



Appeal Decision

No Site Visit

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/P2365/X/23/3317587

Farm View, Owens Lane, Downholland L39 7HX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Charlotte Vose against the decision of West Lancashire Borough Council.
 - The application ref 2022/0758/LDC, dated 7 July 2022, was refused by notice dated 2 September 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is occupation in non-compliance with condition 2 attached to application reference 8/75/285 requiring the property to be occupied by a person solely or mainly employed in agriculture.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have sought the parties' views as to whether the appeals can be determined without the need for a site visit and have received no objection to this approach. I am satisfied that the appeal can be determined on the evidence before me.
3. The Council advise that the appeal submission contains documentation that was not submitted as part of the original application submission. It advises that it has not been given the opportunity to properly assess the information, nor has it been able to consult relevant parties in respect of the additional information. However, the Council has been given the opportunity to consider the appellant's evidence through this appeal. Furthermore, there is no statutory requirement to consult third parties. Section 195 of the Act refers to the authority's refusal being well-founded, meaning the local planning authority's decision, not the reasons for the decision. It would serve no public purpose for me to refuse the LDC strictly on the basis of the evidence submitted with the application, because it would always be open to the applicant to make a further LDC application on the basis of evidence that came to light after the Council's decision. I shall therefore consider it on the basis of the evidence submitted as part of this appeal.

Main Issue

4. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

5. An application under section 191(1)(a) of the Act¹ seeks to establish whether any existing use of buildings or other land is lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. As established in *Gabbitas v SSE & Newham LBC* [1985] JPL 630, if there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
7. The appeal site is subject to a condition, Condition 2, attached to planning permission 8/75/285, dated 19 June 1975, which states "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 by Section 290(1) of the Town Country Planning act 1971, or in forestry, (including any dependents of such a person residing with him) or a widow or widower of such a person."
8. The main thrust of the appellant's case is that there has been a breach in Condition 2 for 16 years and that aside from *de minimis* breaks in occupation, the only significant gap was while major refurbishment works took place to enable the property to obtain an unrestricted open market rent.
9. Section 171(B) of the Act sets out the time limits for the taking of enforcement action against a breach of planning control, after which no such action may be taken in respect of that breach. Section 171(B)(3) states that in the case of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
10. This appeal will therefore turn on whether Condition 2 has been breached continuously for at least ten years prior to the LDC application, i.e., by 7 July 2022 and if so, by the date of the LDC application, the accrued planning right had not then been lost because of a supervening event.
11. In support of the appellant's case, they have provided a table setting out the names, occupations, and period of occupation of tenants. The table also identifies periods when the property was unoccupied. The table covers a period between 1 May 2006 to present² and is replicated, either in part or in full, in a number of statutory declarations which have also been submitted in support of the appeal. The occupations of the different tenants identified within the table vary, though none are identified as being employed in agriculture.
12. The owners of the appeal site state in their statutory declarations that, to the best of their knowledge, the tenants identified in their submission have never

¹ Town and Country Planning Act 1990 (as amended)

² February 2023

been employed in agriculture. However, it is not clear how they know this. Although a landlord may request information regarding the occupation of a prospective tenant to confirm their ability to pay rent, it is not clear whether such information was requested in this case, or whether documentary evidence was sought from the various tenants to provide detail of their respective employment.

13. I have been provided with a series of tenancy agreements, which do not restrict the occupation of the occupants. While the tenancy agreements did not restrict the occupation of the occupants, this of itself is not an indication that they did not comply with the requirements of condition 2. Deposit protection scheme documents and bank statements showing payment of rent have also been submitted. However, while these documents, together with the tenancy agreements point towards the property being occupied by the various individuals named in the table, they do not show that the occupants did not meet the requirements of condition 2.
14. An occupant who resided at the premises between May 2006 and January 2009 is stated to have been unemployed with a disability. To support this, a letter, dated 7 April 2006 has been submitted which confirms that the tenant is to move in shortly and sets out works which are to be carried out in preparation for them moving into the property. A letter is also provided, dated 19 October 2006, confirming the level of rent and that a proportion of that is to be paid by housing benefit, with the remainder to be paid by the occupant. A letter dated 4 April 2007 regarding a warm front grant sets out that the tenant is eligible for the grant but does not set out the basis for their eligibility.
15. These documents point towards the tenant having been unemployed or having a low income, such that they would be eligible for certain benefits/grants. However, they do not show that the last employment of the tenant was not in agriculture or forestry, or that they were not a widow or widower of such a person, nor do they show that the tenant was unemployed for the duration of their occupation at the property.
16. The appellant states that there were marketing and reletting periods between 13 January 2009 to 31 January 2009, 31 May 2009 to 31 August 2009 and 10 June 2013 to 27 June 2013. While I agree such limited periods could be *de minimis*, there is no contemporaneous documentary evidence to show the exercises that were carried out.
17. A statutory declaration of a previous occupant of the premises, who occupied the property from around September 2009 to June 2013 confirms that during their occupation they were employed as a chef and their wife was a housewife. Evidence has been submitted which is consistent with the witness' claim that they resided at the property, and I have no reason to doubt that their evidence in this regard. This points towards their occupation being in breach of the aforementioned condition and weighs in support of the appellant's case.
18. Between the end of June 2013 and the end of August 2015, the premises is stated to have been occupied by a housewife. However, the term housewife is usually used to describe a woman whose main occupation is caring for her family, managing household affairs and doing housework while her husband or partner goes out to work. From the information provided it appears that the occupant had no husband or partner residing at the premises and so it is unclear how any rent would have been paid. Although the tenant is stated as

- not being employed in agriculture, it is not clear whether they were a widow of a person solely or mainly employed, or last employed in agriculture or forestry.
19. A statutory declaration made by the current occupier of the property confirms that they have occupied the property continuously and without interruption from May 2019. The witness confirms that they have never been employed in agriculture and I have no reason to doubt their evidence in this regard. This points towards their occupation being in breach of condition 2 and weighs in support of the appellant's case.
 20. A statutory declaration, provided by the occupant of Poplar Farm, which is adjacent to the appeal property, states they have known the appeal site from around November 2008. During this time, they confirm that they have gotten to know the various tenants occupying Farm View, entering into 'neighbourly conversations with them' and that to the best of their knowledge, none of the occupiers have been employed in agriculture or associated agricultural activities. However, it is not clear whether the information provided in the table included in their statutory declaration reflects their own recollection.
 21. While I don't doubt that the occupant of Poplar Farm would have chatted with their neighbours, I consider it highly unlikely that they would recall the level of detail provided in their statutory declaration in terms of tenant's dates of occupation of the premises, where the tenant's worked and their full names. The detail provided within their statutory declaration simply seems to repeat that provided within the appellant's statement of case, albeit the date range included in the table starts from November 2008 rather than May 2006.
 22. A statutory declaration has also been provided by a member of a syndicate, who states from around September 2006 they have visited the premises adjoining the appeal site on a daily basis. The individual advises that during their daily visits to the site, they got to know the tenants having entered into 'neighbourly conversations with them'. The declaration includes a table, similar to others provided, and shows details from 13 January 2009. As with the occupant of Poplar Farm, however, it is not clear whether the information provided in the table reflects their own recollection. For example, I find it highly unlikely that they would recollect the dates of an 18 day marketing and reletting period over 10 years prior to writing the statutory declaration.
 23. The appellant has provided a series of insurance schedules which show that property was insured. The 2014 insurance document includes a section 'about your premises' which has a sub-heading 'Tenant's occupation'. However, the occupation is described as 'Private Dwelling House'. The remaining documents submitted do not appear to include their respective final pages and do not include any detail regarding the occupation of the tenants. Although they point towards the property being occupied, they do not, therefore show that it was occupied in breach of Condition 2.
 24. The appellant has included various documentation, such as gas and electrical safety documents and building regulation certificates. However, these documents provide no information regarding the occupation of the tenants occupying the property at any time and so do not show that it was occupied in breach of Condition 2.
 25. I note there is dispute regarding major refurbishment works which were carried out between 13 August 2017 and 30 April 2018. The Council suggests that

during this period it would not have been able to take enforcement action as there was no breach of condition. In such a situation, it is necessary to ask whether there has been what could properly be regarded as a breach of the condition over the whole of that period, whether or not there was anyone in physical occupation during any particular part of that period.

26. The appellant suggests that the breach continued during this period and has referred me to *Basingstoke and Deane BC v SSCLG & Stockdale* [2009] EWC 1012 (Admin); [2009] JPL 1585, where it was held that if work were carried out after there had been a breach by occupation by non-agricultural workers, and it was apparent and clear on the facts that the activities thereafter were being carried out in order to further that breach, then that breach would properly be regarded as continuing. I recognise the apparent similarities between that case and the appeal before me. However, in the case before me, I am not satisfied that it has been shown, on the balance of probabilities, that there had been a breach by occupation by non-agricultural workers prior to the works.
27. Drawing everything together, although the evidence points towards the premises having been occupied for a period of at least 10 years prior to the date of the LDC application, I find the evidence that condition 2 has been breached to be far more limited. While statutory declarations have been provided by a number of individuals, direct first-hand knowledge provided by the various occupants of the building is limited and falls well short of 10 years.
28. Although statutory declarations provided by the owners of the property and visitors to the site cover a period of at least 10 years, as set out above, I am not persuaded that their knowledge of the circumstances of each tenant is likely to be sufficiently accurate. Consequently, I consider corroborating evidence is required to discharge the burden of proof, such as pay slips or letters of verification from a tenant's employer. No such documentation has been provided.
29. I acknowledge that the Council has not provided any evidence to contradict the appellant's version of events. Nevertheless, the appellant's evidence must be sufficiently precise and unambiguous. I do not find it to be so. Thus, for the reasons given above, it has not been demonstrated, on the balance of probabilities, that condition 2 attached to planning permission 8/75/285 has been breached continuously for a ten-year period by 7 July 2022.

Conclusion

30. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of occupation in non-compliance with condition 2 attached to application reference 8/75/285 requiring the property to be occupied by a person solely or mainly employed in agriculture, at Farm View, Owens Lane, Downholland L39 7HX 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.

M Savage

INSPECTOR