



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26TH SEPTEMBER 2023

Appeal Ref: APP/P2365/X/22/3306391

Bella Vista, Gorse Lane, Tarleton, PRESTON, PR4 6LH

- 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 Marilyn Barron against the decision of West Lancashire Borough Council.
 - The application ref 2022/0658/LDC, dated 10 June 2022, was refused by notice dated 30 August 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 that the property has been occupied for a continuous period in excess of 10 years contrary to a condition restricting its use.
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Decision

1. The appeal is dismissed.

Application for costs

2. The appellant has made a costs application which is the subject of a separate decision.

Preliminary Matter

3. The description of the development on the application form is that the property has been occupied for a continuous period in excess of 10 years contrary to a condition restricting its use. I will therefore determine the appeal on the basis of whether there has been a matter constituting a failure to comply with a condition subject to which planning permission was granted.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant the LDC application was well-founded.
5. The appellant must prove on the balance of probabilities that the house at the appeal property was occupied for a substantially uninterrupted period of more than 10 years prior to the date of the application without complying with the condition on planning permission 8/6/8137 which stated that:

"The occupation of the dwelling shall be limited to a person employed or last employed locally in agriculture as defined in section 221(1) of the Town and Country Planning Act 1962, or a dependent or such a person residing with him (but including a widow or widower of such a person)."

Reasons

6. The issue in dispute is whether the appellant's father, the original occupier of the house, had been employed locally in agriculture during his occupation. The sworn evidence provided by his three children is that he had worked in horticulture for around 2 years after the family moved into the house in 1967. At some point in around 1969/1970 he took up full time employment as a produce merchant which involved him collecting vegetables from local farmers and transporting them to market and to small shops in Blackburn and Accrington.
7. The Council say that this employment falls within the wording of the condition as a person employed locally in agriculture as defined:

"includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodland when that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly."
8. The precise nature of this work is not evident from the submitted evidence, and neither are the details of employment. The evidence states that he 'took up full time employment as a produce merchant' and that he 'worked exclusively as a delivery driver' which are two different descriptions of work which may not necessarily entail the same job, and therefore confusing. The sworn evidence does not say that he was self-employed when selling produce to the markets and shops, and it may therefore be that he was employed by a local agricultural business or farmers to deliver their goods to retail customers for onward sale. One term used by the appellant to describe the job, 'produce merchant', is not sufficiently clear in itself or within common usage to enable the reader to know exactly what it entailed or its terms.
9. The appellant's evidence is therefore not sufficiently precise and unambiguous regarding the actual nature of their father's job so that it is not possible on balance to state that he did occupy the house in breach of the condition. The status of the appellant's mother as occupier of the property is also reliant on the employment status of the father, as she would not have been in breach of the condition unless he was also in breach at the time when he was last employed (i.e. not employed locally in agriculture).
10. The appellant has also referred to a separate LDC issued by the Council (Application No 2020/0114/LDC) and states that the Council has acted inconsistently in not treating these applications in the same way. There are similarities in that the occupier in the earlier LDC was employed as a potato merchant delivering potatoes to local chip shops, but I do not have all the information from that case before me and am therefore not aware of the precise details regarding the applicant's work in that matter. In any event, each case is treated as an objective decision based on the best facts and evidence available when the decision is made, and as such the decision-maker is not bound by an earlier unrelated decision.

Conclusion

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

failure to comply with a condition subject to which planning permission was granted 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.

Zoë Frank

INSPECTOR