

Reference: 11/00668/CL
Date submitted: 26.08.11
Applicant: Mr Robert Jarrom
Location: Crowthorne, Landyke Lane, Scalford, LE14 4SY,
Proposal: Use of bungalow, garage and associated garden area for Class 3 residential use.



Introduction:-

Site: The bungalow to which this application refers was originally permitted under 83/0714/919 with a condition restricting the occupation of the dwelling to a person employed or last employed locally in agriculture. A reserved matters permission was granted in 1984 84/0075/6/919.

Proposal: The applicant seeks to prove that the property is a dwellinghouse and there has been a continuous breach of the occupancy condition that would permit the continued occupation of the property in non-compliance with the condition.

For the purposes of the s.191(2) of the Town and Country Planning Act 1990, uses and operational development are lawful at any time if:

1. No enforcement action can be then taken against the development
2. The development is not in contravention of any requirements of an enforcement notice then in force

There are time limits, given in s171B of the Town and Country Planning Act 1990, in which a local planning authority can pursue enforcement action.

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

This proposal seeks to establish that this breach is lawful by virtue of a breach of a condition (3 above). In order to do this the evidence provided needs to prove ‘on the balance of probability’ that the breach of the condition has been continuous for **10 years** preceding the date of the application, 26 August 2011, i.e it is shown to have been present since **26th August 2001**.

The property is a dwellinghouse (Class C3), accordingly there would be no material change of use as such, the only issue being whether there has been a breach of the occupancy condition.

The breach against which the Certificate is sought is the breach of the agricultural occupancy condition. As such the evidence should prove, on the balance of probability, that there has been a period 10 years continuous breach of the condition prior to the date of the application.

Planning History

Outline planning permission 83/0714/6/919 for the construction of a dwelling granted on 6 December 1983.

Reserved matters granted under 84/0075/6/919 on 13 April 1984 for the construction of the property.

Enforcement : None.

Planning Policy

Policies OS2 and C12 of the Melton Local Plan are relevant to the area but the policies are not applicable in this instance. The determination of a Certificate of Lawfulness relies on whether a breach of planning control continuing on the date of the submission of the application that, in this instance, has persisted for 10 years or more.

Consultations:-

Consultation reply	Assessment of Head of Regulatory Services
<p>Scalford Parish Council The PC objected to the initial application (to build the bungalow). The Parish Council has been aware that there has been a breach of the occupancy condition and state that the application can only be accepted.</p>	<p>Noted. The Parish Council has been asked for clarification of its understanding of the breach and why it did not report the breach it was aware of.</p>

Representations:

Representation	Assessment of Head of Regulatory Services
<p>A letter has been submitted that states that the property was rented to a chicken farmer prior to the fire.</p>	<p>This information effectively suggests compliance with the condition. Evidence and detail has been sought from the responder, but no further information has been forthcoming.</p>

Other considerations (not raised through consultation or representation)

Consideration	Assessment of Head of Regulatory Services
<p>Information submitted by the applicant: The agent submitted the following history to the use of the building:</p> <ul style="list-style-type: none"> • Robert Hobill and his wife lived in Crowthorne between 1984 and 1989. • The Applicant, Mr. Robert Jarrom purchased Crowthorne in 1989. • It was then occupied by Mr. Robert Jarrom’s 	<p>The evidence that has been submitted shows that the property was constructed in 1984 and was initially occupied in accordance with the condition, by someone employed in agriculture.</p> <p>In 1989, the property was sold to Mr Jarrom and thereafter occupied by his parents until 2005. Information provided shows that Mr and Mrs Jarrom were not employed, nor were ever employed</p>

<p>mother and father, Alice and Anthony Jarrom. Anthony Jarrom died in 1996, but Mrs. Alice Jarrom continued to occupy Crowthorne until she died in 2005.</p> <ul style="list-style-type: none"> • Between 2005 and 2009, Crowthorne has been let to and occupied by Mr. and Mrs. Parsons. Mr. Parsons was retired and Mrs. Parsons was a secretary. • Since 2009, Crowthorne has been empty and in recent months has become subject to vandalism. In 2010, a fire caused severe damage to the structure of the bungalow and ruined all the internal fittings and furniture. It is in an increasingly dilapidated state, and is becoming an eyesore. • Mr. and Mrs. Jarrom wish to renovate Crowthorne and lease it on the open market. It has a better prospect of being leased if the agricultural condition is removed. <p>Three letters have been submitted in support of the application:</p> <ul style="list-style-type: none"> • From R A Jarrom – Son of last tenants – Confirmation that his parents lived at the property since 1989. Confirms that his mother was a cleaner/housewife and his father was a retired process worker at Pedigree Petfoods. • From Victor Partridge – a friend of the Jarroms – Confirmation of the occupations of Mr and Mrs Jarrom and the period of their occupation of the property. • From Mr Paul Wood – a friend of the Jarroms – Confirmation of the occupations of Mr and Mrs Jarrom and the period of their occupation of the property. 	<p>in agriculture. Between 2005 and 2009, the property was occupied by Mr and Mrs Parsons, again not employed in agriculture. To 2009, there had been a continuous breach of the agricultural condition, which in planning terms would have been lawful and to the day that the last tenant moved out, enforcement action could not have been taken.</p> <p>A breach of condition is different to one, for example, relating to operational development in that the condition (unless formally removed by an application to remove) remains in effect on the planning permission. An issue with this application is that there has been a substantial break in the occupation of the property resulting from a fire in 2009. The consideration must be whether a re-occupation of the property by persons who are not employed in agriculture would be considered to be a fresh breach and therefore would be capable of being subject to enforcement action.</p> <p>The break in occupation in this instance has been 2½ years. It is considered that this break is of sufficient length to have remedied the breach of the condition and any further occupation of the property in breach of the condition would be a further breach of planning control where the Council would be in a position to take enforcement action. The condition in question relates to ongoing occupancy of the bungalow and as a result of its vacancy, there is no breach of it at present. Accordingly, the breach has not persisted to the date of the application and the 10 year requirement for ‘lawfulness’ under s191(2) has not been met.</p>
<p>Earlier correspondence/estoppel: There has been the discovery of correspondence from the Council which, if considered to be of substantial weight, could result in no further action being taken in this matter.</p> <p>At the time of the initial construction of the property, a solicitor acting on behalf of the applicant wrote to the Council requesting clarification of the condition of the permission and the Borough Planning Officer offered the following in response.</p> <p><i>“Condition No.4 of the outline planning permission of the 6th December, 1983 can be taken as satisfied if the dwelling in question is first occupied by persons so employed.</i></p>	<p>The property was purchased by the now owners of the property relying on this information. The consideration at the time being that the Council were effectively estopped from taking action and the occupation of the property in breach of the condition would be lawful.</p> <p>The basis of an ‘estoppel’ claim was normally that an officer of a local authority had, by reason of a statement made verbally or in writing, given permission for a development which binds that Authority. The problem used to arise most frequently where a determination may be necessary as to whether planning permission is or is not required for a development; where alterations are being made to an approved development, particularly in the course of construction or in</p>

<p><i>As you will appreciate, "first occupied" means that the applicant or his family must be residence for a reasonable minimum period, i.e. months rather than days.</i></p> <p><i>I think it worth repeating however, that providing the dwelling is first occupied by a person employed as specified in the condition, then the condition is satisfied."</i></p> <p>This correspondence was the subject of an extensive amount of discussion between August 1988 and September 1989 in consideration of whether the Council were 'estopped' from enforcement action in respect of any breach of the occupancy condition. At that time, the Council's Manager of Planning and Technical Services consulted the Borough Secretary and Clerk over the issue and advised the purchasing solicitors the following;</p> <p><i>"I have consulted the Borough Secretary and Clerk and I confirm that in the view of the then Borough Planning Officer's letter dated the 18th July , 1984, the agricultural occupancy condition is effectively removed from planning permission reference 83/0714 and the subsequent reserved matters application reference 84/0075."</i></p>	<p>enforcement cases.</p> <p>The status of 'estoppel' has moved on some way from the correspondence referred to opposite and has been brought to an end by the House of Lords decision <i>R (on the application of East Sussex County Council) v Repotech (Pebsham) Ltd</i> 28/2/02.</p> <p>This does not absolve the Council wholly of such legal concerns. The purchasers of the property, the current owners, took steps to buy it on the premise of the written information that was given at the time. This was from the Council's Manager of Planning and Technical Services and as such could be regarded as being from a person of such a position to be able to act on behalf of the Council to determine such matters. As such, what now rises is that there would be an belief that should they continue with the occupation of the property, such would be acceptable in planning terms and would not be subject to possible enforcement action, a civil law concept of 'legitimate expectation'.</p> <p>However, such a 'legitimate expectation' that enforcement action does not equate to lawfulness within the terms of the Planning Act, which is defined as set out above. Accordingly, this difficulty does not contribute to the balance of evidence in favour of the Certificate.</p>
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Conclusion:

On the balance of probability the application for the Certificate of Lawfulness fails and should be declined. The evidence submitted does not demonstrate a continued breach of planning control because of the current vacancy of the bungalow. The correspondence referred to above, whilst a complicating factor, does not contribute to the lawfulness of the use, which is based on the evidence of occupancy only.

Whilst the Council do not consider that the development benefits from a lawful use for occupation by persons not employed in agriculture, it is considered desirable to confirm the position regarding Enforcement Action. It is considered that for the remaining period of the applicant's ownership the Council should not take enforcement action to stop the any such occupation because of the 'legitimate expectation' issues described above.

However, the re-occupation of the property would be a fresh breach of planning control, It is considered that the owners should be advised that if this involved another party, the Council would then consider whether to serve an Enforcement Notice in respect of the breach of condition. If the property is transferred to another party the new owners would then be under no misunderstanding that they would be at risk of Enforcement Action if the property was not occupied in accordance with the condition.

RECOMMENDATION : Refuse:

The applicant has not submitted sufficient evidence to prove, on the balance of probability, that the condition has been breached for a continuous period of 10 years from the date of the application. The break in occupation of the property, whilst of no fault of the applicant, is substantial to the point that any further occupation of the property in breach of the condition would be a breach of planning control and enforcement action could be taken by the Council to remedy the breach.

Officer to contact: **Mr Andrew Dudley**

Date: 21st November 2011