



Appeal Decisions

No Site Visit

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th October 2023

Appeal A Ref: APP/N2535/X/23/3317309

54 Field Lane, Morton, Gainsborough DN21 3BY

- 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 Miss Victoria Bryceson of Miracle's Mission against the decision of West Lindsey District Council.
 - The application ref 145548, dated 12 September 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 or development is sought is to continue occupation of a dwellinghouse without complying with condition of planning permission GR/40/66.
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Appeal B Ref: APP/N2535/X/23/3317311

54 Field Lane, Morton, Gainsborough DN21 3BY

- 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 Miss Victoria Bryceson of Miracle's Mission against the decision of West Lindsey District Council.
 - The application ref 145925, dated 28 November 2022, was refused by notice dated 8 February 2023.
 - The application was made under section 192(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 the proposed use of the dwelling for occupation by a person or persons, including the dependents of such person or persons, taking an income from renting out land (smallholding) attached to the dwelling to be farmed.
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Decisions

1. Appeal A is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition or limitation which is found to be lawful.
2. Appeal B is dismissed.

Procedural Matter

3. The matter to which an LDC relates is usually taken from the application form. In relation to Appeal B, the application form only states '*Please see attached supporting statement*'. The Planning Statement offers no description but concludes that '*the proposed use of the dwelling for occupation by a person or persons, including the dependents of such person or persons, taking an income from renting out the land attached to the dwelling to be farmed must be lawful and in compliance with the condition on planning permission reference GR/40/66*'. It is therefore reasonable to deduce that the appellant is seeking to determine whether

the use of the dwelling by someone who derives their income from renting out the land attached to the dwelling for agricultural purposes was lawful at the date of the application. The Council has described the matter in their decision notice as *'proposed use of the dwelling for occupation by a person or persons, including the dependents of such person or persons, taking an income from renting out land (smallholding) attached to the dwelling to be farmed.'* I shall proceed on that basis for consistency.

Background

4. The dwelling to which these appeals relate was granted planning permission¹ on 3 May 1966 (the 1966 PP). That planning permission was the subject of a condition stating, *'The occupation of the dwelling shall at all times be limited to persons whose employment or last employment is, or was, employment in agriculture, as defined by Section 221(1) of the Town and Country Planning Act, 1962, and including also the dependents of such persons aforesaid.'* (the agricultural occupancy condition). There is no dispute that the dwelling was erected and first occupied in accordance with the 1966 PP.
5. The condition imposed on the 1966 PP does not tie the occupation of the dwelling to any specific area of agricultural land. Whether or not the land associated with the dwelling has been used for agriculture is not therefore directly relevant to the determination of this appeal.

Appeal A

Main issue

6. The main issue is whether the Council's refusal to issue an LDC is well founded. This turns on whether the appellant can show that the occupation of the dwelling in breach of the agricultural occupancy condition was lawful at the material date, which is 12 September 2022. The onus of proof is on the appellant to show, on the balance of probability, that the dwelling has been occupied in breach of the agricultural occupancy condition for a continuous period of 10 or more years, without material interruption, so as to be immune from enforcement action. Any continuous 10-year period is relevant.

Evidence

7. Sworn evidence is provided by Jane Kostryca, a cousin of the dwelling's previous occupier, Catherine June Sampson, who was known as, and I shall refer to as 'Kitty'. This sets out that the dwelling was formerly occupied by Kitty's parents Douglas and Gladys Sampson. That Douglas Sampson was employed on the land holding in agriculture. That Kitty was living in Sheffield where she worked as a nurse, before moving in with her parents to care for them. That her mother died in 1999 and her father died in 2000. That Kitty inherited the dwelling and land, and continued to live in the dwelling until she died on 13 August 2020. That throughout Kitty's occupation of the dwelling, the agricultural land was tenanted by W Barratt & Sons for agricultural purposes. That Kitty was employed as a nurse and latterly worked as a Complementary Therapist, offering home and mobile services. I find this evidence unambiguous and precise and give it significant weight.

¹ GR/40/66 for the erection of 2-bedroomed bungalow to replace existing cottage in connection with small holding of approximately 11½ acres O.S. Field No. 184, Field Lane, Morton

8. Several neighbouring occupiers corroborate that the Kitty lived and trained as a nurse in Sheffield. However, they also claim that Kitty returned to her parents' home at weekends or when not on shift. During the times she was at her parents' Kitty is claimed to have helped or worked on the land with her father, thereby being employed in agriculture. There is a consensus that at some point during the late 1990's, the land was tenanted for agricultural purposes and that Kitty derived an income from the land. It is also claimed that Kitty was financially dependent upon her parents once she moved in with them and that her Contemporary Therapy business was only a hobby. This is not sworn evidence and there are some conflicting accounts. I find this evidence to be less precise and somewhat ambiguous and therefore give it moderate weight.
9. The Council has no evidence of its own to contradict the evidence provided by Kitty's cousin. It is the Council's case that Kitty remained a dependent of her parents' until they died. Furthermore, as Kitty derived an income from renting out the land for agricultural purposes, the Council claim that her occupation of the dwelling complied with the agricultural occupancy condition.

Reasons

10. While there is conflicting evidence as to when Kitty became the owner and sole occupier of the dwelling, all the evidence points to that having occurred by 2000. The issue to be considered is whether Kitty's occupation of the dwelling complied with the agricultural occupancy condition imposed on the 1966 PP.
11. Section 221(1) of the Town and Country Planning Act 1962 (the 1962 Act) defines agriculture as '*includ[ing] 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, marker gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly*'. A definition is not provided for employment or dependents. It therefore reasonable to assume that their common meaning should be applied, i.e. the state of having paid work, and a person or persons who depend on or need someone for aid or support.
12. All the evidence points to Kitty having trained and been employed as a nurse in Sheffield. The Contemporary Therapy business card includes details of Kitty's qualifications, amongst other things. Other than the undocumented claims of interested parties, there is no evidence to show that Kitty was paid for any agricultural assistance she gave to her parents. Any agricultural activity that she may have partaken in while still being employed as a nurse could reasonably be described as a hobby or simply helping her father.
13. Similarly, when Kitty moved in with her parents, there is a consensus within the evidence that she did so to provide care and support for them. While she may have given up her nursing career, there is no evidence to show that Kitty was supported, financially or otherwise, by her parents during this time. Interested parties suggest Kitty was in her 50s at the time of moving in with her parents, and the evidence shows she had lived independently for a significant period before that and that she moved in to care for them when they fell ill. Taking all this factors together, in my judgement, I find it less than likely that Kitty was a dependent of her parents.

14. There is a common thread running through the evidence that once the land was tenanted by W Barratt and Sons, Kitty only derived a rental income from their agricultural use of the land. The definition of agriculture set out in s221(1) of the 1962 Act does include deriving an income from the agricultural use of land. While a specific date is not given for when W Barrett and Sons first tenanted the land, all the evidence points to their tenancy taking place from at least when Kitty inherited the dwelling, up until her death in August 2020. This spans a period of over 19 years. There is no evidence to show that Kitty was employed in agriculture elsewhere. Furthermore, there is no evidence to show that the dwelling was not occupied by Kitty, as her main place of residence, at any point during that period.
15. Taking all these factors into account, I find it less than probable that kitty was agriculturally employed or that she was a dependent of a person that was agriculturally employed. Kitty's occupation is shown to have exceeded a period of 10 years. Furthermore, there is nothing before me to suggest that the dwelling has been occupied by a person or persons that does comply with the agricultural occupancy since Kitty died.
16. The appellant has therefore shown, on the balance of probability, that Kitty's occupation of the dwelling was in breach of the agricultural occupancy condition and that the breach of condition occurred for more than 10 years. The continued occupation of the dwelling in breach of the agricultural occupancy condition was lawful at the material date.

Conclusion on Appeal A

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the continued occupation of a dwellinghouse without complying with condition of planning permission GR/40/66 was not well-founded and that the appeal shall succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

Main issue

18. The main issue is whether the Council's refusal to issue an LDC is well founded. This turns on whether the appellant can show that the proposed use of the dwelling for occupation by a person or persons, including the dependents of such person or persons, taking an income from renting out land (smallholding) attached to the dwelling to be farmed was lawful at the material date, 28 November 2022. The onus of proof is on the appellant to show, on the balance of probability, that the occupation of the dwelling by person, persons or dependents of such persons would comply with the agricultural occupancy condition imposed on the 1966 PP.

Reasons

19. I have already found above, in paragraph 14, that the definition of agriculture does not include deriving an income from the agriculture tenancy of land. Whether or not a person is a dependent of someone deriving an income from the agricultural tenancy of land would not change the fact that deriving an income from the tenancy does not represent agricultural employment.

20. The appellant has failed to show, on the balance of probability, that the occupation of the dwelling by person or persons, or their dependents, deriving an income from the agriculture tenancy of land would comply with the agricultural occupancy condition imposed on the 1966 PP. The use proposed would not therefore be lawful at the material date.

Conclusion on Appeal B

21. For the reason given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use of the dwelling for occupation by a person or persons, including the dependents of such person or persons, taking an income from renting out land (smallholding) attached to the dwelling to be farmed was well-founded and that Appeal B shall fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Madge

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 September 2022 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission GR/40/66 was granted on 3 May 1966 for the erection of 2-bedroomed bungalow to replace existing cottage in connection with small holding of approximately 11½ acres O.S. Field No. 184. The only condition imposed requires *'The occupation of the dwelling shall at all times be limited to persons whose employment or last employment is, or was, employment in agriculture, as defined by Section 221(1) of the Town and Country Planning Act, 1962, and including also the dependents of such persons aforesaid.'* The dwelling was occupied by persons not employed in agriculture and who were not a dependent of such a person. The condition has not therefore been complied with since approximately the year 2000, being an uninterrupted period of more than 10 years prior to the date of the application. The occupation of the dwelling by any person continuing the same breach of the condition is therefore immune from enforcement action under s171(3) of the Town and Country Planning Act 1990 as amended.

Signed

M Madge

Inspector

Date: 11th October 2023

Reference: APP/N2535/X/23/3317309

First Schedule

To continue occupation of a dwellinghouse without complying with condition of planning permission GR/40/66

Second Schedule

Land at 54 Field Lane, Morton, Gainsborough DN21 3BY

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 11th October 2023

by **M Madge Dip TP MA MRTPI**

Land at: 54 Field Lane, Morton, Gainsborough DN21 3BY

Reference: APP/N2535/X/23/3317309

Scale: Not to Scale

