

## DELEGATED DECISION REPORT

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HPK/2024/0047  
VALID 05/02/2024

COMBS VIEW,  
MANCHESTER ROAD,  
CHAPEL-EN-LE-FRITH,  
DERBYSHIRE, SK23 9UH

APPLICATION FOR A LAWFUL  
DEVELOPMENT CERTIFICATE  
FOR AN EXISTING USE -  
OCCUPATION OF DWELLING  
WITHOUT COMPLIANCE WITH  
CONDITION 6 OF OUTLINE  
DECISION NOTICE 028638  
AND CONDITION 5 OF  
RESERVED MATTERS  
DECISION NOTICE 029053  
(CERTIFICATE OF  
LAWFULNESS –EXISTING)

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### MAIN ISSUES

Whether the building has been occupied without complying with restrictive conditions for a period in excess of 10 years, and, its occupation as a dwelling without restriction is lawful.

### DESCRIPTION OF SITE

The application site relates to a detached dwelling, known as Combs View, which is located within an area of countryside as defined by the Local Plan Policies Map.

The dwelling was constructed as a rural workers dwelling in association with the adjacent agricultural contractors site.

### PROPOSAL

The application seeks a Lawful Development Certificate to establish whether the building has been occupied in excess of 10 years without complying with the restrictive condition.

Outline Planning Permission was granted on 15<sup>th</sup> November 1989 under application Ref: 028638. Condition 6 attached to that permission states:

*The occupation of the dwelling shall be limited to a person mainly 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 him or her, or a widow or widower of such a person.*

The condition is replicated as Condition 5 attached to the approval of reserved matters Ref: 029053, which was approved on 15<sup>th</sup> March 1990.

It is these conditions which the application seeks confirmation that they have not been complied with.

## **PLANNING HISTORY**

HPK/2017/0313 - Removal of Condition No 5 restricting the occupation of the dwelling to person or persons employed wholly or mainly in agriculture from Planning Permission 029053 granted on 15 March 1990 to build the house known as Combs View on land off Manchester Road, Chapel-en-le-Frith, Derbyshire – Refused – 08/09/17.

HPK/0003/5987 - RELAXATION OF CONDITIONS ON APPROVAL REF. 028638 RE OCCUPANCY – Refused – 26/02/1997

## **CONSULTATION RESPONSES**

### **Public Comments**

None received

### **Parish Council**

No objection

## **OFFICER COMMENTS**

### Background and Relevant Legislation

This certificate has been submitted under s.191 of The Town and Country Planning Act to determine whether the failure to comply with any condition or limitation subject to which planning permission has been granted is lawful. In this instance, the application relates to Combs View which is a dwelling which has an occupancy restriction attached to the permission(s) for its construction. S.191(2) states that uses and operations are lawful at any time if no enforcement action may be taken in respect of them. S.171B sets out the time limits for where no enforcement action may be taken and confirms, that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In this instance, therefore, it needs to be established whether a breach of condition has occurred and, where it has, that the breach has endured continuously for a period of more than 10 years from the date that the application was submitted to the LPA. The relevant date is therefore 5<sup>th</sup> February 2014, from which a continuous use must be demonstrated.

S.191(4) states that if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use then they shall issue a certificate to that effect. Planning Practice Guidance also confirms that the applicant is responsible for providing sufficient information to support an application and, in the case of applications for existing use, if a LPA has no evidence itself, nor any from others, to contradict or make the applicants version of events less than probable

there is no good reason to refuse the application, provided that the evidence alone is sufficiently precise and unambiguous to grant on the balance of probability.

### Evidence Submitted

The application has been supported by a planning statement and sworn declaration.

The planning statement makes the followings key points:

- 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;
- During the first few years of occupation, the applicant complied with the occupancy conditions carrying out mainly agricultural contractor work;
- Since 2000, the applicant 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;
- The operation of a contracting business clearly falls outside of the definition of agriculture and would fall within use classes B8, B2 or sui generis, depending on the specific operations carried out at the site;
- 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.

The statutory declaration (and its appendices) makes the following key points:

- Applicant and wife obtained the original planning permissions and have resided in the property since construction (Feb 1991);
- Adjacent to the site are a range of buildings and yard known as Newfield Farm Buildings which applicant is joint owner.
- Buildings were purchased in 1980 and used as storing agricultural machinery in connection with the agricultural contracting business known as B & H Fletcher.
- At that time the business primarily served dairy and livestock farms within a 10 mile radius.
- Series of events in 1990's affected dairy and livestock agriculture, resulted in decline in agricultural contracting
- Government funding for environmental projects became available for creating wildlife habitats etc. Various plant and machinery purchased
- Countryside conservation and environment work became main work undertaken by B&H Fletcher in 2000.
- Over past 10 years agricultural contracting has been the main source of income, between 78.11% and 96.8%
- Applicants wife has not had any agricultural income since residing at Combs View.

- Appendix SF1
  - Land Registry Plan
- Appendix SF2
  - 088638 Decision Notice
- Appendix SF3
  - 029053 Decision Notice
- Appendix SF4
  - Document titled “Overall Percentages of Work Done by Stephen Fletcher B & H Fletcher”
  - Details Agricultural Contracting and Conservation Contracting %ages, from 2012/13 to 2022/23
- Appendix SF5
  - List of Non-Agricultural contract invoices
  - Dates from 03/04/2013 to 31/03/2023
  - Includes a listed of circa 234 contracts
  - Contract numbers range from 2669 to 3297
- Appendix SF6
  - Provision of 13 individual business invoices
  - Invoice Ref 2682, dated 28/06/2013
    - Business name and address contained
    - Details services including Agricultural Contracting, Heather Conversion and Fencing Contractors
    - Derbyshire Wildlife Trust
    - Appears to say erection of osprey nesting poles
  - Invoice Ref 2739, dated 12/12/2013
    - Business name and address contained
    - Details services including Agricultural Contracting, Heather Conversion and Fencing Contractors
    - Woolston Eyes Conservation Group
    - Appears to tree and scrub removal, ground lowering
  - Invoice Ref 2755, dated 05/04/2014
    - Business name and address contained
    - Details services including “Agricultural Conservation & Fencing Contractors”
    - Staffordshire Wildlife Trust
    - Nature of work cannot be made out, but seems to say “bush....”
  - Invoice Ref 2789, dated 03/09/2014
    - Business name and address contained
    - Details services including “Agricultural Conservation & Fencing Contractors”
    - Client name unclear
    - Nature of work cannot be fully made out, but refers to felling trees
  - Invoice Ref 2922, dated 03/02/2016
    - Business name and address contained
    - Details services including “Agricultural Conservation & Fencing Contractors”
    - Cheshire Wildlife Trust
    - Nature of work cannot be fully made out but refers to Delamere and over flow car park

- Invoice Ref 2928, dated 05/03/2016
  - Business name and address contained
  - Details services including “Agricultural Conservation & Fencing Contractors”
  - Client and nature of work unclear
- 3 x Invoices where Ref and date unclear
  - Business name and address contained
  - Details services including “Agricultural Conservation & Fencing Contractors”
  - Client and nature of work unclear
- Invoice Ref 3102, dated 31/03/2019
  - Business name and address contained
  - Details services including “Agricultural Conservation & Fencing Contractors”
  - Cheshire Wildlife Trust
  - Works at Weaver Farm
- Invoice Ref 2956, dated 06/08/2016
  - Business name and address contained
  - Details services including “Agricultural Conservation & Fencing Contractors”
  - Cheshire Wildlife Trust
  - Outflow pipe and reinstating track
- Invoice Ref 3293, dated 31/03/2023
  - Business name and address contained
  - Details services including “Countryside Contractor”
  - Clearing silt from ditches
  - No client details
- Invoice Ref 3184, dated 11/08/2020
  - Business name and address contained
  - Details services including “Countryside Contractor”
  - Woolston Eyes Conservation Group
  - Ground preparation and clearance
- Appendix SF7
  - List of plant and machinery owned by B & H Fletcher
- Appendix SF8
  - Letter from TW Bowler dated 23<sup>rd</sup> May 2023
    - Letter says that B & H Fletcher have had an account with them for over 20 years;
    - They have transported plant and machinery from their yard to various sites as instructed.
- Appendix SF9
  - Letter from Woolston Eyes Conservation Group, dated 5<sup>th</sup> June 2023
    - Confirms the applicant has been a contractor for them since 2012 carrying out various conservation work.

### Any other Evidence

Various websites have B&H Fletcher listed as agricultural contractors.

### Analysis of Evidence

The condition requires that:

*The occupation of the dwelling shall be limited to a person mainly 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 him or her, or a widow or widower of such a person.*

It is clear from the evidence that the applicant and his wife have resided at the property since its construction in 1991, and there is no reason to dispute this.

The evidence also indicates that the site lies adjacent to Newfield Farm Buildings. From here B & H Fletcher operate. The evidence indicates that Mr Fletcher is joint owner of this business and carries out work for the business. At the time that planning permission was granted, it is understood that this was the agricultural contractors business referred to in the condition.

The condition can be broken down into various ways of compliance. The main one in this instance is whether Mr Fletcher is:

*a person mainly or solely employed in the adjoining agricultural contractors' business*

From the evidence provided, it seems clear that Mr Fletcher is mainly or solely employed in the adjoining business and there are clear functional ties between the applicant and that adjacent business. There is no suggestion in the evidence to indicate that Mr Fletcher works independently of this business.

Given that the applicant still works for B&H Fletcher, a key question is therefore whether they operate an agricultural contractors' business. The Planning Statement asserts that the business is no longer an agricultural one and that its use is more likely B8/B2. Firstly, an agricultural contractors site which is not in itself necessarily an agricultural use, it may fall within sui-generis use (or indeed B8). Secondly, whether a material change of use has occurred at that site from what was occurring at the time the planning permission was granted, has not been established. No Lawful Development Certificate has been submitted to show that agricultural contracting does not occur at that site. A LDC for the adjacent site would be definitive.

The evidence does not show that any different business have operated at the site, and that B&H Fletcher have operated from the site since before the dwelling was constructed. The suggestion is that the business has moved from agricultural contracting to conservation contracting.

The submitted invoices, through the various years indicate B&H Fletcher's services. These have varied through the years but include "Agricultural Contracting, Heather Conversion and Fencing Contractors", "Agricultural Conservation & Fencing Contractors", and "Countryside Contractor". This is strong evidence which indicates the totality of work being carried out by B&H Fletcher and this includes work

assisting the agricultural community. Many of these invoices are dated within the relevant 10 year period.

Appendix SF5 provides a list of approximately 234 Non-Agricultural contracts from 03/04/2013 to 31/03/23. The list includes invoice numbers ranging from 2669 to 3297 across this period. This may suggest that 628 invoices had been issued across this time, 394 of which are not detailed. There is insufficient evidence to show that any other invoice relates to, however the use of the term “non-agricultural” would suggest the other invoices were agricultural invoices.

Appendix SF4 refers to Overall Percentages of Work Done by Stephen Fletcher, breaking down the work into Agricultural and Conservation work. The percentage levels of agricultural work appears to be low with conservation work predominant. The title of the document is ambiguous and may suggest that the %ages referred to relate to Mr Fletchers work only and not the totality of the business. In any event there is no information, within the submission, to corroborate the claims of the levels suggested.

Even if Mr Fletcher’s own personal element of work comes from contracts with a Conservation steer (through working with B & H Fletcher), it would still need to be established that B & H Fletcher, as a business is no longer an agricultural contractor and, at some point in time, there had been a material change in use of land. As identified above, there is sufficient ambiguity for the LPA to be satisfied that this is correct.

The are areas of ambiguity in the submission which:

- The true nature of B&H Fletcher business is not fully clear. If the intention was to rely on the business not being an agricultural contracting business, then an LDC for the existing use should be sought in the first instance;
- The companies own marketing material indicates that agricultural contracting has occurred;
- SF4 is ambiguous in that it is not clear whether the information relates to Mr Fletcher individually or the business as a whole;
- It would appear that a larger number of “non conservation” invoices have been issued but it is not clear what these relates.

The remaining part of the condition reads:

*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 him or her, or a widow or widower of such a person.*

It is clear that the main applicant does not work locally in agriculture or forestry.

It is not necessary to assess the nature of the applicants employment/work with B&H Fletcher against the definition of agriculture. The test is whether the applicant is mainly or solely employed in the adjoining agricultural contractors’ business. This does not require them to be employed in agriculture itself.

## CONCLUSIONS

There is insufficient evidence, on the balance of probabilities, to demonstrate that Combs View has been in breach of condition 6 attached to 028638 and condition 5 attached to 029053 in excess of 10 years and is lawful.

**OFFICER RECOMMENDATION:**      **Refuse Certificate**

**Case Officer:** Declan Cleary

**Recommendation Date:** 02/05/2024

X *B.J. Haywood*

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Signed by: Ben Haywood

**On behalf of High Peak Borough Council**