

STEPHEN JUPP

BA(Hons), LLM, MRTPI

CHARTERED TOWN PLANNER

Planning Department
Civic Offices
Havant
Hants
PO9 2AX

Friday, 23 June 2023

Dear Sir/Madam:

**Re: Saltings Cottage, Meadow Farm Nursery, Woodgaston Lane,
Hayling Island, PO11 0RL**

Certificate of Lawfulness of Existing Use

**Breach of condition 4 of planning permission 02/56431/003
[Agricultural occupancy condition]**

Introduction

The application is submitted under the provisions of section 171B(3) – for “*any other breach of planning control*” wherein the immunity period is ten years.

The application in this case seeks confirmation that there has been continuous breach of condition 4 of planning permission 02/56431/003.

Planning permission 02/56431/003 was an outline permission granted on 1978 for “*3 bedroom agricultural workers dwelling.*”

Condition 4 of this permission states:

*“The occupation of the dwelling shall be limited to ,
solely or mainly employed, or last employed, in the locality ,
agriculture as defined in Section 336(1) of the Town
Country Planning Act 1990, or in forestry or a dependent of
such a person residing with him or her, or a widow or widower
of such a person.”*

PLANNING APPLICATIONS .

AUTOCAD DRAWINGS.

GENERAL ADVICE.

OBJECTION LETTERS.

APPEALS.

SITE DEVELOPMENT APPRAISALS.

LOCAL PLAN SUBMISSIONS.

EXPERT PLANNING ADVICE.

SPECIALISING IN:

DEVELOPMENT CONTROL,

AGRICULTURE,

ENFORCEMENT AND

NATURE CONSERVATION LAW

PARTNERS:

STEPHEN PAUL JUPP
BA(Hons), LLM, MRTPI

LYNN ALEXANDRA JUPP

**PO BOX 839
CHICHESTER
WEST SUSSEX
PO19 9XQ**

Mobile: 07777-618886

E-Mail:

**steve@planning-solutions.co.uk
lynn@planning-solutions.co.uk**

Web Site:

www.planning-solutions.co.uk

**Member of the
Royal Town Planning Institute.**



The Legal Position

Section 191(1)(c) provides that if any person wishes to ascertain whether any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, they may make an application to the local planning authority.

Where the alleged breach is a failure to comply with a planning condition, it is necessary to find a continuous breach over the 10-year period. If non-compliance has ceased by the discontinuance of the offending activity, the breach is at an end; and if there is subsequently renewed non-compliance, that would be a fresh breach. Hence, an application can be made under the section only if non-compliance exists at the time of application. The applicant will then be entitled to a certificate if at that time a period of 10 years has expired since the breach occurred, and it does not constitute a contravention of any enforcement notice or breach of condition notice.

The question was further considered by the High Court (Christopher Lockhart-Mummery Q.C. sitting as Deputy Judge) in *North Devon District Council v. Secretary of State for the Environment* [1998] E.G.C.S. 72; *The Times*, May 12, 1998. The case concerned an agricultural occupancy condition, which the applicants maintained had been breached because the property had actually been used as holiday accommodation for short lets during the holiday season. This meant that it had been unoccupied from October to April each year. The court allowed the appeal against the Secretary of State's decision to grant a certificate, holding that the relevant question was whether the property had been occupied for 10 years otherwise than by a person in agricultural employment. The Secretary of State had wrongly confused the question of use with the question of occupancy, and had found that the type of use had continued throughout the period when the house was not occupied. He had not directed his mind to the question of whether the facts demonstrated a continuous breach throughout 10 years.

Finally, with regard to the appropriate test of evidence, it is accepted that the onus of proof is on the applicant, although as confirmed in *F W Gabbitts v SOS & Newham LB* [1985] JPL 630 an applicant's own evidence does not have to be collaborated by independent evidence.

The Facts of this Case

This application is accompanied by the statutory declarations of [REDACTED]. They have been occupiers of the subject dwelling since the commencement of the continuous breach of 30th April 2013.

[REDACTED] Statutory Declaration is very detailed in terms of the historic use of the dwelling and I draw heavily on that for my summary of the facts of this case as set out below.

Reserved matters were subsequently approved under permission 03/56431/004 on 25th September 2003. Building work commenced on 1st July 2004 and on 5th April 2005 the dwelling was completed and occupied [REDACTED],

[REDACTED]

[REDACTED]

in September 2011 her now husband, Philip Newell moved into the property with her.

[REDACTED]

bookkeeping for the other half of her working week.

[REDACTED]

Conclusions.

The evidence is clear in demonstrating that [REDACTED] was the only person employed in agriculture who has lived in the dwelling.

[REDACTED]

However from 30th April 2013 [REDACTED] until the present day there has been a continuous breach of the agricultural occupancy condition.

In summary the breach has been achieved through the following periods of occupancy:

[REDACTED]

[REDACTED]

The evidence therefore demonstrates, on the balance of probability, that a breach of condition 4 of planning permission 02/56431/003 commenced on 30th April 2013 [REDACTED]

Accordingly, since 20th April 2013 the breach of condition 4 has been continuous. This is for a period in excess of the 10 years needed to achieve a certificate of lawfulness.

A certificate confirming the lawfulness of the non-compliance with condition 4 on planning permission 02/56431/003 should therefore be issued.

Yours sincerely,

[REDACTED]

STEPHEN JUPP
BA(Hons), LL.M., MRTPI
Chartered Town Planner