



**PLANNING STATEMENT IN RELATION TO AN
APPLICATION FOR A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT**

AT

**COMBS VIEW
MANCHESTER ROAD
CHAPEL-EN-LE-FRITH
HIGH PEAK
SK23 9UH**

ON BEHALF OF

MR STEPHEN FLETCHER

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1.0 INTRODUCTION

- This report has been produced to support an application to High Peak Borough Council for the issue of a Certificate of Existing Lawful Use in connection with the occupation of Combs View without compliance with Condition 6 of the Outline Planning Decision Notice 028638 granted on the 15th November 1989 and Condition 5 of the Reserved Matters Planning Decision Notice 029053 granted on the 15th March 1990.
- Pursuant to Section 191 of the Town and Country Planning Act 1990, the Authority is invited to issue a Certificate which recognises the lawful use of Combs View without compliance of the agricultural occupancy conditions stating *“The occupation of the dwelling shall be limited to a person solely or mainly employed or solely employed in the adjoining agricultural’ contractors business, or in the locality in agriculture as defined in Section 290 of the Town and Country Planning Act. 1971, or in forestry, or a dependent of such a person residing with hi(m) or her, or a widow or widower of such a person”*
- This is on the basis that the property has for a period of more than 10 years continually occupied by the applicant who has not complied with the occupancy restriction deriving their main source of income from operating a contractors business carrying out non-agricultural work.
- This application is supported by a Statutory Declaration and evidence from the applicant.

2.0 POLICY AND LAW

THE TOWN AND COUNTRY PLANNING ACT 1990

- Section 55 (1) provides that “development” includes, “the making of any material change of use in the use of any buildings or other land.”
- Section 336 (1) defines “use” in relation to land as, not including the use of land for the carrying out of any building or other operation on it.
- Section 191 (1) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful or whether any operations which have been carried out in, on or under land are lawful may make an application for the purpose to the local planning authority specifying the land and described use.
- Section 191 (2) advises that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them whether because they did not involve development or require planning permission or because the time for enforcement has expired or for any other reason.
- Section 191 (4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

CIRCULAR 10/97: ENFORCING PLANNING CONTROL – LEGISLATION AND POLICY

- Annex 8 headed “Lawfulness and the Lawful Development Certificate (LDC)” provides advice regarding how applications should be determined
- Paragraph 8.11 to the Circular states, “Once satisfied that the application is valid, what the LPA must address when reaching their determination is whether, on the facts of the case and relevant Planning Law, the specified matter is or would be lawful.”
- Paragraph 8.12 states, “The onus of proof in a LDC application is firmly on the applicant.....in many cases, the applicant of a certificate will be best placed to produce information about the present, and any previous activities taking place on the land, including a copy of any planning permission he may hold. Some information, especially about the history of any unauthorised activity on the land, will be within the applicant’s knowledge.”

- Paragraph 8.13 states, “section 191 (1) of the 1990 Act enables anyone to apply to the LPA for a decision whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.”
- Paragraph 8.14 states, “subsection (4) of section 191 provides that if, on an application under the section the LPA are provided with information satisfying them of the lawfulness, at the time of the application of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them, they shall issue a certificate to that effect, and, in any other case, they shall refuse the application.
- Paragraph 8.15 states “in appeals to the Secretary of State which raise “legal issues”.... Where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is “the balance of probability”. As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely “beyond reasonable doubt”.

3.0 THE EVIDENCE

- With reference to the supporting Statutory Declaration from Mr Stephen Fletcher, the facts of this case are set out in the history.
- During the first few years of occupation, the applicant complied with the occupancy conditions carrying out mainly agricultural contractor work.
- Since 2000, Mr Stephen Fletcher has derived his main source of income from outside of the agricultural sector operating a contracting business carrying out countryside conservation and environmental work. Evidence has been provided in Exhibit SF4, SF5 and SF6 to substantiate the Declaration made by the applicant.
- There is no agricultural business associated with this dwelling and the applicant does not receive any other agricultural income.
- Within the Declaration and accompanying evidence, the applicant has provided details of their continued occupation of the property.

4.0 MAIN ISSUES & ASSESSMENT

- It is considered that based upon the evidence, the main issue to be determined is whether the property has been occupied continuously without compliance with agricultural occupancy conditions.
- In order to establish whether or not there has been a breach of these conditions, the following detail needs to be considered:
 - ✓ What is the definition of agriculture in the Town and Country Planning Act 1971.
 - ✓ What is the history of the occupation of the property and what circumstances have led to the application?
 - ✓ What evidence is available in relation to paragraph 8.12 of circular 10/97?
 - ✓ Does the evidence demonstrate that on the balance of probability the condition has been breached?
- Firstly, it is important to consider the definition of “agriculture” as defined under the Town and Country Planning Act 1971 *“Section 336 of the **Town and Country Planning Act 1971** defines ‘agriculture’ as including: 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, market 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;*
- Taking into account the definition above, the operation of a contracting business clearly falls outside of agriculture and would fall within use classes B8, B2 or sui generis, depending on the specific operations carried out at the site.
- In this case, the applicant has mainly carried out contracting work since the year 2000 working on environmental projects and carrying out conservation work on behalf of non-agricultural clients. The main client base includes wildlife trusts, conservation groups, heritage and conservation trusts, public environmental bodies and private landowners.
- Furthermore, the operation of a contracting business in principle falls outside of agricultural however the nature of the operations further substantiates that an agricultural operation has not been carried out. This work has included the creation and management of wildlife habitats, wetlands, peatland restoration fall outside of agriculture.

- The condition is clear in stating that *“The occupation of the dwelling shall be limited to a person **solely or mainly employed or solely employed in the adjoining agricultural’ contractors business**”*. The evidence demonstrates that an agricultural contractors business has not been operating since the 2000 and the applicant has been mainly or solely employed in a non-agricultural contracting business. Therefore, the condition has been continually breach since that date.

Balance of Probabilities

- Based on the evidence above and included in the application it is considered that the information provided should satisfy the LPA under sub section (4 of section 191) that the information provided is sufficient to issue a Certificate of Occupation for the dwelling without compliance with Condition 6 of the Planning Decision Notice 028638 granted on the 15th November 1989 and Condition 5 of the Planning Decision Notice 029053 granted on the 15th March 1990 and that the balance of probability clearly indicate the issue of a Certificate.

5.0 CONCLUSION

- The evidence in support of the application clearly demonstrates that Combs View has been occupied as a private residential dwelling without compliance with Condition 6 of the Planning Decision Notice 028638 granted on the 15th November 1989 and Condition 5 of the Planning Decision Notice 029053 granted on the 15th March 1990.
- The evidence in this application and Statutory Declaration clearly demonstrates that the property has been occupied without compliance with the agricultural occupancy conditions.
- The applicant requests that the Authority issue a Certificate of Existing Lawful Use in terms which recognise that Combs View may continue to be occupied without compliance with the Agricultural Occupancy Conditions.