



Appeal Decision

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/D1265/X/22/3296887

Whitegate, East Orchard, SHAFTESBURY, SP7 0LH

- 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 & Mrs T Puckett against the decision of Dorset Council.
 - The application ref P/CLE/2021/03743, dated 30 September 2021, was refused by notice dated 17 February 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 Use of existing building as dwellinghouse without any agricultural occupancy restriction.
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Decision

1. The appeal is dismissed.

Reasons

2. In 1973 outline planning permission was granted to "*develop land by the erection of agricultural bungalow and garage, modify vehicular access*". Following that in 1976 reserved matters were granted for the same development and the bungalow was built and occupied by Mr and Mrs Bush, the parents, presumably, of Valerie Puckett who, with her husband also lived at the bungalow from 2010 caring for the elderly Bush's. Mr and Mrs Puckett are the appellants, and they argue there is no agricultural occupancy condition and so the bungalow is unrestricted.
3. No copies of the outline planning permission can be found and the Council have no record of it – the only mention is in the reserved matters permission which does exist on their database. The appellant has also carried out a search of local land charges. There is no record of any planning permissions or restrictions on that database either, although it does not carry information from before 1 August 1977, so that is not surprising.
4. The above facts are not in dispute, but the Council argue the bungalow is in a remote, rural location and would only have been granted planning permission because of special circumstances. It is described as an "agricultural bungalow" so it is clear it was only allowed because it was intended to be for an agricultural worker. Consequently there would have been a condition to that effect on the outline planning permission. I agree that all of this is quite likely but of course we do not know. They may have forgotten to attach the condition, or they may have worded it so badly it was unenforceable, or they may have simply relied on the description of the development. I have come across examples of all of these over the years, especially in relation to older planning permissions.

5. There is also the question of enforcement. How would an assumed condition be enforced? I do not think it is possible to enforce a condition that doesn't exist. So I would conclude there is no operative condition to restrict the occupation of the dwelling.
6. The second question is whether the Council can rely on the description of development and this is a rather more complicated issue. In 1999 in *I'm Your Man*¹, the courts held a temporary condition could not be implied into the description of development for a 'temporary period of 7 years'. However, since then this principle has been somewhat diluted. In 2015 in *Winchester*², the court held that a planning permission described as a 'travelling showpeople's site' was limited to people who were travelling show persons. This was differentiated from *I'm Your Man* as that dealt with the manner of the use not, as in this case, the extent of the use. This would seem to be very similar to a grant of planning permission for an agricultural worker's dwelling.
7. This approach has been reinforced in *Lambeth*³, which dealt with s73 applications, but held that a condition could be implied into a new planning permission granted under s73 by relying on the wording of what the application had been for. In that case it was clear it was to amend a condition not to discharge it, and so the fact the new condition had not been attached to the s73 permission wasn't fatal. Although I do not think a condition can be implied in this case, because the planning permission does not exist, the principle that the wording of an application can be sufficient to imply a condition is on all fours with the direction of travel in *Winchester*.
8. This has all been further clarified by *Finney*, where the description of development of a 100m turbine was also secured by condition. But the court held that changing the condition to 125m did not authorise a new turbine of that height as the planning permission was still bound by the 100m in the description of development.
9. The permission in this appeal was clearly for an agricultural dwelling, that was stated in the reserved matters permission and that description was, it would seem, taken from the original grant of outline planning permission. In *Winchester*, the fact that travelling showpeople were a distinct group with their own specific planning issues was important. Unlike in *Finney*, where the description was as a matter of fact limited to 100m, in *Winchester* (and here) the question is the use of the building. Are agricultural workers a distinct group and would the occupation of the bungalow by a non-agricultural worker raise different planning issues? In other words would it be a material change of use if occupied by a non-agricultural worker? That has not been argued before me, but it is at least arguable that it would. Consequently, on the balance of probabilities I cannot say that the bungalow can be occupied lawfully by persons who are not engaged in agricultural, and a certificate cannot be issued.

Other Matters

10. The description of the application in the heading above is taken from the Council's refusal rather than the agent's description in their application

¹ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107

² *Winchester CC v SSCLG & Others* [2013] EWHC 101 (Admin), [2015] EWCA Civ 563; [2015] JPL 1184

³ *Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd* [2017] EWHC 2412 (Admin), [2018] EWCA Civ 844, [2019] UKSC 33; [2020] JPL 31

supporting statement. In that they ask for a certificate which said the dwelling "*was immune from future enforcement action relating to any residential occupancy restriction*". I just want to note here that an LDC could not be issued guaranteeing the future. An LDC is a statement of lawfulness on the date it is issued. Even if the Council agreed with the appellant and granted a certificate allowing occupation by a non-agricultural worker, should the original planning permission eventually be discovered with a condition on it, then that condition would remain enforceable. Whether it would be expedient to do so would be another matter.

Simon Hand MA

INSPECTOR