

DELEGATED DECISION REPORT

HPK/2025/0012
VALID 17/01/2025

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. (C3
- DWELLINGHOUSES)
(CERTIFICATE OF
LAWFULNESS –EXISTING)

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 C3 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 15th 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 15th March 1990.

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

PLANNING HISTORY

HPK/2024/0047 – 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 Refused (Not Lawful) – 03/05/24

Reason:

The Local Planning Authority considers that the evidence presented is not sufficiently precise or unambiguous to demonstrate a failure to comply with the restrictive occupancy conditions attached to the dwelling. Therefore, on the balance of probabilities, the Local Planning Authority cannot justify the grant of a certificate of lawfulness.

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

None received

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 17th January 2015, 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, of 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.

Previous Application HPK/2024/0047

This application is a resubmission of a previously refused application for a lawful development certificate for existing use (non compliance with the restrictive occupancy condition).

In consideration of that application, the Council were not satisfied, based on the evidence submitted, that the occupier/s of Combs View were not mainly or solely employed in the adjoining agricultural contractors' business. That being the operations at the adjacent Newfield Farm Buildings.

Further, the application was not sufficiently unambiguous with uncertainty surrounding:

- *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. (Extract from delegated report)*

Evidence Submitted

The application has been supported by a planning statement and sworn declarations, and addended information.

The planning statement makes the following key points:

- The wording of the condition does not account for any other type of contracting or permit occupation of the property by a person employed in any other type of contracting business.

- The evidence in support of the application clearly demonstrates that Combs View has been occupied as a private residential dwelling without compliance with the restrictive conditions
- The evidence also confirms that 'B & H Fletcher' is a countryside contracting business and not specifically an agricultural contracting business
- The evidence also confirms that Mr Stephen Fletcher, sole trader for the business B & H Fletcher, has derived his main source of income from this countryside contracting business and therefore not "solely or mainly employed or solely employed in the adjoining agricultural' contractors business", as an agricultural contractors business no longer operates from the site, "or in the locality in agriculture"
- Following the issue of Decision HPK/2024/0047, the applicant has collated additional evidence to address the issues raised in the Delegated Report and presented this evidence in the form a Statutory Declaration with clear and concise business records over a ten year period that confirm the operation of a countryside contracting business. The additional evidence also clarifies the nature B & H Fletcher and how this operates for taxation and legal purposes.
- B & H Fletcher, operated by Mr Stephen Fletcher, has been operating as a countryside contracting business and therefore the applicant has not been a "person solely or mainly employed or solely employed in the adjoining agricultural' contractors business"
- The evidence presented in this application from two Statutory Declarations and third party evidence clearly demonstrates that the property has been occupied without compliance with the agricultural occupancy condition

The statutory declaration from Mr Stephen Fletcher makes the following key points:

- Applicant and wife obtained the original planning permissions and have resided in the property since construction (Feb 1991);
- The property is subject to occupancy restriction by condition;
- 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 conservation and environmental 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 23rd 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 5th June 2023
 - Confirms the applicant has been a contractor for them since 2012 carrying out various conservation work.

This statutory declaration and supporting information was previously seen by the Council when considering the previous application.

The statutory declaration from Mr Stephen Fletcher makes the following key points:

- Margaret Fletcher and her husband have lived at Combs View since Feb 1991.

- Combs View is adjacent to Newfield Farm Buildings which B&H Fletcher have owned since 1980 to operate their business.
- Stephen Fletcher is now a sole trader, since 2016
- He still uses the buildings and yard to store vehicles and machinery for the Countryside Contracting business which includes both Agricultural and Countryside and Environmental contracting.
- The main source of income is from the Environmental and Countryside work
- Agricultural work is mainly carried out from April to September
- Non-agricultural work is carried out any time but not between April and August to protect nesting birds
- As part of her administrative role, Mrs Fletcher prepared estimates and some invoices between 1st April 2013 and 31st March 2023.
- Over 25 years branded invoices have been used and invoices hand written
- Branded invoices detail how the nature of work has evolved over time with list of services adjusted
 - Invoices initial cited "Agriculture and Fencing Contractors"
 - From 1999 cited "Agricultural Contractors, Heather Conservation, Fencing Contractors". Stating that farming fencing was in decline and more domestic and commercial fencing undertaken
 - From 2014 cited "Agricultural, Conservation & Fencing Contractors"
 - From July 2020 cited "B&H Fletcher, Countryside Contractor". Stating that this covers working in agriculture and enhancing the biodiversity of the countryside
- List of invoices for all contracts between 1st April 2013 and 31st March 2023 have been provided. Confirmation of why there may be gaps in invoice numbers – amendments, errors, sales, or cancelled. Also clarifies when last fencing contract was undertaken and when work as sole trader commenced.
- 10 year period of annual turnover provided. Including confirmation that the percentages cited are accurate.
- Business accountant confirms accounts
- Business never been advertised on website or social media. Rely on word of mouth, client referral and recommendations.
- Exhibit 1
 - 23 Page list of Invoices/Contracts between April 2013 and March 2023
 - List separated into "Agricultural" and "Non Agricultural"
 - List includes 283 Agricultural contracts and 283 Non Agricultural contracts
- Exhibit 2
 - B&H Fletcher Annual Turnover from April 2013 to March 2023
 - Turnovers include VAT
 - Figures separated into Agricultural and Non Agricultural turnover
- Exhibit 3
 - Letter from Mary Hardy Book Keeping and Accounts, dated 30th September 2024
 - Confirm they have acted as accountant for B&H Fletcher for last 4 years and worked closely with previous accountant since 2010
 - Confirms that Mrs Fletcher has carried out book keeping for the business

- Confirms that tax reporting for the business runs from 1st April to 31st March
- Confirms that they prepare accounts for the business and complete Mr Fletchers self-assessment tax return
- Confirms that the information contained within Exhibit 1 and Exhibit 2 are accurate and correct

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. At the time that planning permission was granted, it is understood that this was the "agricultural contractors business" referred to in the condition. The evidence indicates that Mr Fletcher was joint owner of this business, carried out work for the business and since 2016 has been a sole trader using the business name.

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 or that he has other main employment elsewhere. As such there has remained a continuous tie between Mr Fletcher occupying Combs View and the Newfield Farm Buildings.

Concerns were raised previously that the evidence was not sufficiently unambiguous for a Lawful Development Certificate to be granted. Further information in this application has been provided by way of a Statutory Declaration by Mrs Fletcher and the accompanying exhibits.

As set out above, it is clear that the dwelling has been occupied by a person (Mr Fletcher) who is mainly employed by the adjacent business, B&H Fletcher, and that this business has been enduring at the site for many years.

The applicants main argument can be summarised that B&H Fletcher is not an agricultural contracting business and, therefore, they have not complied with the condition in excess of 10 years.

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 or that a material change of use has occurred. A LDC for the adjacent site would be definitive. It is not for this application, or indeed appropriate for this application, to consider what the lawful use of an adjacent site is. Whether a material change of use has occurred would be a matter of fact and degree.

To support their position the applicant has broken down turnover for the business into that which is derived from "agricultural" work and that which is from "non-agricultural" work. This is detailed in Exhibit 2 of Mrs Fletchers declaration and Exhibit Sf4 of Mr Fletchers declaration. It is noted that the %age figures differ between the two, although it is acknowledged that Mrs Fletchers figures have been corroborated by an accountant.

While there is evidence that a large majority of turnover from the business is derived from non-agricultural contracting it is noted that the %age figures fluctuate year on year with turnover in 2017-18, for example, amounting to 32.1%.

Furthermore, relying on turnover figures alone is not wholly demonstrative of business operations as certain contracts may be more lucrative financially than others. This is clearly evident given that the breakdown of "agricultural" and "non agricultural" contracts provided within Exhibit 1 of Mrs Fletchers declaration shows a high proportion of agricultural invoices/contracts being undertaken with 283 contracts, of the 576 cited, being agricultural ones. This represents 50% of the contracts taken by the business.

Furthermore, as set out above the business can fluctuate and there are years where the business had taken more agricultural contracting contracts than non-agricultural e.g. (but not exclusively) year 17-18 (29 Agri v 18 Non-agri); year 18 – 19 (24 Agri v 21 Non agri); year 19-20 (36 Agri v 23 Non-agri).

As noted in the earlier application, 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.

It clearly evident that agricultural contracting is being carried out by B&H Fletcher and has done throughout the 10 years and that there is an agricultural contracting business being carried out at the adjacent site. While the business may have evolved, based on the evidence provided, the LPA cannot be satisfied that there is no longer an agricultural contracting business operating from the adjacent site.

In summary, the condition reads:

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 that in the last 10 years the applicant resides at property known as Combs View i.e. they occupy the dwelling in question.

It is clear that in the last 10 years that the applicant is mainly employed in the business at Newfield Farm Buildings i.e. the buildings adjoining the site under the trade name B&H Fletcher.

It is clear that in the last 10 years that the applicants business at Newfield Farm Buildings has been engaged in agricultural contracting. While agricultural contracting may only be part of the business operations, agricultural contracting is nonetheless a significant part of the business, which ensures compliance with the restrictive condition i.e. that there is an agricultural contracting business operating at the site.

It is also noted that the agricultural contracting element of the business is variable. The reliance on turnover percentages alone is not truly representative of the number of agricultural contracts undertaken (amounting to circa 50% over the 10 years presented) and some years there have been more agricultural contracting contracts for B&H Fletcher, than non-agricultural. There is also no evidence presented which demonstrates activities from the period 1st April 2023 to 17th January 2025 which falls within the relevant period.

If it is the applicants assertion, as the case appears to be, that adjoining business is not an agricultural contracting business then the correct route, in the first instance, would be to establish the lawful use of that land, through a Lawful Development Certificate relating to that site. It is not for this application to consider the lawful use of that site and whether the nature of the operations carried out on that land have resulted in a use which would be no longer be considered an agricultural contracting business. This would remove any uncertainty or ambiguity surrounding the business operations of the adjacent buildings.

As such, it is the position of the LPA that the applicant is occupying the dwelling in compliance with the condition as worded.

CONCLUSIONS

There is insufficient evidence, on the balance of probabilities, to demonstrate that Combs View has been occupied 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: 12/05/2025

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council