



Appeal Decision

Site visit made on 25 February 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Appeal Ref: APP/P0119/X/19/3238191

Mission Hall, Mission Road, Iron Acton, Yate BS37 9XR

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Jenni Howie against South Gloucestershire Council.
 - The application Ref P19/6447/CLE is dated 3 June 2019.
 - The application was made under section 191(1)(a) and 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use and development for which a certificate of lawful use or development is sought is described as "*Permission granted to renovate mission hall in 1975. Evidence attached to show renovation work commenced within time scales. Seeking confirmation that renovation permission is still valid and which Class of use is valid last known official use I believe was Class D1.*"
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Decision

1. The appeal is dismissed and the application for a certificate of lawful development is refused.

Procedural matters

2. I have interpreted the application as seeking a certificate as to the lawfulness of proposed operations under s.191(1)(a) of the Act to carry out the renovation of the building in accordance with planning permission Ref: N.1133/2, approved on 13 November 1975. The appellant also seeks a determination as to the lawful use of the land. However, it is not open to an applicant to seek a certificate in such terms, and a precise use must be indicated. I have therefore dealt with the appeal as seeking a certificate as to the lawfulness of the use of the site as a mission hall, under s.192(1)(b) of the Act.

Main Issue

3. The main issue is whether, on the balance of probabilities, the proposed operations and the existing use of the land as a mission hall are lawful.

Reasons

4. Planning permission was granted for "renovation of mission hall" on 13 November 1975 (Ref: N.1133/2). The permission has, beside the standard 5 year implementation condition, three other conditions which state:

(b) The building and the surrounding land shall be used solely as a mission hall and for purposes appropriate to a mission hall, and shall be used for no other purpose whatsoever without the prior consent of the Council.

(c) No material alterations to the external appearance of the building shall take place without the prior written agreement of the Council.

(d) parking facilities shall be provided and subsequently maintained within the curtilage of the site to the satisfaction of the Council before the use hereby authorised commences.

5. The reason given for conditions (b) and (c) is:

The Council wish to retain control over the future use and appearance of the hall, in the interests of the amenity of the area.

6. The reason given for condition (d) is:

In the interests of highway safety and to enable vehicles to park off the carriageway of Mission Road.

7. It is argued by the appellant in this case that the planning permission for the renovation of the mission hall was implemented. The only evidence of that before me is the statement from Mr Dracup, a previous owner, that he carried out works involving the removal of ivy, the repointing of the interior of the building, the rejoining of an arch and the demolition of a wall.
8. S.43(1) of the 1971 Act says that development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out. S.43(2) defines "specified operation to mean any of the following:
- (a) any work of construction in the course of the erection of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in the last preceding paragraph;
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land, where that change constitutes material development.
9. The works carried out as described by Mr Dracup do not comprise "a specified operation". Moreover, these works were likely not to amount to development, having regard to the definition of development under s.22(a) of the 1971 Act then in force, which excludes from the definition works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building. The works described by Mr Dracup would not amount to development. Accordingly, on the balance of probabilities, planning permission Ref: N.1133/2 has not been implemented.

10. Moreover, the only application plan provided to me in connection with that planning permission is a site plan. The appellant provided me with a copy of a plan found on a subsequent 1990 application (Ref. N. 1133/3), titled "Proposed renovation of Mission Hall at Mission Road, Iron Acton for Mr K.S. Stinchcombe". Even that plan is unclear as to what it depicts, as it shows, in plan view, parts of the external wall of a building in a darker colour, which might be suggestive of the parts which are to be rebuilt. However, there is no indication on the elevational drawings of corresponding areas of rebuilding. Whilst a cross-sectional drawing indicates the darker area as extending up to the bottom of the window level, that does not give a complete picture of the extent of the works proposed.
11. In the absence of any plans or other details showing the nature and extent of the renovations proposed, I cannot be satisfied on the balance of probabilities even if the permission were still "alive" that any operational development to the building would now be lawful.
12. Moreover, on my visit I saw that the building is little more than a ruin. The wall on the eastern (end) elevation is wholly intact, and the southern-facing roof pitch remains over a small section. The south facing rear wall remains up to the top of window level and a small section of the western end elevation remains. The rest of the building, including the long front elevation, nearly all of the roof, and much of the western end elevation is missing. The stone from these elevations appears to have been removed from the site. Notwithstanding the uncertainty as to what planning permission N.1132/2 entails, I consider that "renovation" does not amount to the large-scale rebuilding which would be necessary to reinstate the building as a mission hall.
13. Accordingly, I cannot be reasonably certain what operational development (if any) the planning permission permitted, and in any event, the works required to reinstate the building would fall outside the scope of the planning permission. I am unable to certify that further works would be lawful.
14. Turning to the use of the site, the evidence is scant. The appellant has provided part of a document which appears to have been written by the former owner of the site, Mr Dracup, in connection with a previous appeal. That document claims that the owner bought the site to use as a woodyard, but abandoned that ambition when it became clear that the use would not be supported by the Council. He says that he was told by the daughter of a former owner that it was used as a furniture store during "the war" (presumably the Second World War), and was later used by a Mr Willets, but there is no indication for what purpose. Accordingly, there is insufficient evidence for me to conclude on the balance of probabilities, what the use of the site was on the appointed day, 1 July 1948.
15. There is no evidence as to when the building was last used as a mission hall, but on the basis of the former owner's evidence, that was before 1940. In an appeal statement relating to a 1984 appeal on the site, the agent comments that the Council contends that the hall was last used as such about 50 years ago. The author of the statement says that this contention is "intriguing" but goes on to say that it is unnecessary to investigate this claim further.
16. Even so, planning permission condition (2) which restricts the use to that of a mission hall seems to acknowledge that the use as a mission hall, was, at that

time, lawful. The Council contends that the use (if indeed it was lawful) has been abandoned.

17. The legal authorities relating to abandonment identify 4 factors which may lead to a use being abandoned; the period of non-use, the physical condition of the land or building, whether there had been any other use, and the owner's intentions as to whether to suspend the use or to cease it permanently.
18. The period of non-use in this case is substantial. The best evidence is the previous owner's statement which refers only to wartime and post-war use, and therefore it is likely that the last use as a mission hall was at least 60-70 years ago. I have referred to the physical condition of the building above. The use as a mission hall could not be carried out in the building as it stands, and the continued dereliction, the overgrown condition and the removal of the stone from the demolished parts of the building, all reinforce the concept of abandonment.
19. An unauthorised use for the storage of plant, machinery, equipment and vehicles was enforced against by way of an enforcement notice dated 13 September 1977. That notice gives no indication of the lawful use of the site. Notwithstanding this, s.23(9) of the Town and Country Planning Act 1971 (which was in force at the time) provided that where an enforcement notice has been served in respect of any development of land, planning permission is not required for the use of that land for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not taken place. Thus, the intervening use does not extinguish any lawful use. Nevertheless, that use, and the use for the siting of a caravan, appear to me to be incompatible with the use as a mission hall.
20. Finally, there are the owner's intentions. Here the evidence goes both ways; it is clear from what Mr Dracup says, that he bought the site with the intention of using it as a woodyard. He subsequently sought permission for the use of the site for plant hire. Nevertheless, when those plans were frustrated, he sought planning permission for the renovation of a mission hall, which was granted with a condition restricting its use solely to that of a mission hall.
21. In 1984 the same owner sought planning permission for a dwelling on the site, which is clearly incompatible with the use as a mission hall. Subsequent applications for a dwelling on the site were made in 1988 (change of use) and in 2005. An application was also made for the rebuilding of the existing derelict mission hall in 1990. Thus, the evidence seems to indicate that uses other than a mission hall have been uppermost in the minds of owners since the 1970s, although when these were refused planning permission, there has been interest in renovating the building, but whether there was an intention to resume the use as a mission hall, the evidence is unclear.
22. In any event, even if the planning permission were to have been implemented, the minimal work carried out, together with the long period of non-use since that time, the demolition or decay of the walls, the removal of stone from the site and the intention to seek residential use of the site, cumulatively indicate that the owner's intentions were to abandon the use as a mission hall.
23. The case of *Iddenden v Secretary of State for the Environment* [1972] 1 WLR 1433 held that a use cannot survive the destruction of buildings and installations necessary for it to be carried on. A mission hall use can only be

carried on in a building, and clearly cannot be carried on in what remains of the shell of the hall.

24. Thus, taking all the legal criteria into account, I am satisfied that the use of the site as a mission hall has been abandoned, and that, on the balance of probabilities, the continued use of the site as a mission hall is not lawful.

Conclusion

25. I conclude that the proposed development would not be lawful and that the use as a mission hall is not lawful. Accordingly, for the reasons given above, the application for a certificate of lawfulness is refused and the appeal is dismissed.

JP Roberts

INSPECTOR