



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2022

Appeal Ref: APP/D0121/X/22/3300997

Orchard Lodge, Brinsea Batch, Congresbury, BS49 5JP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Sheila Stuckey against the decision of North Somerset Council.
 - The application ref 21/P/1820/LDE, dated 21 June 2021, was refused by notice dated 4 January 2022.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is for the existing use of Orchard Lodge without compliance with the agricultural occupancy condition attached to planning permission 92947/A.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the appeal depends on the submissions of the parties in respect of matters of law, it is unnecessary to carry out a site visit.

Main Issue

3. I consider the main issue is whether the authority's decision to refuse to grant an LDC was well-founded. This turns on whether the appellant can show, on the balance of probabilities, that the relevant occupancy condition has been continuously breached for a period of 10 years prior to the date of the application for the LDC, such that the application of that condition would no longer be lawful.

The site and relevant planning history

4. The appeal site is known as Orchard Lodge which is located in open countryside.
5. The appellant has occupied Orchard Lodge since its construction in 1974 and has continued to live there since the death of her husband in 1997 at which time the livestock and machinery associated with the farm business were sold. Since then the farmland has been let on periodic tenancies and in the early 2000's various planning applications were submitted for the conversion of the farm buildings to office accommodation.

6. Planning permission 92947/A dated 14 March 1974 was for the erection of a bungalow subject to conditions. Condition 6 states "the occupation of the dwelling shall be limited to persons employed or last employed full-time locally in agriculture as defined (in) Section 290 of the Town and Country Planning Act 1971, or in forestry and the dependents of such persons."
7. Reserved matters approval (310/74) was granted on 16 August 1974.
8. South of Orchard Lodge lies the former farm buildings belonging to the appellant where various permissions have been granted for light industrial use, the conversion and erection of buildings for office use and, more recently, prior approval for change of use from offices to dwelling houses.

Reasons

9. The parties disagree on whether the appellant still meets the occupancy condition. The Council's position is that the appellant has been a dependant of a person employed or last employed full-time locally in agriculture and remains in compliance with Condition 6.
10. The appellant contests this as Mrs Stuckley, who has submitted a statutory declaration, has not been a dependant of the person last employed in agriculture due to being both financially and emotionally detached from the person employed in agriculture or reliant on this person since her husband's death. It is claimed that she has been independent from her late husband in excess of 10 years. Additionally since the imposition of the condition there has been a change in its wording to take account of widows, widowers and spouses. The appellant's interpretation that the change in wording implies that the original wording did not specify that spouses and widowers were automatically dependent on the original planning appellant. Bromsgrove Planning Guidance is referred to in support of this position¹.
11. Since the framing of the condition in 1974, the model agricultural occupancy condition of Circular 11/95 includes reference to a 'widow or widower of such a person' employed or last employed in agriculture or in forestry.
12. The Shortt case² examines the meaning of dependants in an agricultural occupancy condition and established that there was no definitive interpretation of the term. The judgement rejected an argument that an agricultural occupancy condition was breached if any of the occupiers did not depend, in part at least, on income generated by Mrs Shortt's agricultural work and upheld an inspector's decision, who commented that:
13. "In my view this is unnecessarily restrictive interpretation of the wording of the condition. In the context of people living in the family, the words subsistence and support are capable of having a non-monetary construction. Further, were the meaning of 'dependant' in the condition to be invariably interpreted as financial[ly] dependent, it would leave members of a family who lived in a dwelling whose occupation was the subject of such condition, but who were not themselves working in agriculture, at risk of enforcement action whenever the agricultural worker's income fell below level deemed to establish dependency,

¹ In the appellant's statement, reference is made to planning guidance set out by Bromsgrove District Council in 2004. Whilst the statement provides commentary on these matters, a copy of the document has not been submitted. Accordingly I am unable to have full regard to it. Additionally the appellant refers to a planning application in Stroud District but no documentary evidence was submitted with the statement.

² [2015] EWCA Civ 1192

which would be a nonsense. I consider that the wording of the condition should be interpreted so as to avoid such a possibility having regard to the potential impact on, or interference, with ordinary family life.”

14. Although the facts relating to the Shortt case can be distinguished from this appeal, it nevertheless indicates that the approach to the wording of a condition should not be unnecessarily restrictively interpreted. The reason for such a condition is also highly relevant in that an agricultural occupancy condition is imposed in order to limit the number of dwellings in the open countryside and to allow dependents of the last agricultural worker to remain in the dwelling on the death of the last agricultural worker to reside in the property.
15. Mrs Stuckley states that she has not been emotionally or financially reliant on the person who satisfied the occupancy condition. Reference is made to the dismissed appeal of Mrs Judith Kitching (APP/G2713/18/3210262) in which emotional dependency was demonstrated that met the terms of an occupancy condition. The inspector in that case concluded that a financially dependent adult cannot be considered as having broken the ties for dependency on a partner.
16. The appellant also refers to an LDC granted by South Gloucestershire District Council where an occupancy condition had been breached. However, this relates to a case where the occupants had not been employed in agriculture for some 39 years but had established a kennel boarding business. North Somerset Council considers that South Gloucestershire District Council failed to have regard to the full construction of the occupancy condition which allowed the dependents of the last or former agricultural worker to remain in the dwelling. Whether this is the case or not, is not a matter before me to determine.
17. Following the death of Mr Stuckley, no enforcement action could have been taken against the continued residence of the property by the appellant as she met the terms of the occupancy condition. Indeed such action would have been quite contrary to the benevolent intention of the condition in respect of dependants. Despite her financial and emotional independence since that time, she still satisfies the condition and no enforcement action could be taken in these circumstances. The construction of the condition does not imply that should a dependant's circumstances change then the person living in the dwelling would be in breach of the condition and be required to vacate the property. Furthermore, without knowledge of personal circumstances by the Council, it would be extremely difficult for any enforcement action to be taken. In my view, it is likely that this could only be triggered by Mrs Stuckley's departure from the property where a new occupant fails to meet the terms of the occupancy condition.
18. The appellant has not demonstrated on the balance of probabilities that Condition 6 of planning permission 92947/A has been continuously breached for a period of 10 years prior to the date of the application for the LDC, such that the application of that condition would no longer be lawful.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of

Orchard Lodge, without compliance with the agricultural occupancy condition attached to planning permission 92947/A 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.

P N Jarratt

INSPECTOR