



## Appeal Decision

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by Mr A Thickett BA (Hons) BTP Dip RSA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 11.01.2023

Appeal reference: CAS-01782-V5X9G7

Site address: Grove View, Bully Hole Road, Shirenewton, Monmouthshire, NP16 6SA

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- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by A Corner against the decision of Monmouthshire County Council.
  - The application Ref DM/2021/00568, dated 25 March 2021, was refused by notice dated 17 December 2021.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use development for which a certificate of lawful use or development is sought is occupation of the building by a non agricultural/forestry worker.
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### Decision

1. The appeal is allowed

### Main Issue

2. The main issue is whether the occupation of Grove View is limited to a person employed in agriculture or forestry.

### Reasons

3. Grove View was granted planning permission in 1966 for what was described as; '*Site for erection of Woolaway type bungalow on existing smallholding to be occupied by full time agricultural worker*'. Condition 1 states; '*The proposal is permitted on the understanding that the bungalow will be occupied by a person employed or last employed locally in agriculture as defined under Section 221 of the 1962 Act or in forestry, and the dependents of such persons and is to be permanently attached to the existing smallholding*'. The reason for the condition is; '*To ensure the occupant of the bungalow is a 'bona fide' farmworker.*' That the planning application was made for a new dwelling to house an agricultural worker is not in dispute. The bungalow has been empty since 2017. Nothing is submitted to indicate that the occupants of the dwelling up to 2017 were not employed or last employed in agriculture.
4. Both parties cite caselaw to support their positions. I agree with the appellant that the Trustees of Hercules Unit Trust Ltd against the Highland Council 30/09/2013 (DCS

NO400-002-011) and *Trinder v Sevenoaks* (1967, 204 EG 803) cases are superseded by later judgements. These include *Trump International Golf Club Scotland Limited v Scottish Ministers*, [2016] S.C. (UKSC) 25 and the findings of Lord Hodge at paragraph 34 of that judgement:

*'When the court is concerned with the interpretation of words in a condition in a public document .... it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.'*

5. Looking at the consent as a whole, the purpose of the planning permission was to provide a dwelling, that dwelling was to be occupied by an agricultural worker. None of the other conditions assist in determining whether Condition 1 prohibits occupation by persons not employed in agriculture. Nor does the second part of Condition 1 which states the proposal must be permanently attached to the existing smallholding. The *'proposal'* must refer to the *'Woolaway type bungalow.'* I do not see how it could relate to the occupants, not least because the condition allows occupation by a person employed or last employed locally in agriculture, that being someone no longer (or never) employed on the smallholding. In this regard the condition is internally inconsistent and unenforceable.
6. The reason for the condition states that it was imposed to ensure the occupant of the bungalow is a farmworker but does not say why this was necessary. Although it probably was the case, the Council produce nothing to indicate that planning policy at that time precluded dwellings in the countryside unless essential to meet the needs of agriculture. Further, the reason makes no mention of forestry.
7. I agree with the appellant that in drafting a planning permission, a distinction may need to be made between the use planning permission is granted for and what is restricted or prohibited; food and non food retail in out of town locations for example. In *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin) at [15] (Appendix 3) Hickinbottom J stated;  
*'the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, because such a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control.'*
8. The occupation of the bungalow by a person not employed or last employed in agriculture or forestry would not constitute a material change of use. It seems clear that whoever drafted the planning permission thought the permission was for an agricultural workers' dwelling and the bungalow must be occupied by a person employed or last employed in agriculture. It matters not what the conventions may have been in 1966, limiting occupation is dependent on the effective wording of conditions. Circular 16/14 'The Use of Planning Conditions in Development Management' warns a condition which uses ambiguous terms will give applicants (and future occupants) little idea of what is expected of them.

9. The condition only refers to what is permitted and not in terms specifying what is not permitted. Further, the condition permits occupation of the bungalow beyond that included in the description of the permitted development; that being a person employed in forestry and persons no longer employed in agriculture or forestry, reinforcing the argument that the condition only sets out what is permissible rather than what is not. The condition does not restrict occupancy to agriculture or forestry workers.
10. In *Lambeth LBC v Sec of State for Communities and Local Government* [2019] 2 P&CR 18, Lord Carnwarth said:  
*‘whatever the legal character of the document in question, the starting-point— and usually the end-point—is to find ‘the natural and ordinary meaning’ of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense.’*
11. Dictionary definitions of ‘understanding’ in this context refer to informal, unwritten agreements, not legally binding requirements or limitations. An understanding that the dwelling be occupied by a person employed or last employed in agriculture is not a prohibition against occupation by someone not employed in agriculture or forestry. Nor, as worded, does the condition place a continuing obligation or limitation on any subsequent occupier. I consider a reasonable, informed reader would take the view the bungalow intended to house an agricultural worker. But, for the reasons given above, I do not consider that same reader would take the view that first or subsequent occupation was limited to an agricultural worker.

### **Conclusion**

12. 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 occupation of Grove View by a non agricultural/forestry worker was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

*A Thickett*

Inspector



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## 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)  
(WALES) ORDER 2012: ARTICLE 28

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**IT IS HEREBY CERTIFIED** that on 25 March 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

- 1) The occupation of the building by a non agricultural/forestry worker is not prohibited by Condition 1 of planning permission reference 2333 granted 20 September 1966.

Signed:

*A Thickett*

Inspector

Date: XXXX

Reference: CAS-01782-V5X9G7

**First Schedule:** Occupation of the building by a non agricultural/forestry worker.

**Second Schedule:** Grove View, Bully Hole Road, Shirenewton, Monmouthshire, NP16 6SA

### NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/ operations described in the First Schedule taking place on the land specified in the Second Schedule was/ were lawful, on the certified date and, thus, was/ were not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use/ operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/ operation 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.

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## Plan

This is the plan referred to in the Lawful Development Certificate dated: XXXX

**By:** Mr A Thickett BA (Hons) BTP Dip RSA MRTPI

**Land at:** Grove View, Bully Hole Road, Shirenewton, Monmouthshire, NP16 6SA

**Reference:** CAS-01782-V5X9G7

*Not to Scale:*

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Site Plan shows area bounded by: 345920.42, 195822.24 346061.84, 195963.66 (at a scale of 1:1250), OSGridRef: ST45999589. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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