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## Appeal Decision

Site visit made on 19 November 2019

**by L Perkins BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 December 2019**

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### **Appeal Ref: APP/B9506/X/18/3216801 Hartwell, Newgrounds, Godshill SP6 2LJ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Dr Frank Graham against the decision of New Forest National Park Authority.
  - The application Ref 18/00541, dated 8 July 2018, was refused by notice dated 17 October 2018.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The development for which an LDC is sought was described as: *"Hartwell is a domestic residence which before 1982 included the residence plus commercial greenhouses known then as 'Hartwell Nurseries'. Since 1982 during my ownership all of the property has been a domestic dwelling and the greenhouses have been used only for leisure purposes. There were originally 2 small and 2 large wooden greenhouses on the same plot as the house. One large wooden greenhouse was partly converted to a workshop and due to collapse the glass was removed from the remainder. The second large greenhouse and one small greenhouse have been maintained for hobby use. The second small greenhouse collapsed and was demolished. We are requesting removal of the 'Horticultural clause'."*
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### **Decision**

1. The appeal is allowed and attached to this decision is an LDC that describes the development which is considered to be lawful.

### **Preliminary Matters**

2. The appellant seeks (i) what they have described as a 'formal legal statement of the situation', and, (ii) that the meaning of the word "only" in the condition is defined. However, sections 191 and 192 of the above Act enable applicants to ascertain whether a specific use, operation or activity is or would be lawful. These provisions do not enable anyone to ask the general question of what is or would be lawful. For this reason the applicant must precisely describe what is being applied for.
3. The description of development in the heading above has been taken from the application form. This description is different to that provided by the appellant on the appeal form and does not match the description of development used by the New Forest National Park Authority (the NFNPA) on the decision notice. As such, I have sought views from the appellant and the NFNPA as to precisely what the LDC was sought for.

4. The responses received differ significantly. In broad terms, the appellant considers the application was for confirmation that the occupation of the dwelling by **any person** is lawful, whereas the NFNPA considers the application was sought to prove non-compliance with an occupancy condition for more than 10 years by **the appellant**.
5. The application was made under section 191 of the above Act and so must be for an **existing** use or development, rather than for a **proposed** use or development which is made under section 192. Accordingly, I consider the NFNPA's description of development is accurate. I have determined the appeal on this basis and reflected the NFNPA's description in the attached LDC.
6. If, as appears to be the case, the appellant seeks confirmation that **any person** may reside at the property, it is open to him to seek planning permission from the local planning authority, to have the relevant occupancy condition removed. Any such application would need to be considered on its planning merits and would be unaffected by my determination of this LDC appeal.

### Main Issue

7. The main issue is whether the NFNPA's decision to refuse the certificate was well-founded or not.

### Reasons

8. On 8 May 1961 planning permission was granted on the appeal site for a dwelling. The permission was subject to a planning condition which reads:  
*"The dwelling being used only in connection with the use of the land edged in red on the plan as a horticultural holding."*
9. The reason for the condition is stated as:  
*"The site is within the proposed Green Belt where it is not intended to permit general residential development."*
10. By reason of the inclusion of the word "only" in the condition, the appellant views the condition as meaning that anyone domiciled in the dwelling can only be employed in horticulture on the land and cannot take up full-time employment elsewhere instead.
11. Inclusion of the word "only" in the condition excludes all persons not engaged in horticulture on the land, i.e. persons employed elsewhere may not reside in the dwelling.
12. Evidence provided indicates the appellant bought the dwelling in 1982, and, whilst residing at the dwelling, has worked full-time, away from the dwelling, for over 10 years. He worked first for the Plessey Company (which became GEC and then BAE) and then he worked for Colt International. Documentation provided from these companies supports this explanation.
13. I therefore consider the condition has been breached by the appellant for in excess of 10 years. Accordingly, the occupation of the dwelling by the appellant has become lawful by the passage of time.

14. The former District Council confirmed in 1983 that they considered the condition would be complied with provided there would be some form of horticulture carried out at the site. Cognisant of this, the NFNPA has taken the view that provided some horticulture is practised on the land there is no breach of the condition. But this position does not acknowledge the inclusion of the word "only" in the condition and so I am not satisfied this position is correct.

### **Conclusion**

15. For the reasons given above I conclude, on the evidence available to me, that the NFNPA's refusal to grant an LDC in respect of the existing occupation of the dwellinghouse in breach of a condition attached to planning permission RFR 7675 for 10 years before the date of the application, at Hartwell, Newgrounds, Godshill SP6 2LJ, was not well-founded. As such the appeal succeeds and I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*L Perkins*

INSPECTOR

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 8 July 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that Dr Frank Graham has resided in the dwellinghouse on the land at Hartwell, Newgrounds, Godshill SP6 2LJ whilst working full-time away from the land, for in excess of 10 years. As such his occupation of this dwellinghouse, in breach of a condition attached to planning permission RFR 7675, has become lawful under section 171B(3) of the above Act.

Signed

*L Perkins*  
INSPECTOR

Date: 20 December 2019

Reference: APP/B9506/X/18/3216801

### **First Schedule**

The existing occupation of the dwellinghouse in breach of a condition attached to planning permission RFR 7675 for ten years before the date of the application.

### **Second Schedule**

Land at Hartwell, Newgrounds, Godshill SP6 2LJ

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 December 2019

by **L Perkins BSc (Hons) DipTP MRTPI**

**Land at: Hartwell, Newgrounds, Godshill SP6 2LJ**

**Reference: APP/B9506/X/18/3216801**

Scale: Not to scale

