



Appeal Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/D0840/X/22/3308632

Lavender Cottage, Trevellas, St Agnes, Cornwall TR5 0YA

- 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 Stephen Johnson against the decision of Cornwall Council.
- The application ref PA22/05358, dated 9 June 2022, was refused by notice dated 5 August 2022.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the use of Lavender Cottage as a dwelling.

Summary of Decision: The appeal is dismissed

Procedural matters

1. This appeal concerns an application for a certificate of lawful use or development (LDC), rather than an application for planning permission, so 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.
2. Since the matters at issue concern the historic use and condition of the property, rather than its present state, a site visit was not necessary.

Main issue

3. It is common ground that Lavender Cottage was built, and used, as a dwelling. The dispute between the Appellant and the Council, and the main issue for this appeal, is whether or not its use as a dwelling has since been abandoned.

Reasons

4. A use may be regarded as “existing”, and lawful, even if it is dormant or inactive.¹ That is what the Appellant contends is the case here. However, lawful use rights may be lost in a number of ways; the Council contends that in this case, the lawful use of the dwelling has been abandoned. The concept of abandonment applies when a building or land “remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned”.² Case law has established four criteria for abandonment. These are the period of non-use; the physical condition of the land or building; whether there has been any other use; and the owner’s intentions as to whether to suspend the use or to cease it permanently. It will be helpful to look at each in turn.

¹ *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461

² Lord Denning in *Hartley v MHLG* [1970] 1QB 413

The period of non-use

5. Lavender Cottage is a two-storey, two-bedroom cottage of stone and cob construction, and is shown on historic maps dating back to 1875. The earliest date of any evidence as to the use of the property in latter years is 1993, when it was deleted from the Council Tax Register because the Valuation Office had deemed it substantially derelict. The Appellant contends that this is evidence that the cottage was occupied up until 1993.
6. However, guidance published by the Valuation Office Agency³ explains that a Council Tax band will only be deleted if the property has deteriorated so badly that it is no longer capable of being repaired without “very significant reconstruction.” It is not enough for a property to be neglected, unmodernised, or lacking in basic repairs: the Valuation Office takes the view that nobody should get a reduction in Council Tax just because their property has not been looked after. Rather, for deletion to be justified the property must no longer be habitable, such that it is no longer a dwelling. The examples given are where a property is not wind and water tight, has severe rot, or has been badly vandalised.
7. Lavender Cottage must, therefore, have been uninhabitable by 1993, or it would not have been deleted from the Council Tax Register. It follows that its residential use is likely to have ended a considerable number of years previously.
8. This means that the use of Lavender Cottage as a dwelling ceased, at the latest, by 1993. It is common ground that no residential use has been made of the building since its removal from the Register in 1993. Therefore by the date of the LDC application the period of non-use was, at the minimum, 29 years.

Physical condition

9. The Statutory Declaration made by the Appellant on 16 May 2022 exhibits a photograph of Lavender Cottage, in which the building is in reasonable condition with its roof intact, but this is undated. The Council has provided a copy of the Estate Agent’s sales particulars from the marketing of Lavender Cottage prior to the Appellant’s purchase of it in October 2021. These describe the property as a “Derelict cottage in approx 0.43 of an acre. Exciting development opportunity – have you got the imagination to turn this derelict property into the home of your dreams”. The sales particulars advise that the Council Tax Band is “N/A”, and an Energy Performance Certificate is “Not required on Derelict property”. They include a set of photographs showing the building to be in very poor condition, with a holed roof, and views through the window openings of the extensively damaged and deteriorated interior.
10. The Council has also provided copies of local news articles about the sale of Lavender Cottage,⁴ and an article from a national newspaper.⁵ The Appellant’s agent rightly points out that “tabloid papers... are known to embellish the truth and emphasise matters for purposes of clickbait.” I attach very little weight to the written content of these news cuttings, but the article that appeared in “The Sun” and the second of the local news articles are helpful in that they provide photographs of the interior of the building, the veracity of which has

³ Council Tax: domestic properties which are in disrepair or are derelict (updated 11 May 2021)

⁴ Cornwall Live dated 1 November 2017 and 29 August 2020

⁵ The Sun dated 24 June 2019.

not been disputed by the Appellant. These show that while the staircase to the first floor remains, joists and floorboards have failed and rotted; electrical appliances have rusted away; and much of the plaster has fallen off the interior walls, with vegetation growing in its place.

11. What is shown in these photographs accords with what is said in the Structural Report that accompanied a request for pre-application advice submitted to the Council in June 2020.⁶ The report notes that the building was in a “very poor state of repair due to its long-term abandonment”. Details of its condition include large holes in the roof, failures in the sections of external walling constructed from traditional cob, and a collapsed rotten truss present within the ground floor area. The report concludes that only the limited natural stone elements of the building would be suitable for retention and re-use.
12. I note that since his acquisition of the property in October 2021, the Appellant has cleared away overgrown vegetation and installed a temporary roof covering to provide protection from the weather. But there is no evidence at all of any works of maintenance or repair having been carried out at the property prior to this. Indeed, the Appellant’s Statutory Declaration states that the previous owner told him the condition of the property had deteriorated due to several break-ins, and that while attempts were made to secure the premises and repair the damage done, he lived “out of County” and was “unable to manage the security of the property at that time.”

Other use

13. It is common ground that Lavender Cottage has only ever been used as a dwelling, and there have been no other intervening uses.

The owner’s intentions

14. The Appellant, as the present owner, intends to restore Lavender Cottage so that he can live in it with his partner and children. However, no evidence has been provided as to the intention of the previous owner(s). As noted above, the Appellant’s Statutory Declaration states that the owner from whom he purchased the property had made some unsuccessful attempts to secure it from break-ins, and repair the damage these caused. But this does not provide any assistance in establishing that owner’s intentions concerning the use of Lavender Cottage: a property owner could reasonably be expected to try to secure their property from break-ins and damage, even if they had no intention of using it for residential purposes.
15. In 1996 planning permission⁷ was sought, and granted, for “alterations and erection of extension” at Lavender Cottage, and in 2002 Building Regulations approval was granted for plans approved by the 1996 planning permission. It is common ground that the 1996 planning permission was never implemented, but it does serve to indicate that at that date, the owner intended to return the (by then derelict) dwelling to residential use.
16. There is no record of any subsequent application for planning permission, or Building Regulations approval. Between 2018 and 2020 the Council received a number of requests for pre-application advice as to the possibility of restoring, or demolishing and replacing, Lavender Cottage. The Council’s response to

⁶ Ref PA20/01701/PREAPP

⁷ Ref C1/PA25/0808/96/N

each request was that the lawful residential use of the property had been abandoned. Most of the requests were from prospective purchasers, but the last was made by an agent acting for the previous owner, and described the proposed development as “convert existing building to dwelling.”⁸ This suggests that at that date, the owner himself took the view that the building on the site could no longer be regarded as a dwelling.

17. It is possible that this pre-application enquiry might have indicated an intention by the owner to resume residential use of Lavender Cottage. But given that the property had by then been offered unsuccessfully for sale for some 3 years, with the Council’s response to pre-application enquiries apparently acting as a deterrent to potential purchasers, it seems far more likely that the owner was exploring methods to facilitate its sale. A grant of planning permission to “convert existing building to dwelling” would certainly have helped. In the absence of any Statutory Declaration, or other clarification, from the previous owner it is not possible to discern his subjective intention.
18. Importantly, the Court of Appeal has established that the test of the owner’s intentions should be objective, not subjective.⁹ 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?
19. In this particular case, by the time the LDC application was made the property had been derelict and unused for at least 29 years. No effective repair works or maintenance had been carried out at all during that period, and the last clear evidence of any intention by the owner to resume residential use was the Building Regulations Approval in 2002. In 2017 the Estate Agent marketing the property on behalf of its owner described it as a “derelict cottage”. In 2020 an engineer commissioned to produce a Structural Report on the property attributed its state of disrepair to “long term abandonment”. Later that same year the (then) owner made a request to the Council for pre-application advice, the terms of which acknowledged that the building was no longer a dwelling, and would need to be “converted” to be used as one.
20. In my judgment, an objective assessment of all the currently available evidence would lead the reasonable person to conclude that by the time the Appellant purchased Lavender Cottage, its residential use had not merely been temporarily suspended by the owners, but had long since ceased for good.

Conclusions

21. The weight to be attached to each of the four criteria is a matter of judgement for the decision maker,¹⁰ and it is important to be clear that each case needs to be assessed on the basis of its own specific circumstances. The Appellant has drawn my attention to a previous appeal decision¹¹ in which the period of non-use was around 16 years and, despite the dwellings at issue being in a far worse state of repair than Lavender Cottage (only slabs, footings and chimneys remained) it was held that the residential use had not been abandoned. However, in that case the Inspector found detailed evidence of repeated attempts by the owner to gain planning permission throughout the period of

⁸ Ref PA20/02784/PREAPP

⁹ *Hughes v SSETR* [2000] 80 P&CR 397

¹⁰ *Bramall v SSC LG* [2011] JPL 1373

¹¹ Ref APP/C3810/X/15/3035706

non-use, demonstrating a clear intention to maintain the residential use of the land. There is no such evidence of intention here.

22. There is evidence that the current owner purchased the property with the intention of returning it to residential use, and the fact that it has never been used for any purpose other than as a dwelling is a factor which weighs against a finding of abandonment. However, on the other side of the balance, it is clear that Lavender Cottage was derelict and unoccupied by 1993 at the latest, and has remained so ever since. It has not been used as a dwelling for a period of at least 29 years, and over that period has simply been left to deteriorate and decay, with no effective attempts made at repair or maintenance. It was uninhabitable – such that the Valuation Office considered it no longer a dwelling – in 1993, and remains uninhabitable now. For the reasons set out above I consider that on an objective assessment, its previous owner had ceased residential use of the property on a permanent basis long before its sale to the present owner.
23. Weighing all of this together, I conclude that by the date of the LDC application the residential use of Lavender Cottage had been abandoned. This means that it could not be lawfully used as a dwelling without a grant of planning permission. It follows that the LDC cannot therefore be issued.

Decision

24. For the reasons given above I conclude that the Council's refusal to grant a LDC for the use of Lavender Cottage as a dwelling 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