



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Appeal Ref: APP/J0540/X/22/3300282

37 West End Road, Maxey, Peterborough, PE6 9EJ

- 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 Mr and Mrs Warren and Christine Garford against the decision of Peterborough City Council.
 - The application ref 22/00169/CLE, dated 8 February 2022, was refused by notice dated 13 May 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 for the continued use of the dwelling without complying with an agricultural occupancy condition.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Warren Garford and Mrs Christine Garford against Peterborough City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.
4. In an LDC appeal, the planning merits are not relevant. My decision rests on the application of relevant planning law and judicial authority to the facts of the case.

Planning History

5. Outline planning permission was granted on 15 April 2004 (Ref: 04/00213/OUT) for the "Erection of bungalow and garage, tractor shed and store" subject to a number of conditions. Condition 5 states: *"The occupation of the bungalow permitted shall be limited to a person employed within the crop spraying business or within agriculture."*
6. The reason for condition 5 is given as: *"To enable the Local Planning Authority to maintain strict control over the nature of the use, to ensure that the character and appearance of the area within the open countryside is retained"*

for a local business/agricultural related purpose only in accordance with Peterborough Local Plan (First Replacement) (second stage deposit 2002)."

7. Planning permission (Ref:18/01626/WCPP) was refused in 2018 for the removal of condition 5.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well founded.

Reasons

9. Where a breach of planning control involving the failure to comply with any condition of a planning permission has subsisted for a period of ten years, no enforcement action may be taken. In an LDC application it is necessary to demonstrate that this occurred ten years before the date of the application, which in this case is 8 February 2012. Accordingly, the burden of proof is on the appellant and the standard of proof is the balance of probabilities.
10. The appellants' statutory declarations¹ state that the appellants have occupied the property since November 2011. There is no dispute that at that time Mr Garford had a crop spraying business trading as 'WTG Agricultural Contractors' and Mrs Garford was a nurse. It is agreed that Mrs Garford has never been employed in the crop spraying business or within agriculture and Mr Garford was employed in the crop spraying business until at least 2014. Thus, it is argued that Mrs Garford as a nurse, has been in continuous breach of the agricultural occupancy condition for over ten years.
11. My attention has been drawn to the Government's model agricultural occupancy condition² and various case law³. I also have detailed and carefully constructed submissions from the appellant. However, in short, the Courts have held that conditions must be construed in a common sense way in the context of the permission as a whole. Conditions should not be construed narrowly or strictly. A condition is to be understood in conjunction with the reason for its imposition. A condition must be interpreted objectively; not by what the parties may or may not have intended but what a reasonable reader reading the condition in the context of the permission as a whole would understand.
12. The planning purpose of the condition is to enable the Council to maintain strict control over the nature of the use. In this case it was to restrict the occupancy of the property to a person employed within the crop spraying business or within agriculture. I accept that in this particular case the condition does not mention dependants/widow/widower as per the model condition and it would have been better had it done so. Indeed, the appellants raise the matter of consistency with reference to two planning permissions where the Council has imposed the model agricultural occupancy condition. Nevertheless, I consider that a reasonable person reading the decision as a whole would interpret the

¹ Statutory declarations Exhibit 3 of the Appellant's appeal statement.

² Department for Communities and Local Government Circular 11/95: Use of condition in planning permission.

³ *Shortt v SSCLG & Tewkesbury BC* [2015] WL 725902, *London Borough of Lambeth v SSHCLG* [2019] UKSC 33, *Ashbury Borough Council Ex Parte Shepway District Council, R. V.* [1998] Admin 488, *UBB Waste Essex Ltd v Essex County Council* [2019] EWHC 1924 (Admin) and *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P. & C.R. 137.

condition to mean, a person living at the property must be employed within the crop spraying business or within agriculture, in order for compliance with the condition to be satisfied. It does not necessarily exclude/prohibit other people who do not meet those criteria from living at the property in order for the planning purpose of the condition to be achieved. Thus, I consider that the appellants' interpretation of the planning condition is unduly restrictive.

13. The ultimate test in determining whether or not lawfulness might be achieved is whether the Council could have taken enforcement action at any time during the whole of the relevant period. The evidence clearly shows that Mr Garford was 'a person employed within the crop spraying business' until at least 2014. Consequently, the Council could not have taken enforcement action whilst Mr Garford was thus employed. I accept that Mrs Garford resided at the property also. However, in the context of a planning permission for a four bedroom dwelling, it would be unreasonable and contrary to common sense to interpret the condition as meaning that only Mr Garford (being the one employed in crop spraying) could live there.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 37 West End Road, Maxey, Peterborough, PE6 9EJ 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.

Elizabeth Jones

INSPECTOR