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# Appeal Decision

**by Andy Harwood CMS MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 September 2024**

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**Appeal Ref: APP/P1133/X/24/3337671**

**Charlecombe Farm, Combeinteignhead, Newton Abbot TQ12 4RE**

- 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 Ms Katherine Kingston against the decision of Teignbridge District Council.
  - The application ref 22/01938/CLDE, dated 3 October 2022, was refused by notice dated 2 October 2023.
  - 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 described as "C3 dwelling without compliance with agricultural occupancy on permission 88/2091/19/1".
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I consider that there was no need to undertake a site visit for this case given the issues in dispute and the parties were consulted about the procedure.
3. The application sought to demonstrate that the relevant planning condition controlling occupancy of the dwelling (a matter I return to below) had been breached for more than 10 years and was therefore immune from enforcement action by reason of s171B(3) of the Act and lawful. Even if an LDC were to be granted for a condition with such a continuing requirement, it would only demonstrate that it would remain lawful if the breach of that condition was continued. It would not have the effect of removing the condition which could subsequently come back into effect if the condition were complied with for a material period.

A complication in this case is that there are 2 conditions which have been imposed on the outline planning permission and then subsequently the reserved matters consent respectively. The condition on the outline planning permission (88/02091/OUT) states:- *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture or as defined in section 290 of the Town and Country Planning Act 1971, or in forestry, or a dependant of such a person residing with him or her, or a widow or widower of such a person.*

The condition on the subsequent reserved matters consent (89/00857/REM)

states:- *The dwelling hereby permitted shall be occupied only by persons employed or last employed full-time locally in agriculture or forestry work, as defined by Section 290 of the Town and Country Planning Act, 1971 and the dependants of such persons as aforesaid.*

4. It has been held that at the reserved matters stage, further conditions should only be imposed provided they arise directly from that application and therefore the details proposed for those specific reserved matters and where they do not materially derogate from the outline planning permission. As a matter of fact, an occupancy condition has been imposed on the approval of reserved matters in this case, rightly or wrongly, and has not been challenged in the courts or through an appeal.
5. However, it has also been held that where there is an outline approval and reserved matters approval, the outline is 'the' planning permission. Whilst I am not provided with legal authorities to establish that the second occupancy condition should simply be ignored, it cannot be realistic to require that the dwelling is occupied "only" by persons employed or last employed "full-time" locally in agriculture or forestry work. Agricultural workers will often undertake some other employment and seek income from other sources.
6. Furthermore, the reason for imposing the condition on the reserved matters decision notice is "...as the site is located in open countryside where residential development would not normally be permitted". This gives no indication that new issues were raised when reserved matters were considered, warranting a more restrictive condition compared with the outline planning permission. The reserved matters condition does not therefore fairly and reasonably relate to the development therefore failing those legal tests<sup>1</sup> for planning conditions. Conversely, the condition on the outline planning permission reasonably allows for other employment to be sought. I will therefore continue to consider this appeal on the basis of the condition imposed on the outline planning permission which is consistent with the approach of both main parties.

## **Main Issue**

7. The main issue is whether the authority's decision to refuse to grant an LDC was well-founded. As a part of that, it is necessary for me to consider, on the balance of probabilities, whether the breach of planning control, in this case the breach of the condition on the outline planning permission, has continued for at least a 10 year period (the time-limit for enforcing conditions as defined by s171B (3) of the Act) at least up to the date of the application. The onus of proof is upon the appellant.

## **Reasons**

8. The condition refers to a definition of agriculture from legislation from 1971 which has been superseded by the current Act, however there is no dispute about what "agriculture" is. The case does not therefore turn on any differences between that and the current definition within s336 of the Act. There is no formal definition of "forestry" and so I will use the ordinary meaning and the appellant has made a useful reference to that which I return below. The Council has not disputed the figures for the appellant's income.

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<sup>1</sup> Legal tests, conditions must be: Imposed for a planning purpose and no other purpose, however desirable; fairly and reasonably related to the development permitted; and not so unreasonable that no reasonable planning authority could have imposed them – 'Wednesbury' unreasonable.

The main dispute relates to whether the income as set out in evidence can be considered to involve employment in agriculture or forestry over the period since the appellant began their occupancy of the dwelling.

9. Agriculture relates to the production of crops and animals and the factors that go into those production processes. However, public funding is also available in relation to agricultural land such as the Basic Payment Scheme (BPS) which the appellant has been receiving since they have lived at the property. This is one of a suite of other payments available in relation to farmland. My consideration of this may be separate from the way in which the qualification for such payments are made but the appellant has not provided evidence of what was declared when applying for those payments. As explained in the Council submissions, these payments do relate to farmland which in the ordinary sense of the term means land used for agriculture.
10. The appellant's chartered tax advisor has provided a written statement. The Council differ in the interpretation of the nature of the income, but there is no evidence from them to contradict what is said such as the counter-view of a similarly qualified professional. The tax advisor has only been instructed to act for the appellant since 2018 but they confirm that they have reviewed previous tax information from 2011/12 onwards. This is a reliable statement in so far as how it sets out the nature of the appellant's income although it does not refer to precise figures. A substantial majority of the appellant's income derives from their financial investments, either dividend investment income or from capital gains from selling financial investments. The statement also confirms that the appellant received "a minority of her income over the last 10 years from the land that she owns at Charlecombe Farm."
11. Details of the farm income since April 2011 is provided as are some tax returns. It is clear that farm sales have generally been low in comparison to other personal income. However, the condition, does not refer to agricultural or forestry income it relates to "employment". It has been held that a person can meet the requirement to be employed in agriculture without making a profit from the agricultural business. When planning applications are submitted for agricultural and forestry workers' dwellings, they are often accompanied detailed statements setting out the likely efforts and time required to carry out the tasks agriculture on the land. In the present case, I have nothing to help me understand the efforts in terms of time that is required to earn the appellant's income from investments or the lesser part of her income from the farm, relative to one another. Farmers can often outsource work to contractors and the managerial oversight of the overall farm business may well be reasonably considered as agricultural "employment".
12. A main concern of the Council however is whether the payments from the Rural Payments Agency (the Basic Payments Scheme) can count towards compliance with the occupancy condition. Whilst the payments are for maintenance of open grassland, it is not clear specifically what happens on that land and whether it is where a "monthly grass crop" has been regularly taken and paid for. It is not expressly explained how that is managed or what the appellant's involvement is in terms of time and effort in managing this and other parts of the land. The appellant does admit to using a tractor to mow some land albeit this is described as a "small" tractor. This takes around 2 hours every other week. Whilst this is also described as a recreational garden, the evidence doesn't confirm if this is grass which is then sold.

13. Furthermore, in 2013 the applicant successfully applied for the English Woodland Grant Scheme through which they have received grant funding to contribute towards the creation of a new woodland. This was initially paid in 2014 towards initial purchase of trees for planting. There are ongoing funding payments towards the costs of maintaining the woodland. The term forestry is not defined in statute. However, the appellant suggests a definition from the Collins dictionary which is "forestry is the science or skill of growing and taking care of trees in forests". Even though the woodland is only maintained rather than felled and replanted, maintenance in my view falls within the scope of being "forestry" within that definition. Whilst the appellant says that they outsource this work, there is no detail provided regarding what precisely is involved in the process of outsourcing, oversight and checking that work.
14. The appellant is also an energy therapist but doesn't charge fees. Whilst this may well occupy time and therefore is capable of being a means of employment even without monetary reward, the information although corroborated by some clients, is not precisely detailed such as by appointment schedules or diary entries. The appellant states that they "spend hours" and the "majority" of their time "every day" together with "spending hours" writing up notes. It is unrealistic to interpret these terms as absolutes because they are very general expressions that may subjectively mean one thing to one person but something else to another. For instance, it seems improbable that the appellant would literally spend every day doing this and I have nothing to help me know what they mean by the majority of their time relative to, for example, time involved in land-management activities.
15. It is unclear as well how much time is involved administering solar panel income and renting out buildings on the land. There were also times when the appellant was employed by outside bodies including the National Health Service and their time in that capacity was clearly not working within agriculture although was periodic rather than continuous.
16. The majority of the appellant's personal income derives from a portfolio of investments. The condition relates to employment rather than just income and their time spent earning non-agricultural income and their non-fee earning time as a therapist, is not precisely detailed. It is not shown how much effort is needed to achieve the income that the appellant does receive from the farm land including from government subsidies. The evidence is not sufficiently precise and unambiguous. It has not been demonstrated on the balance of probability that the appellant has not been solely or mainly employed in agriculture in breach of the occupancy condition continuously for 10 years.

## **Conclusion**

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the "C3 dwelling without compliance with agricultural occupancy on permission 88/2091/19/1", was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Andy Harwood*

INSPECTOR