



Appeal Decision

Site visit made on 5 January 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2023

Appeal Ref: APP/J9497/X/22/3296766

Brambleside, Lydford, Dartmoor, Devon, EX20 4AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ranald MacDonald against the decision of Dartmoor National Park Authority.
 - The application ref 0280/20, dated 22 June 2020, was refused by notice dated 17 August 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of a building known as Brambleside as a dwelling plus associated land as garden, parking and access.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. For the avoidance of doubt I should explain that the planning merits of any use or operations are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

Main Issue

4. I consider the main issue is with the authority's decision to refuse to grant an LDC was well-founded. This turns on whether the appeal property has achieved immunity from enforcement action through the passage of time.

The appeal site and relevant planning history

5. The appeal property, known as Brambleside, is located to the rear of Moorlands and shares a private drive with the property Upalong. The property comprises a former railway carriage with a corrugated metal lean-to and a corrugated metal outbuilding on the east side, together with a parcel of land. The carriage is sited close to the north boundary adjacent to a barn within the grounds of Moorlands.

6. The carriage appears dilapidated externally with its south facing timber side and its curved roof showing the signs of age and lack of maintenance. However, internally, the carriage appeared to be in much better order, other than the lean-to kitchen. There were a number of items of furniture and domestic paraphernalia within the carriage, including an old bed. An electricity supply was evident albeit that it had not been operational for some time and there was an outdoor water supply.
7. An earlier application for an LDC, reference 0438/18, related to the same use of the carriage. This was refused on the grounds that it had not been demonstrated that the building had been in use as a single dwellinghouse or that the land adjoining had been used in association with it for the relevant periods. Additionally, the building was found not to contain the necessary facilities to be considered to be a dwellinghouse. I note that the appellant is critical of this decision as it had been based on the use of the property for a period of four years prior to the application for an LDC and not for a period of four years starting with the date of the breach as required under s171. The appellant did not appeal that decision.

Reasons

8. In support of the application, the appellant has submitted a number of declarations from Ranaid MacDonald, Angus MacDonald, Miriam MacDonald, David Miller, Terry Sims, Katherine Hoare, Harriet Lukens, and Jesse Thorne, and a letter from Victor Hansen.
9. The appellant states that at some time prior to 1950, a railway coach was positioned on land belonging to the adjacent cottage Upalong. The coach was known as The Glade before being known as Brambleside. It was conveyed to Mr Cash in 1950 as a distinct plot with the railway coach and a right of access. A lean-to kitchen and a basic toilet were added at some stage before 1953 as they are identifiable on a plan of that date. During his ownership, Mr Cash carried out roofing and other repair work, including partially cladding with shiplap boarding below window level.
10. The extent of the plot is clear from copies of conveyancing and documents submitted by the appellant. The plot coincides with the appeal site and Brambleside has had its own sign and post-box since at least 1985 when a new sign was erected by the appellant.
11. It is stated that Mr Cash moved to The Glade in 1950 and occupied the structure as a dwelling and as a sole residence until the site was sold to George Alan MacDonald in 1966 and it has remained in family ownership since that time. The MacDonald family holidayed at Upalong from around 1956 to 1963 prior to purchasing it and the recollections of members of the family recall Mr Cash living in the garage and tending his garden. From 1966 to 1991 the carriage was maintained by the Macdonald family but was not used and the furniture that had belonged to Mr Cash was left in situ.
12. In 1991, Upalong was let by the appellant's mother on an informal basis to a lady and her boyfriend Paul Brooks, with only a nominal rent and a maintenance obligation which included Brambleside and a stable building. It is stated that Mr Brooks was largely left to live in and maintain the properties but the relationship between Mr Brooks and the appellant deteriorated leading to the eviction of Mr Brooks from Upalong. The appellant on clearing the carriage

of furniture and personal effects in 2017 was left with the impression that Brambleside had been occupied until quite recently, prior to 2017, and it is suggested that Mr Brooks had allowed his son to live in the carriage. When clearing out the carriage and on emptying the freezer, there were items that had only just exceeded their best before date.

13. It is claimed that the property and its associated curtilage achieved immunity from enforcement in 1954 by virtue of s23(1) of the Town and Country Planning Act 1947. This provided that no enforcement notice could be served after the expiry of four years of the development being carried out. The appellant also states that the building was used continuously as a dwelling for at least 12 years thereafter. I am satisfied that the appellant's submissions and the statutory declarations from the appellant, Mr Angus MacDonald and Ms Miriam MacDonald support this to be the case on the balance of probabilities, despite the fact that they are recalling events from their childhoods.
14. It is not argued by the Authority that the development represents a material change the use of land for the stationing of a railway carriage for residential purposes and I am satisfied from my observations that the carriage is a building as defined in s55 of the Act bearing in mind its size, permanence and attachment to the ground. In any event this is a somewhat academic matter in this case as the 1947 Act makes no distinction between the time limits to achieve immunity from enforcement action of building operations and changes of use.
15. The Parish Council questions whether Brambleside has been 'dressed up' for the purposes of site visits but I attach little weight to this assertion on the basis of the statutory declarations by Harriet Lukens and Jesse Thorne concerning the cleaning up of Brambleside and the indications of someone having recently lived there.
16. However, this raises the issue of whether the use had been abandoned subsequent to the change in ownership to the appellant's family. Abandonment is not a defined concept and is dependent on the particular circumstances of a case. Here, there has been no apparent intention to abandon the use. The building was maintained whilst in the ownership and occupation of Mr Cash, and a maintenance obligation was imposed on Mr Brooks. In representations submitted by Mr Brooks, he advised that the carriage was used as a 'den' by his son and for domestic storage. Although he claims that the carriage was never maintained, nor had there been any electricity, he states that the site was derelict and uninhabitable. In view of the obvious deterioration of the relationship between the appellant and Mr Brooks, I am unable to attach as much weight on Mr Brooks statement as I might otherwise have done. In any event, by Mr Brooks's own admission, the storage of domestic items and use of the carriage as a 'den' does not render the property as derelict or change its lawful residential use on the basis that it became established and lawful prior to his occupation. Even if the use became dormant, it does not lose its lawful use rights established before it fell dormant. I note that the Authority does not make a case that any residential use, had it existed, may have been abandoned.
17. A neighbouring resident of Moorlands question the appellant's statement of events but the reliability of some of his comments is questionable. The neighbour has lived at Moorlands for a period of 13 years, and is unable to adduce direct evidence of the occupation of the carriage in the 1950's and relies on hearsay evidence from previous residents of Moorfield who lived in the

property from 1972-2005. Reference to the sale price of the carriage and to Mr Cash's background are of little value in determining this appeal.

18. The Authority does not consider that the carriage has the appearance of a dwellinghouse or meet the usual description of a dwellinghouse set out in *Gravesham BC v SoSE (1982) 47 P&CR 14*. They draw attention to the facilities as they existed in 2018, rather than in the period relevant to the appeal. Day-today domestic facilities were very different in 1950 when expectations and standards were not as they exist today. Converted redundant railway carriages provided a cheaper living option in the past. The carriage had an electricity supply, an attached kitchen, living and sleeping space and an outside non-flushing toilet, which, whilst not being acceptable to many people, is nevertheless a functioning toilet. These facilities provided the facilities for private day to day existence
19. Reliance is also placed by the Authority on "whether the building has the appearance of a dwellinghouse" and they refer to 'Gore' and a 2007 appeal decision in support but fail to provide a full citation or submit a copy of the appeal. The Planning Inspectorate does not retain decision letters indefinitely. If the Authority is referring to *R(oao Gore) v SSCLG & Dartmoor NPA [2008] EWHC 3278 (Admin)*, this concerned whether a building that had an LDC for 'use of forestry store as residential' enjoyed permitted development rights. The court held that the building was not a dwellinghouse for the purposes of the General Permitted Development Order, but in any event the case concerned the extent of curtilage. Although a structure's physical characteristics as well as its use should be taken into account in determining whether it constitutes a dwellinghouse for the purposes of planning law, it is evident that cases relating to deliberate concealment have shown that a building may not look like a house but still be used as such.
20. I note that that the appeal property has not been registered for Council Tax purposes and that there are no historic electricity bills, which in view of the passage of time is unsurprising.
21. I find that on the evidence submitted, and on the balance of probabilities, the breach of planning control involving the change of use of the railway carriage to a dwelling and the use of the site as a garden occurred in 1950 or thereabouts and continued for a period in excess of four years. No enforcement action can be taken after the end of the period of four years beginning with the date of the breach as set out in s23(1) of the 1947 Act and it is therefore immune from action through the passage of time. There is no evidence that the use as a dwelling has been abandoned.

Conclusion

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of uses of a building known as Brambleside as a dwelling plus associated land as garden, parking and access was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

P N Jarratt

INSPECTOR

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

IT IS HEREBY CERTIFIED that on 22 June 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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:

The breach of planning control involving the change of use of the railway carriage to a dwelling and the use of the site as a garden occurred in 1950 or thereabouts and continued for a period in excess of four years. No enforcement action can be taken after the end of the period of four years beginning with the date of the breach as set out in s23(1) of the 1947 Act and it is therefore immune from action through the passage of time. There is no evidence that the use as a dwelling has been abandoned.

Signed

P N Jarratt

Inspector

Date: 18 January 2023

Reference: APP/J9497/X/22/3296766

First Schedule

Use of a building known as Brambleside as a dwelling plus associated land as garden, parking and access.

Second Schedule

Land at Brambleside, Lydford, Dartmoor, Devon, EX20 4AU

IMPORTANT NOTES – SEE OVER

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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

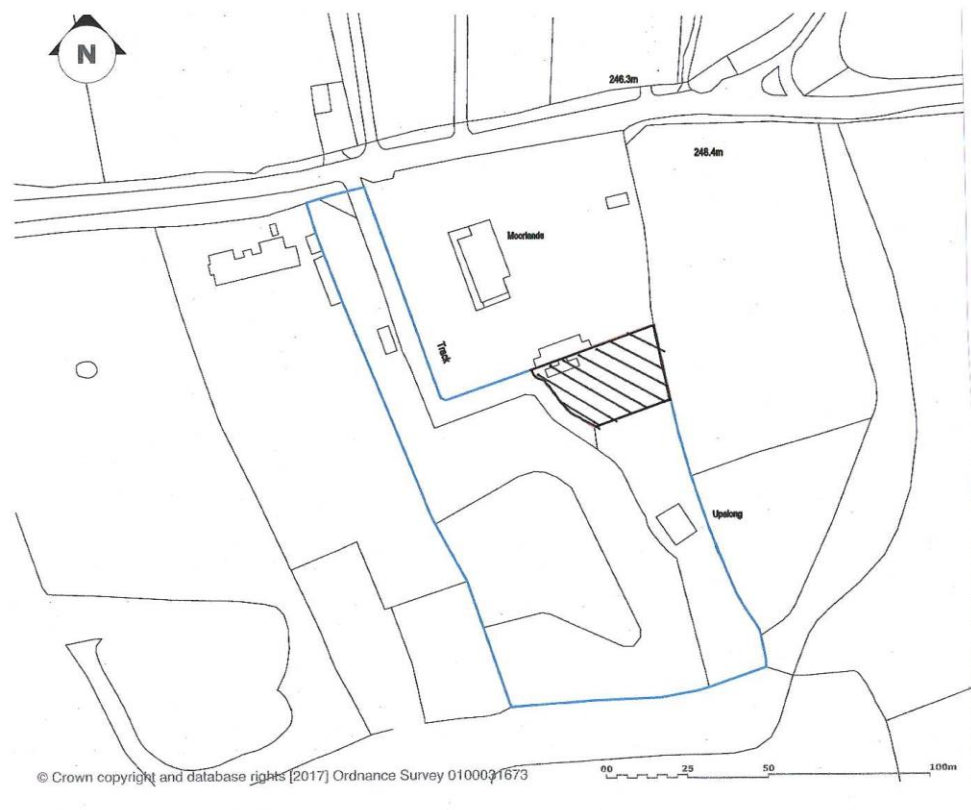
This is the plan referred to in the Lawful Development Certificate dated: 18 January 2023

by P N Jarratt BA (Hons) DipTP MRTPI

Land at: Brambleside, Lydford, Dartmoor, Devon, EX20 4AU

Reference: APP/J9497/X/22/3296766

Scale: Not to Scale



Signed

P N Jarratt

Inspector