



Appeal Decision

Site visit made on 2 June 2021

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 June 2021

Appeal Ref: APP/D0840/X/21/3269674

Fleur-De-Lys, Nanstallon, Bodmin PL30 5LY

- 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 Mr and Mrs Williams against the decision of Cornwall Council.
- The application Ref PA19/10698, dated 22 November 2019, was refused by notice dated 9 October 2020.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
- The use for which a LDC is sought was described in the application as "Residential Unit".

Summary of Decision: The appeal is dismissed

Background

1. In 1966 planning permission was granted for the stationing of a caravan on the appeal site¹, and a static caravan was installed shortly thereafter. This permission was limited, by condition, to a temporary period of three years. Further permissions for the continued siting of the caravan, each time for a temporary period of three years, were granted in 1971 and 1974.
2. A "renewal" of permission for the siting of one residential caravan was granted in 1977, again for a period of three years, but with an additional condition restricting occupation of the caravan to Mr and Mrs Pryor. Further permissions for the use of the land for the siting of one residential caravan were granted in 1980, 1983, 1984 and 1989; each for a temporary period, and each with a condition restricting occupancy.
3. A flat-roofed extension was attached to the north side of the static caravan sometime between 1965 and September 1984.
4. The most recent grant of planning permission was made in 1994 ("the 1994 Permission")², for "Renewal of permission for the siting of a caravan." This was subject to a single condition:

1) When the caravan ceases to be occupied by Mrs H M Pryor, the use hereby permitted shall cease and the caravan and all other items brought onto the premises in connection with the residential element of the use shall be removed within two months of the date of the cessation of the use.

¹ Ref E1/C/65/26833

² Ref E1/94/1970

5. The Appellants purchased the appeal site from Mrs Pryor in 1996, on the understanding that she could continue to live there for as long as she wished. I am told that Mrs Pryor moved to a nursing home in 2004, and that she died in 2007. The caravan has since remained unoccupied.

Main issues

6. Since this appeal concerns an application for a LDC, the planning merits of the development can have no bearing on my decision: my assessment must be confined to the narrow point of determining whether the use described in the application was lawful at the date of the application. The Town and Country Planning Act 1990 (as amended) provides that a use is lawful if no enforcement action may be taken against it, and sets out time limits for the taking of enforcement action against breaches of planning control.
7. The primary case for the Appellants is, in summary, that when the extension to the permitted caravan was constructed the caravan ceased to be a caravan and became, instead, a building. They say that this amounted to the unauthorised construction of a dwellinghouse which, having taken place by 1984 at the latest, achieved immunity from enforcement before Mrs Pryor ceased to occupy it, and that its use has not subsequently been abandoned. In the alternative, the Appellants contend that if after the addition of the extension the caravan remained a caravan, the condition attached to the 1994 permission has been breached for a period in excess of 10 years and so is now immune from enforcement. The Council's position is that the caravan remains a caravan; that the residential use of the appeal site has been abandoned; and that the caravan has not been occupied in breach of the condition attached to the 1994 Permission.
8. The first main issue in this appeal, then, is the status of the structure on the appeal site: that is, whether it is a building or a caravan. The nature of the subsequent issues will depend upon the answer to that question. If I establish that the addition of the extension resulted in a structure that is a building rather than a caravan, I will then need to consider whether that amounted to the construction of an unauthorised dwellinghouse, which subsequently achieved immunity from enforcement, and whether its residential use has since been abandoned. If on the other hand I find that the structure is a caravan, I will then need to determine the effect of the condition attached to the 1994 Permission.
9. The Appellants' professional representatives for this appeal (as distinct from those who acted for them in submitting the LDC application) contend that the use for which the LDC was sought is ambiguous, in that it does not specify whether that use is (1) the siting of a caravan for residential use, or (2) a dwellinghouse. As they rightly note, it is clear from the Officer's Report that the Council considered both options, and it is open to me in the context of this appeal to amend the description of the use. I shall therefore proceed on the basis that the use for which the LDC is sought is that of a dwellinghouse, but in the event that I conclude that the structure on the appeal site is a caravan rather than a building, I will go on to consider whether a LDC could be granted for its residential use.

Reasons

First main issue: caravan or building?

10. There is no dispute that the static caravan, which was placed on the appeal site in the 1960s and remains there to this day, originally met the statutory definition of a caravan. This is set out at s29(1) of the *Caravan Sites and Control of Development Act 1960* as meaning “any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.”
11. Whether or not the addition of built structures to an existing caravan will render it a building is a matter of fact and degree.³ In some cases, for example the construction of a porch which is not fixed to the ground and can be easily detached, the caravan will clearly remain a caravan. In others, for example where two or more caravans are joined together, their bases cemented to the ground and their flat roofs replaced with a single pitched roof, the resulting structure will clearly constitute a building. The concept of mobility is critical, but it is not crucial that a caravan can be moved on its own wheels; it may be mobile if it can be picked up intact and put on a lorry by crane or hoist. Key points to consider, when assessing whether any structure is a building, are size, permanence, and physical attachment to the land.⁴
12. The extension here is a sizeable structure, with an internal floorspace around two thirds that of the caravan, and a slightly higher roof. It has been attached to the northern flank of the caravan, where the entrance door would originally have been. A new opening (or openings) appear to have been created in this flank wall, to facilitate movement between the two areas of living space, and a front door built in the western side of the extension. I am told that an oil-burning stove, used for cooking and heating, was installed in the extension but was removed, along with the flue, in 2007.
13. There is no direct evidence before me as to how the extension was constructed. The Council does not dispute the Appellants’ contention that “...its installation required substantial internal and external alterations to the Mobile Home”, but refers to notes made during a site investigation by a Council Officer in 2017 where it is described as “a bolt-on building”. In places where the fabric of its walls has deteriorated through weather damage it is possible to see that these consist of insulated board; the door and window frames are of timber, and the flat roof has been covered with felt. It has been physically attached to the fabric of the caravan such that the two entities have the appearance, and fulfil the function, of a single structure.
14. The caravan rests on blocks, to which it does not appear to have been fixed, but the Appellants’ uncontested evidence is that the extension was attached to the ground. There is no dispute that the caravan has remained in the same place for 55 years, and the extension has been in place for at least 37 years. When occupied, the structure was connected to mains electric and water supplies. Drainage was via a septic tank.

³ *Pugsley v SSE & North Devon DC* [1996] JPL B124

⁴ *Skerrits of Nottingham Ltd v SSETR (No. 2)* [2002] EWCA Civ 5569

15. I do not share the Council's view that the caravan could simply be detached from the extension and removed from the site. I saw no readily apparent means for the straightforward separation of the two: it is likely that the extension would need to be taken to pieces or broken up, and it is doubtful that the caravan would then retain sufficient structural integrity to be moved or craned from the site, in view of the access alterations made to its flank wall. In any event, it is clear that the caravan and extension together could not be moved as a single unit.
16. Taking all of this into account, I find that the addition of the substantial extension in this case amounted to considerably more than the attachment of a readily-removable ancillary structure. In other words, it is not the case that the original caravan remains a caravan. Instead, the works involved in the formation of the extension resulted in the creation of a new compound structure, incorporating the original caravan and the new extension. The structure thus created, while clearly designed or adapted for human habitation, is not capable of being moved from one place to another and so does not meet the statutory definition of a caravan. Having regard to its size, permanence and degree of attachment to the land, I conclude that the structure is a building.

Second main issue: the status of the building

17. There is no dispute that the planning unit here under consideration is the area outlined in red on the plan submitted with the LDC application. This is a self-contained area of land, with access to the highway. The building is located close to the eastern boundary, and the rest of the grounds have the character of a private domestic (albeit very overgrown) garden. It is common ground that, regardless of whether the structure that was in place by 1984 is regarded as a caravan-with-extension or as a building, it contained all of the facilities necessary for day to day living⁵ and functioned as Mrs Pryor's private domestic residence until she moved out in 2004. The building therefore constitutes a dwellinghouse.
18. The carrying out of works to create a dwellinghouse, on land where the authorised use was the temporary siting of a caravan for residential use, amounted to development for which planning permission was required but not obtained.⁶ This effectively opened a new chapter in the history of the planning unit.
19. I appreciate that neither the Council, nor Mr and Mrs Pryor (at that time the owners and occupiers of the land), considered that the construction of the extension had changed the status of the caravan to a building. This is evident from the applications for planning permission subsequently made, and granted, in 1989 and 1994: the former for "continued use of land for the siting of a caravan" and the latter for "renewal of permission for the siting of a caravan." The plan submitted with the 1994 application includes the footprint of the structure created by extending the original caravan, labelled as "mobile home".
20. I make no criticism of the Council or the (then) occupiers for proceeding in that manner because, as will be obvious from the paragraphs above, the question of whether a caravan has become a building is not straightforward. But in my

⁵ *Gravesham BC v SSE* (1984) 47 P&CR

⁶ S.55 TCPA 1990

view, and for the reasons I have set out above, their treatment of the structure as a caravan was incorrect: it was, following the addition of the extension, a building. The fact that it was described as a “caravan” in the application forms did not prevent the Council from conducting its own assessment, and the fact that the Council granted permission for “the siting of a caravan” does not mean that that is how the structure on the site must now be defined and treated.

21. It was, then, open to the Council to take enforcement action against the unauthorised construction of a dwellinghouse. The time available for doing so expired four years after the date on which the operations were substantially completed.⁷ It is perhaps worth noting here that enforcement action would not have been precluded by any perceived conflict with the owner’s existing permission to reside on the land in a caravan, because an enforcement notice need not have required the cessation of the residential use in its entirety: it could simply have required that the extension was removed, and that any remaining structure on the site complied with the extant permission for the stationing of a caravan. If the Council was of the mind (as it appears to have been) that the breach of planning control was the attachment of an unauthorised structure to a permitted caravan, rather than the construction of a dwellinghouse, it could nevertheless have taken enforcement action requiring the removal of the unauthorised extension without affecting the (then) extant permission to occupy the caravan for residential use.
22. In any event, the Council did not take enforcement action of any kind. The evidence shows that the breach of planning control took place by 1984 at the latest, so the period available for taking enforcement expired during the period when the dwellinghouse was occupied and in use. There is no evidence that there was any period of interruption in that continued use, during which the Council could not have taken enforcement action, prior to Mrs Pryor’s departure in 2004.
23. The creation of the building that currently stands on the appeal site, then, was a breach of planning control that subsequently gained immunity from enforcement through the passage of time. Caselaw⁸ has established that a condition attached to a planning permission cannot be enforced if the planning permission was not in fact required. The planning permissions granted by the Council in 1989 and 1994 were not relevant to, or required for, the dwellinghouse and this means that its use is not governed by any of the conditions attached to those permissions. In other words, the restriction upon who may occupy the caravan, and the requirement to remove it once occupancy ceases, do not apply to the dwellinghouse.
24. In summary, by the time that Mrs Pryor ceased to occupy the dwellinghouse, its use had been established as lawful. The next question is whether or not that use subsisted on the date that the application for the LDC was made.⁹

⁷ S.171B(1)

⁸ *Newbury DC v SSE & Others* [1980] 2 WLR 379, [1981] AC 578

⁹ S.191(4) TCPA 1990

Third main issue: has its use as a dwellinghouse been abandoned?

25. A use may be regarded as “existing”, and lawful, even if it is dormant or inactive.¹⁰ That is what the Appellants say has happened here. However, lawful use rights may be lost in a number of ways; in this particular case, the Council contends that any lawful use of the dwellinghouse has now been abandoned.
26. The concept of abandonment applies if a building or land “remains unused for a considerable period of time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned.”¹¹ The courts have established four criteria for abandonment: the period of non-use, the physical condition of the land or building, whether there had been any other use, and the owners intentions as to whether to suspend the use or to cease it permanently.¹² The weight to be attached to each of the four criteria is a matter of judgment for the decision-maker,¹³ and the test of the owner’s intentions should be objective and not subjective.¹⁴
27. The Appellants are unable to be precise about the exact date that Mrs Pryor ceased to occupy the property. However, the Statutory declaration made by Mr Wood states that Mrs Pryor moved in to the Castle Hill House nursing home in Bodmin in 2004. The majority of her possessions remained at the appeal site, and her family continued to maintain the garden. It is not clear whether Mrs Pryor’s move to the nursing home was intended at that time to be a temporary or permanent arrangement, but her residential use of the appeal site unequivocally ceased upon her death in 2007. Mrs Pryor’s family then removed all her possessions from the property, including the oil burning stove, the external oil tank, and the hot water immersion tank. The flue that served the stove was also removed; the hole that had been made in the wall to accommodate it was stopped up; and the mains electricity supply was disconnected. It is common ground that nobody has lived there since.
28. The period of non-use, up until the date of the LDC application, is therefore some twelve years. The Appellants point out that while the dwellinghouse has not been used for day-to-day living during this period it has nevertheless been used to store tools and equipment but I do not consider that such storage, which could just as well have taken place in a shed as a house, can be regarded as interrupting or shortening the length of time during which the building has not been used as a dwelling.
29. The physical condition of the building is very poor indeed. The external walls of the extension are badly damaged, and the southern elevation and roof of the former caravan show signs of structural deterioration. The Appellants contend that the consequent pooling of water on the roof of the former caravan indicates that the roof is still intact and performing its function, but photographic evidence submitted by the Council and the neighbouring resident shows that parts of the ceiling have collapsed internally, and it seems most likely that this is as a result of water penetration. The timber window frames and fascia boards of the extension are extensively decayed; I saw at my site visit that vegetation has taken root in some of the fissures that have opened,

¹⁰ *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461

¹¹ *Hartley v MHLG* [1970] 1QB 413

¹² *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40

¹³ *Bramall v SSCLG* [2011] JPL 1373

¹⁴ *Hughes v SSETR* [2000] 80 P&CR;

and a colony of bees appears to have taken up residence in the eastern junction of the eaves.

30. I did not enter the building, but photographs provided by the Council show that the internal space is also in a very poor state of repair. There is mould and mildew on the walls and fittings, wallpaper and curtains are hanging off, and clumps of insulation from the broken ceiling lie on the floor. There are a few items of furniture and domestic paraphernalia, but these have the appearance of being stored, rather than having been placed there to facilitate residential use. I agree with the Council that the structure is not habitable in its current state. I note the Appellants' assertion that it is not beyond repair, but no evidence has been provided to support that contention (for example a structural survey, or a quotation for repair works from a builder).
31. As to whether there has been any other use made of the property between vacation by Mrs Pryor and the date of the LDC application, it is common ground that there has not. The question of the Appellants' intentions, as the owners of the building, is less straightforward.
32. The supporting statement submitted with the LDC application in November 2019, which was prepared by the professional advisers then acting for the Appellants, asserted that the residential use of the property had not been abandoned but rather remained a subsisting dormant use, and went on to consider the four tests of abandonment. It explains that "it was not the owner's intentions to cease the use permanently but rather they chose not to occupy it due to personal reasons." Further on, the supporting statement advises that the current owners do not live in the property as, in its present form, it does not meet their own personal needs, and reiterates that it was not their intention to cease the residential use. Nothing further is said on the subject of the owners' intentions.
33. A Statutory Declaration made by Mrs Williams, as joint owner and joint Appellant, was made in November 2019 and submitted with the LDC application. Rather surprisingly, in the circumstances, it contains no information at all about the Appellants' past, present or future intentions regarding the appeal site. The Declaration explains that when the Appellants purchased the property in 1996 it was agreed that Mrs Pryor could live there as long as she liked, but it does not say what the Appellants intended to do with it when she moved out. The Declaration is silent on matters such as whether the Appellants considered renting out the dwellinghouse after Mrs Pryor's departure, or why that might not have been appropriate. Nor does it address the impact, on their plans for the use of the site, of the Council's refusal in 2013 of their application to demolish the existing structure and construct a replacement dwellinghouse. The Declaration does not confirm that the intention of the Appellants was to suspend, rather than to abandon, the residential use: it does not mention their intentions at all.
34. I appreciate that this is not of course fatal to the Appellants' case, because the test of intention is objective rather than subjective. That is, what would the reasonable man apprised of all the circumstances consider the intention of the owners to be, as opposed to what the owners themselves maintain their intentions to be? Helpful clarification of this distinction was provided by Kennedy LJ in the *Hughes* judgment, where he gave the example of a labourer's cottage which an emigrant and his family left 40 years ago and

which had been in ruins for years. If the test of intention were subjective, the cottage "cannot cease to be regarded as a residence so long as its owner in America or Australia cherishes the dream that someday he will return to live there." He held that in such a situation there would clearly have been abandonment, so held an objective assessment to be important.

35. In this particular case, the evidence is that the Appellants have paid Council Tax on the appeal site since 2008, and mowed the grass regularly up until about 2015. Together with the fact that the Appellants made an unsuccessful planning application for a replacement dwelling on the site in 2013, these are circumstances that should inform any objective assessment of the owners intentions. But so too is the consideration that no works of repair or maintenance, at all, have been carried out to the dwellinghouse itself since it was last occupied. The building has instead been allowed to fall into such a state of dereliction that it is no longer habitable, and no explanation for this has been provided.
36. I accept that the subjective intention of the owners was not to cease the residential use, but on an objective analysis, it is difficult to discern any clear intention. It is possible to conclude that they intended to resume the residential use at some future point, but that is only one possibility; others being, for example, that they had no purpose for the building beyond storage associated with using the land as a peaceful outdoor space for rest and relaxation, or as a wildlife haven.
37. My attention has been drawn to a number of other decisions¹⁵ where abandonment was found not to have occurred, in which the physical state of the building in question was worse than is the case here, and the period of non-use longer. But as the Appellants accept, each case must be determined on its own merits, and with regard to its own specific set of circumstances.
38. In this case, the period of time for which the dwellinghouse has remained unused is twelve years. While I appreciate that is shorter than in some other cases where abandonment was found not to have occurred, it is nevertheless a considerable period of time. No alternative use has been made of the building, but it has been allowed to deteriorate to a state of such poor repair that it is no longer habitable. I accept that the subjective intention of the owners was not to cease the residential use, but I am not persuaded that there is sufficient evidence for a reasonable person to conclude, objectively, that the owners had merely suspended the residential use and not ceased it entirely.
39. Drawing all of this together, I conclude that the residential use of the dwellinghouse has been abandoned.

Conclusion

40. I have found that the construction work carried out on the appeal site in or before 1984 resulted in the amalgamation of the existing static caravan with a new extension, to form a compound structure that amounted to the creation of a dwellinghouse. That unauthorised building gained immunity from enforcement through the passage of time, and so achieved lawful use as a residence during Mrs Pryor's occupation. However, that residential use ceased

¹⁵ Refs PA21/00388; APP/C3810/X/15/3035706 (and the two unreferenced appeals discussed therein); [1978] JPL 651 & 653; [1986] JPL 846

on Mrs Pryor's death, and I have found that rather than remaining dormant, it has been abandoned.

41. It follows that the appeal site did not have an existing lawful use as a dwellinghouse at the date of the LDC application. Nor was there, at that date, any valid or extant grant of planning permission for the siting there of a caravan for residential use.

Formal Decision

42. For the reasons given above I conclude that the Council's refusal to grant a Certificate of Lawful Use or Development in respect of the use of Fleur-De-Lys as a residential unit was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Jessica Graham

INSPECTOR