



Appeal Decision

by **R Hitchcock BSc(Hons) DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **01st March 2024**

Appeal Ref: APP/E2734/X/23/3321146

Follifoot Ridge Farmhouse, Pannal Road, Follifoot, HG3 1DP

- 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 (LDC).
 - The appeal is made by Mr & Mrs U Kirkby against the decision of Harrogate Borough Council.
 - The application ref 22/00649/CLEUD, dated 15 March 2022, was refused by notice dated 27 October 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 is sought is the existing occupation of Follifoot Ridge Farmhouse without complying with agricultural occupancy restriction condition 5 of planning permission 88/03945/FUL.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the time of the decision issued by Harrogate Borough Council, the unitary council of North Yorkshire Council has been formed. This has subsumed Harrogate Borough Council and a number of other borough and district councils. Accordingly, the relevant local planning authority is now North Yorkshire Council.
3. As part of the appeal the appellant submitted additional documents which were not before the Council when it considered and determined the application. The Encyclopaedia of Planning Law and Practice sets out that appeals under s195 of the 1990 Act as amended 'are invariably treated as de novo appeals...the parties and interested persons may submit additional evidence to the Secretary of State which was not before the authority at the time of its decision'. Consequently, I have had regard to the additional documents in my determination of the appeal. Given that the Council has had the opportunity to comment as part of the appeal process, I am satisfied that their interests are not prejudiced by this approach.
4. Given the nature of the appeal, access to the building subject of the occupancy restriction was unnecessary. However, I visited the locality on 31 January 2024 to view the site and the former agricultural buildings in their context.

Main Issue

5. The main issue is whether or not the Council's decision to refuse the LDC was well founded.

Reasons

6. The burden of proof in satisfying the requirement of s191(c) falls to the appellant to establish that the use of Follifoot Ridge Farmhouse without compliance with Condition 5 of planning permission 88/03945/FUL commenced at least 10 years before the date of the application on 15 March 2022 and continued without any significant interruption thereafter. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
7. The Planning Practice Guidance reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
8. Condition 5 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 in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, (including any dependants of such a person residing with him) or a widow or widower of such a person'.
9. The site planning history highlights major changes on the holding with planning permissions being granted in 2000 and 2002 for the change of use of agricultural buildings to Class B1 (Business) and B8 (Storage & Distribution) uses. Despite the appellants' references to diversification¹ of activities on the holding, it is their position that they were neither solely, mainly nor lastly employed within agriculture since that time. The appellants contend that their primary employment is that of upkeep of the business park and rental properties. However, evidence of those activities and their duration is limited.
10. In support of that claim, Mr Kirkby's accountant states that his main income is that from property and rental incomes with only minor income derived from the agricultural land owned by the appellants. No accounts or other substantive evidence is provided in support of that claim. No reference is made within the accountant's statement to Mrs Kirkby's income or employment.
11. Although the amount of income derived from any source may provide an indication of business/es undertaken by an individual or company, it is not necessarily a measure of an actual main employment activity. Indeed, some agricultural activities may not make any profit. The relevant test in the condition is that of the nature and extent of main or last employment.
12. The Council provides extracts of submissions by the appellants in support of a number of applications in the years following the permissions for the conversion of the main agricultural buildings to the northwest of the house. These highlight that although commercial farming activity was substantially reduced, some agricultural activities remained.
13. An agricultural occupancy condition relating to a second nearby rural workers dwelling, The Cottage (now Follifoot Ridge Cottage), was removed in 2006 as there was no longer a need for a stockman to occupy it. However, a subsequent condition tying The Cottage to Follifoot Ridge Farmhouse was imposed for reasons of farm diversification.

¹ Both PPG7 and then PPS7 recognising that 'diversification into non-agricultural activities is vital to the continuing viability of many farm enterprises'.

14. The evidence presented by the main parties does not dispute that agricultural activities persisted at that time. Furthermore, there was no attendant application to remove the occupancy restriction on Follifoot Ridge Farmhouse itself. It is notable that it was not until 2023 that the appellants sought to remove the diversification tie between The Cottage and Follifoot Ridge Farmhouse.
15. The continuation of agricultural activity after 2000 was confirmed by the appellants' application for a new agricultural building (05/01533/PNA). This was approved on appeal in 2006. According to an email sent to the Council on behalf of the appellants dated 11 October 2022, farming under a Countryside Stewardship Scheme persisted until 2012.
16. Additionally, Mr & Mrs Kirkby applied for planning permission for a second agricultural building in 2016 (Ref. 16/00129/FUL). There is no dispute between the parties that this included a statement outlining the applicants' farming activity. It confirmed that the 'applicant is still actively involved in agricultural' [sic] and 'The proposed agricultural building is located on a working farm'. As a statement submitted on declaration as part of a planning application, it is a matter of substantial weight.
17. The basis on which the application was made in 2016 therefore directly conflicts with the claim made in Mr Kirkby's signed declaration submitted in support of the LDC. This states that the application was made on behalf of a third-party farmer who tenants some of their land.
18. In conjunction with what appears to be an inaccurate claim that Follifoot Ridge Farmhouse was the sole agricultural workers dwelling associated with the farmstead until the claimed cessation of the agricultural operation in 2000, the statement seems to lack precision against the detail of the wider holding's planning history. In suggesting that income from 2000 has been limited to rental of former agricultural units (the business park) and domestic properties, there also appears to be some conflict with the accountant's position that an element of income is derived from agricultural land within the appellants' ownership.
19. A signed statement by Mr Willis, a third-party livestock farmer, confirms his seasonal use of land adjacent to the appeal site for stock grazing since May 2012. However, there is little substantive evidence, such as contracts, payments, or stock sheets to support that claim. It doesn't refer to use of the building approved in 2016 at all. Even if Mr Willis's claim was given full weight, it does little to demonstrate the appellants' main or last employment.
20. An application (ref. 22/02714/FUL) made by Mr Willis in 2022 for a separate access supports an association with the farmland. Furthermore, distinct from the Council's earlier stance, the 2023 application (ref. 23/00948/DVCON) to remove the diversification tie between The Cottage and the subject dwelling confirms that there are no longer any agricultural activities undertaken by the owner of the landholding. However, as recent decisions, their weight in demonstrating a continuous period of 10 years for non-compliance with the occupancy condition is limited.
21. Taking the above matters together, whilst I acknowledge that significant changes took place shortly after 2000 to change the balance of agricultural activity on the holding, the evidence fails to demonstrate the sole, main or last

employment of the appellants. The information provided under declaration when applying for agricultural buildings in 2005 and 2016 indicates continued agricultural use by them.

22. In the substantial absence of any day-to-day detail of both Mr & Mrs Kirkbys' employment activities, I find that the site planning history, the conflicting, imprecise and ambiguous nature of the signed statements, and the lack of other substantiated evidence leads me to the conclusion that there has been no demonstrated 10-year period of consistent failure to comply with the occupancy condition attached to Follifoot Ridge Farmhouse prior to the date of the application for an LDC.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use in respect of the failure to comply with agricultural occupancy restriction Condition 5 of planning permission 88/03945/FUL 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.

R Hitchcock

INSPECTOR