes that key workers dwellings in such areas will only be permitted if a number of criteria are fulfilled. I have been given no evidence to show that the relevant tests set out there have been met. Such a dwelling would also conflict with paragraph 172 of the National Planning Policy Framework which notes that land in AONBs has the highest status of protection in terms of conserving and enhancing the landscape. I conclude that, were this to be an application for a new dwelling with unrestricted occupancy in this location, it would conflict with planning policy and would be highly likely to be refused.
33. I am mindful of the fact that I have found, in Appeal A, that the AOC attached to the original planning permission has been breached for over 10 years and that, provided there has been no subsequent compliance with that condition, the property could be sold without the need for the purchaser to comply with it. It seems to me that this is the likely scenario that will now take place and the original condition attached to 81/00881/OUT is no longer serving any useful purpose.
34. There is however, the planning permission that has been granted that is the subject of this appeal which, if it were to be implemented, would bring back the requirement for the dwelling to be occupied in accordance with the new condition.

¹ Ref: APP/M2270/W/17/3173048

35. Where two mutually exclusive permissions are in place, it is normally the case that the applicant can choose which one they wish to apply. Because the appellant has appealed the second permission on the basis that she does not accept the new condition, this would indicate that she would not wish to implement it. The Council has not submitted otherwise and, therefore, I consider that it is the original permission that is still in force.
36. As Appeal A has succeeded, the dwelling would have no restrictions on future occupancy unless an owner of the property compromised the terms of the LDC as now granted, either by implementing the new permission or by allowing the property to be occupied by someone who complies with the AOC, thereby losing the right of unrestricted occupancy. It seems to me highly unlikely that this would happen and, with the new condition in place, it is therefore doubtful that the dwelling would be made available to an agricultural worker in the future.
37. Although I consider the condition would be necessary in most instances, in this case, if the dwelling had no restrictions and there was no likelihood of the benefits of the LDC being lost if the dwelling was occupied in accordance with the original condition, there would be a greater possibility that the dwelling could be occupied by an agricultural worker than if the condition were to be retained. Consequently, the particular and somewhat unusual circumstances of this case indicate that the new condition is not serving any useful planning purpose and it would be perverse to retain it. Therefore, for the reasons given above I conclude the appeal in respect of the removal of the newly worded condition should succeed and the appeal should be allowed.

Katie Peerless

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 27 March 2019 the use described in the First Schedule hereto 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(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The agricultural occupancy condition 4 attached to the planning permission 81/00881/OUT has been breached for more than 10 years prior to the date of the application.

Signed

Katie Peerless
Inspector

Date 5 May 2021

Reference: APP/M2270/X/19/3234897

First Schedule

The occupation of the dwelling in breach of an agricultural occupancy condition (81/00881/OUT refers).

Second Schedule

Land at Lodge Nursery, Lidwells Lane, Goudhurst, Cranbrook, Kent TN17 1EJ

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 5 May 2021

by Katie Peerless DipArch RIBA

Land at: Lodge Nursery, Lidwells Lane, Goudhurst, Cranbrook, Kent TN17 1EJ

Reference: APP/M2270/X/19/3234897

Scale:NTS

