



Appeal Decision

Site visit made on 16 January 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal Ref: APP/Y9507/X/23/3316244

30 Winchester Road, Petersfield GU32 3PA

- 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 Ms. Anna Rowe against the decision of South Downs National Park Authority.
 - The application ref SDNP/21/06321/LDE, dated 20 December 2021, was refused by notice dated 30 August 2022.
 - 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 continued use as a residential dwelling (use class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the development from the application form and have removed superfluous wording. Although the development is described as 'continued' use as a residential dwelling, the application sought confirmation that the use was lawful on the date the application was submitted and I have determined it on this basis.
3. The National Park Authority is concerned that the appellant has provided additional information with the appeal and considers that I should not take it into account in my decision. Government guidance makes it clear that although the appellant should not withhold evidence at the application stage, the appeal should be supported by relevant information. Case law has established that an inspector should consider any relevant fresh evidence advanced at appeal, including where this evidence was not provided at application stage.
4. The 'Wheatcroft'¹ principles apply to amendments to a proposal during the appeal process, rather than the submission of evidence to support an appeal and to address reasons for refusal.

Reasons

5. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests and the planning merits are of no relevance. The

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

burden of proof lies with the appellant, who must show, on the balance of probabilities, that the development was lawful at the date of the application.

6. The Planning Practice Guidance (PPG)² states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate.
7. *Panton*³ established that lawful use rights can be lost in three ways, by abandonment, the formation of a new planning unit, or by being superseded by a further change of use. In this case, the decision turns on whether the use as a single dwellinghouse has been abandoned, as a matter of fact and degree and on the balance of probabilities.
8. Case law has established that the cessation of a use does not necessarily mean that it has been abandoned. The concept of abandonment applies if a building or land remains unused for a considerable time, in such circumstances that a reasonable person might conclude that the use had been abandoned⁴. An objective test must be applied that the use was not to be resumed⁵.
9. The Court⁶ suggested 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 owner's intentions as to whether to suspend the use or to cease it permanently.
10. The weight to be attached to each of the criteria is a matter of planning judgement for the decision maker⁷. The test of the owner's intentions should be objective and not subjective⁸.
11. The appellant has referred to *Hall v Lichfield DC* [1979] JPL 426 but has not been able to provide a copy. It is clear however that the case predates the identification of the four criteria for abandonment in *Trustees of Castell-y-Mynach Estate*.

The period of non-use

12. There is no dispute that the building had an established use as a dwelling, appearing on maps from the 1860s. The appellant states that the owner, Miss Stock lived in the property for more than 50 years until 2006, when she moved into a nursing home called Ramscote, in Ramshill, Petersfield, Hampshire. She passed away in 2018. At the time of the application the property had therefore been vacant for approximately 15 years. I have seen no evidence that there was any use of the property since Miss Stock moved out.

² Paragraph: 006 Reference ID: 17c-006-20140306 Revision date: 06 03 2014

³ *Panton and Farmer v SSETR and Vale of white Horse* [1999] JPL 461

⁴ *Hartley v MHLG* [1970] 1QB 413

⁵ *Nicholls v SSE & Bristol CC* [1981] JPL 890

⁶ In *Trustees of Castell-y-Mynach Estate v Taff-Ely BC*, [1985] JPL 40

⁷ *Bramall v SSCLG* [2011] JPL 1373

⁸ *Hughes v SSETR* [2000] 80 P&CR 397

The physical condition of the land or building

13. The plot is overgrown with trees and brambles. The building was originally single storey, and most of the external walls remain, but the building is open to the elements with no roof, ceiling or doors. No internal fittings or furniture were in evidence, with the exception of a fireplace. The walls are a mixture of brick, flint and render. In some places there are still window frames but no glass. Trees have become established within the building and it no longer has the appearance of a dwelling.
14. The appellant states that they recall that the house was in a reasonable habitable condition up until 2006 and has provided an extract from an aerial photograph from 2005 which appears to show it with a roof covering. The nature of the material covering the roof is not discernible from the photograph.
15. An aerial image has been provided from Google Earth from 2001 which indicates part of a building with a tree canopy obscuring part of it. It is stated that there are lawn areas but the image is not sufficiently clear for me to identify areas of lawn amongst the tree and shrub cover.
16. The satellite image from 2008 is stated to show the roof form and areas of lawn, but I can decipher only tree cover with a small area of grey. I am not able to discern the condition of the building or the extent of roof covering from this image. There are no other satellite images until 2015, where the site is completely overgrown and only tree cover is visible.
17. Representations from a neighbour and the Parish Council dispute that the property was habitable as a dwelling in 2006. The neighbour states that in 1996 the roof had partially blown off and the house was covered by a heavy-duty black cover. At the time that Miss Stock stopped living at the appeal site, her front door had been pushed down, there was no water, no working sewage system and water entering the property from above. Due to the condition of the property at that time, the neighbour questions whether it could be considered to be a 'dwelling', despite the fact that Miss Stock was still living there.
18. The neighbour has provided photographs which purport to be from around 2006. I note that there is disagreement between the neighbour and the appellant as to the date of the photographs, but the evidence points towards the property being in a dilapidated state when Miss Stock moved out, with ongoing decline since then.
19. Stroud Parish Council states that the property has been in an exceptionally dilapidated condition since as far back as 1996, with no significant maintenance since then. Furthermore, there has been no overt maintenance since Miss Stock's death in 2018.

Whether there had been any other use

20. There is no dispute between the parties that there has been no other use of the building since Miss Stock moved into a nursing home.

The owner's intentions

21. In March 2008 Miss Stock instructed a solicitor to act on her behalf to protect her property from trespass, indicating a dispute between Miss Stock and a

neighbour. Copies of the letters have been provided. The appellant asserts that Miss Stock's actions were indicative of her intention to maintain the residential use of the property and it was only her ill health that prevented her from doing so. I note that Miss Stock suffered from dementia.

22. The appellant asserts that family members have stated that Miss Stock expressed intentions to replace the existing house with a new and improved structure. This is not corroborated by any contemporaneous evidence and it is not clear when this intention was expressed. The appellant states that planning permission was sought in 1979 for an extension although details have not been provided and I do not know whether any application was approved. I have not been advised that planning permission was sought or granted to extend or rebuild the property since then.
23. Miss Stock is said to have had a deep connection with her home and the local area. There could be many reasons why Miss Stock did not sell the property, and I cannot conclude that her retention of the property indicates whether she intended to resume living there. There is also no indication that it was awaiting imminent improvement. I accept that there is no requirement for a dwelling to be in continual occupation. I also recognise that the costs of bringing the property back into use may have been beyond Miss Stock's financial means.
24. The neighbour opines that Miss Stock moved into an independent living flat rather than a nursing home and therefore had no intention of returning to the appeal site to live. Be that as it may, I do not consider that it should be interpreted as indicating that Miss Stock had no intention of the residential use of the property resuming. Nonetheless, there is little factual evidence regarding her intention with regard to the property, beyond the copies of the solicitor's letters.
25. I acknowledge that since Miss Stock's death, the family have made attempts to pursue a redevelopment of the site for a replacement dwelling, with pre-application advice being sought from the South Downs National Park Authority (SDNPA). I have seen no evidence however that there has been any attempt to maintain the site or the building as a dwelling since Miss Stock moved out.
26. Considered objectively, there is little evidence as to whether Miss Stock intended to suspend the residential use of the property, or to cease it permanently.

Conclusions in relation to abandonment

27. Although there is some evidence from 2008 that Miss Stock had sought to protect her property from trespass and annexation, there is very little evidence of any intention to resume its use as a dwelling. As a result of this, its physical condition and the substantial period of non-use, a reasonable onlooker, applying an objective test, would have the impression that the residential use was not to be resumed. Although the Council does not have evidence to contradict the appellant's version of events, the appellant's evidence is not sufficiently precise and unambiguous and falls short of discharging the burden of proof. I therefore conclude, as a matter of fact and degree and on the balance of probability, that the use of the property as a dwelling has been abandoned.

28. The appellant refers to a case at Lindford Bridge House where the council found that the house had not been abandoned despite being derelict and uninhabitable with no permanent occupants for a period of 22 years. I do not have full details of the evidence that was before the decision maker but it appears that significant weight was given to the owners' intention to restore the property to a family home. It therefore differs to this case, where there was little evidence of an intention to resume the residential use.
29. The appellant states that there are remarkable similarities with *Hall v Lichfield DC* [1979] JPL 426 where a dwelling had been unoccupied when its owner entered hospital for 13 years and its use as a dwelling was found not to have been abandoned. A copy of the High Court transcript or commentary have not been provided. The appellant has provided a copy of the commentary in *A Practical Approach to Planning Law* (by Victor Moore, Michael Purdue) but this does not provide full details of the case. Putting to one side that this case predates the established judgements in relation to abandonment, there is insufficient information for me to conclude as to whether the circumstances of the case were comparable with this appeal.

Conclusion

30. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of continued use as a residential dwelling (use class C3) 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.

N Thomas

INSPECTOR