The Planning Inspectorate

Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Appeal Ref: APP/R1038/X/22/3299637
Robincroft Farm, Swathwick Lane, Wingerworth , Chesterfield S42 6QP

- 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 AFA Planning Consultants against the decision of North East Derbyshire District Council.
- The application ref 21/00855/LDC, dated 2 July 2021, was refused by notice dated 21 January 2022.
- 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 described as 'use of a dwellinghouse without adherence to an agricultural workers condition'.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether occupation of the dwelling without compliance with the disputed condition was lawful when the LDC application was made. This turns on whether, on the balance of probability, the dwelling had been continuously occupied in breach of the condition for not less than 10 years prior to the application.

Reasons

Background

3. Outline planning permission for the construction of a farm worker's dwelling was granted in August 2005[1]. A reserved matters application was approved on 1 September 2008[2]. Condition 3 of the outline planning permission states:

   The occupation of the dwelling shall be limited to a person solely or mainly working, or last working in the locality in agriculture or in forestry, or a widow or widower of such a person and to any resident dependents.

4. The appellant seeks a certificate to show that the dwelling may now be lawfully occupied by people who do not fall within the scope of condition 3.

5. In accordance with s191(3) of the Act, a breach of this condition would be lawful if no enforcement action could be taken in respect of it because the time for taking enforcement action had expired. In accordance with s171B(3), the time limit for taking enforcement action in respect of a breach of the condition is 10 years from the date on which the breach began. Since the application for

[1] 02/01421/OL
[2] 08/00711/RM

the LDC was made on 2 July 2021, the critical date is 2 July 2011; the appellant must demonstrate, on the balance of probability, that the dwelling was continuously occupied in breach of the condition for at least 10 years, commencing not later than 2 July 2011.

The appellant's case

6. The appellant's case is that the dwelling was originally required to enable Mr and Mrs Wright to carry on their farming business at the site. It is said that the house was built in 2009, at which point Mr and Mrs Wright moved in. It is said that the farm business then ceased in November 2009 and that Mr and Mrs Wright were occupying the house in breach of the condition from that point onwards. In support of this, the appellant has submitted the following evidence:

- An affidavit of Mr Wright. This states that he and Mrs Wright moved into the property in 2009. It is said that a decision to run down the pig stock was made in May 2009 and that all work within agriculture ceased on 30 November 2009.
- A DEFRA holding registration document from March 2003, indicating that Mr Wright kept pigs at that time.
- An animal medical record book, showing medicine given to animals between March 2004 and August 2009.
- A record of 5 pigs being moved in September 2008.
- Statements of truth from various people – Mrs Wright, friends, a relative, and people who had dealings with the farm business.
- A photograph.

The Council's case

7. The Council disputes the appellant's version of events, based on the following:

- A reserved matters application for the dwelling, which was intended to house a farm worker, was made in 2008 when it is now said the business was in financial difficulty.
- Comments in design and access statements submitted in support of the application do not suggest that the business was in financial difficulty and being wound down.
- The appellant's claim that the Wrights moved into the dwelling in 2009 is not consistent with building control records. Moreover, an application for a non-material amendment (French doors replacing window) was submitted in January 2010, indicating works were still ongoing at that time.
- An application made in May 2020 for additions to the property indicates that the farm was in operation at that time.

Assessment

8. The DEFRA holding registration document and the record of pig movements do little more than show that pig farming was taking place at the property. The animal medical record book is consistent with the appellant's claim that farming

ceased in November 2009 in that there are no entries after August 2009, although that does not, in itself, show that no animals were kept after that time. The photograph, which shows 2 dogs in front of a fireplace, is not dated and is of no assistance in deciding the matter before me.

9. The affidavit indicates that the Wrights moved into the house in 2009. The statements of truth are consistent with that claim. However, the fact that the Building Control completion notice was issued in June 2010 suggests a later completion/occupation of the building. The appellant refers to delays but does not explain what is meant by this or whether the completion certificate date does, in fact, indicate that the building was completed in June 2010. This casts doubt on the firmness of the appellant's evidence.

10. Be that as it may, it is clear that the building was completed before the end of June 2010. It seems unlikely that it would have remained unused for any significant period of time, and I have no evidence to suggest any break in its occupation or that it was occupied by anyone other than the Wrights. Accordingly, I conclude, on the balance of probability, that the building was continuously occupied by the Wrights for more than 10 years prior to the LDC application.

11. The question of whether the condition was breached is less clear. The appellant's case, supported by the affidavit and statements of truth, is that farming ceased in November 2009. However, an application in May 2020 (subsequently withdrawn) sought permission for an 'additional reception room, along with secure garage, storage, boot room and office to help facilitate the working of the farm'. It is difficult to reconcile the reference to facilitating 'the working of the farm' with the appellant's claim that farming permanently ceased over 10 years earlier. The appellant suggests that this was an error made by the architect who submitted the application, who incorrectly assumed that the farm was still in operation. However, it seems to me an odd thing to assume that a dwelling (albeit one named 'Robincroft Farm), which is said to have been barely ever (if at all) occupied in connection with a farm, was part of a working farm with a specific need for storage, a boot room and an office. Thus, this casts significant doubt on the appellant's version of events.

12. Moreover, it is difficult to reconcile the appellant's current claims with the information previously supplied to the Council. A Design and Access statement of April 2008 advises that 'the enterprise has been established over 18 years … we have demonstrated … that the enterprise can and will sustain the proposed development'. A Design and Access statement of August 2008 indicates that the size of the proposed dwelling was appropriate for a farm of this size. Thus, there appears to have been little doubt about the viability of the farm at that time. Building Control records indicate that work on building the house started on 8 January 2009, which also implies a degree of confidence in the farm. I find it difficult to reconcile this with the appellant's claim that a decision to run the farm business down was taken just 5 months later in May 2009.

13. The appellant suggests that this decision was brought about largely due to an increase in corn prices. However, I have no detailed financial information to show why that led to a decision to cease a long-established farming operation so soon after there was sufficient confidence to start building a new farm worker's dwelling. In any event, I am told that corn prices rose in 2008, which is before work commenced on the dwelling. Since the dwelling was apparently

commenced in the knowledge that corn prices were rising, it is not clear what changed to cause a decision to wind down the business so soon after. In the absence of further evidence, the appellant's claim on this point lacks credibility.

14. There is also reference to a need to clear the pig stock due to a disease. However, this is not referred to in the affidavit, which implies that the increase in the price of corn was the main reason for slaughtering the pig stock. No details are given of when the stock became diseased. It is thus difficult to understand what part the disease may have played in the claimed decision of May 2009 to wind down the farm.

15. Overall, while the affidavit and statements of truth are important evidence in the appellant's favour, the matters raised by the Council cannot be dismissed lightly and run counter to the appellant's claim. The burden of proof falls on the appellant and, viewed as a whole, the position is far from unambiguous. In my judgement, it has not been demonstrated, on the balance of probability, that the condition was breached for a continuous 10 year period prior to the submission of the LDC application. Consequently, I am not persuaded that the dwelling could be lawfully occupied in breach of the condition at that time.

Other matters

16. The Council argues that previous statements made by the appellant suggest that there has been deliberate concealment of the breach of the condition, such that s191(3A) of the Act is engaged. It is also argued that a s106 agreement restricting occupancy of the house has the effect of extending the period in which enforcement action can be taken. However, since I have concluded that the appeal should not succeed when the standard 10 year timescale is applied, it is not necessary to consider these matters further.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of a dwellinghouse without adherence to an agricultural workers 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 and dismiss the appeal.

Peter Willows

INSPECTOR