
Appeal Decision

Inquiry held 12 - 13 September 2017

Site visit made on 11 September 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 25 January 2018

Appeal Ref: APP/R3325/X/17/3171608

'Aunt Emily's', Low Ham Road, Low Ham, Langport, TA10 9DY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Sarah Skeet against the decision of South Somerset District Council.
 - The application Ref 16/05122/COL, dated 24 November 2016, was refused by notice dated 23 January 2017.
 - The application was made under section 191(1)(a) of the Act.
 - The development for which a certificate of lawful use or development is sought is described as: *"The existing residential use of two brick and stone buildings known as Aunt Emily's, on land to the rear of Owl Cottage, Low Ham. This dwelling is shown as building 1 and building 2 in the plans and planning statement submitted with the application. The dwelling is currently not occupied, but its use as a dwelling remains"*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of use in the LDC application submitted to the Council refers to the use of two buildings; those being marked 1 and 2 on the application plan. The details accompanying the application indicated the same. However, the plan shows the buildings within a small area of land edged in red, and the officer report written in consideration of the application states the LDC is sought for the existing residential use of *"land (my emphasis) and buildings located at the above site as a single dwelling house"*. Hence it seems that the application was considered on the basis of inclusion of the red edged land. At the Inquiry I agreed with the parties that the appeal should be determined on the basis of its inclusion¹. I am satisfied that doing so would not be prejudicial to any party.
3. An LDC is not a planning permission. Its purpose is to allow landowners and others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
4. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any

¹ Hereafter 'the buildings' refers to the land and buildings 1 and 2 identified on the submitted application plan.

relevant planning law or judicial authority. Thus planning policies and planning merits are not relevant considerations in determining an LDC application or appeal. Hence, for example, any amenity impacts on neighbouring properties, or the fact that the appeal site is within the countryside, are immaterial to whether or not an LDC is issued.

5. The burden of proof regarding matters of fact rests with the applicant, now the appellant. Although not in active habitation she asserts that the use of the buildings as a residential dwellinghouse has not been abandoned and therefore remains as the lawful use. She must therefore provide enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is made on the balance of probability (that it is more probable than not).
6. In reaching my decision I have also taken account of the additional documents submitted during the Inquiry. All oral evidence to the Inquiry was taken under oath.

Background

7. The two single storey buildings are marked 1 and 2 on the application drawing (hereafter B1, B2). They do not appear on the 1888 Ordnance Survey map but do appear on the 1903 version.
8. The appellant's evidence is that from at least 1908 the buildings were occupied and used as a dwellinghouse by two sisters Marie Jane Skeet and Emily Oram (nee Skeet) until their deaths in 1953 and 1958 respectively. From 1958 until his death in 2007 the buildings were owned by Leonard Skeet, and then from 2007 ownership passed to Sarah and Mark Skeet. However, there has been no residential occupation of the buildings since 1958.
9. Ron Skeet's evidence included his recollection of visiting the sisters in the buildings as a young boy from around 1948/1949 onwards. Another witness² also recalled childhood visits to the sisters in the buildings.
10. On the balance of the evidence I am satisfied that use of the buildings as a dwellinghouse was the lawful use statutorily accrued from 1 July 1948 onwards.

Main Issue

11. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. The appeal therefore turns on the question of whether or not the residential use of the buildings has been abandoned.

Reasons

Relevant Case law

12. 'Abandonment' is a legal concept used by the Courts to describe the circumstances in which rights to resume a use which has been lawfully carried on in the past may be lost because of the cessation of that use. However, it was established in *Panton*³ a use that was merely dormant or inactive could still

² Joan Turner statutory declaration

³ *Panton and Farmer v SSETR & Vale of White Horse DC* [1999] JPL461

- be 'existing' so long as it had already become lawful and had not been extinguished.
13. In *Hartley*⁴, Lord Denning found that if 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, then the Tribunal may hold it to have been abandoned*".
 14. In *Castell-y-Mynach*⁵, the Court established four criteria for assessing whether a use had been abandoned. These are, as applicable to this case: (1) the physical condition of the buildings; (2) the period of non-use; (3) whether there has been any other use; and (4) the owner's intentions.
 15. In *Hughes*⁶ the Court of Appeal held, on the authority of *Hartley*, that the test of the owner's intentions should be objective and not subjective. The intentions of Mr Hughes and of the previous owner, although relevant factors to be considered, could not be decisive because the test was the view to be taken by "*a reasonable man with knowledge of all the relevant circumstances*". Evaluating all the four criteria established in *Castell-y-Mynach*, the Inspector had been entitled to conclude that the residential use had been abandoned.
 16. I have also been referred to a number of previous appeal decisions which turned on the concept of abandonment. They simply demonstrate that no one of the four criteria established in *Castell-y-Mynach* can be decisive and that each case is fact-sensitive and must be decided on its own merit. The proper test and approach in deciding whether a use has been abandoned or not is that set out in *Castell-y-Mynach* and *Hughes*.

Analysis

Physical condition of the buildings

17. During my visit to the appeal site I was able to see that rudimentary repair work has been carried out to the buildings at some time in the past. Ron Skeet provided oral and written evidence⁷ of maintenance and repairs that had been carried out to the buildings in order to preserve them. In his statutory declaration (SD) Kenneth Edmunds recalls Leonard carrying out roof repairs and states that Leonard always kept the dwelling and the surrounding garden in a "*pristine condition*", and Gwen Chubb stated in her SD that she would often see Leonard doing DIY tasks on the buildings. I am unclear as to the precise nature of these works as they did not give oral evidence to the Inquiry.
18. The description of the buildings being generally well-kept from 1958 onwards contrasts with the description of the buildings in later years given by Mrs Williams-Key and Mrs Whitlam; local residents living close to the appeal site for 33 years and 2 years respectively. Their description of the buildings is of an appearance of a derelict pigsty almost entirely hidden by overgrowth until the land was cleared relatively recently. In cross-examination Ron Skeet agreed that the site had become overgrown and "jungley" in photographs⁸ taken in 2015, although in re-examination he explained the deterioration in condition

⁴ *Hartley v MHLG* [1970] 1 QB 413

⁵ *The Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40

⁶ *Hughes v SSETR & South Holland DC* [2000] JPL 826

⁷ Ron Skeet proof, statutory declaration, and work diaries

⁸ Council's appendix E

was due to a period of ill health during which he was unable to maintain the site.

19. However, notwithstanding that some simple repairs have been carried out to the buildings since 1958, it appears to me that at the date of the application the two buildings were of a significantly sub-standard condition for human habitation. In this regard I reject the hypothetical assertion⁹ that "*if Emily was to return she would have been able to carry on where she had left off*". No works of any significance so as to improve them to a habitable condition have been carried out during the 58 year period of non-occupation.
20. Submitted in support of the appeal is a building survey report (BS)¹⁰. It describes individual elements of the buildings before summarising their overall condition. It concludes that B1 is in *generally adequate condition to preserve its structural integrity and water-tight*. I consider that understates the overall poor condition of the building that I saw during my visit to the appeal site. It goes on to say that it is suitable for a programme of improvements that could lead to it being made into a habitable condition. For B2 it identifies structural problems to two of the walls and that demolition and rebuilding of them would be the most cost effective form of repair to the building. However, having regard to its overall poor condition, I have serious doubts that B2 is capable of any reasonable economic repair as described.
21. Taking account of all these factors, together with my own observations, I consider that the overall physical condition of each building is very poor, particularly B2. However, the physical condition of the buildings is not by itself decisive.

Period of non-use

22. There has been no active residential occupation of the buildings since 1958, a period of approximately 58 years to the date of the application. I consider that to be a substantial period of time, but it is not by itself decisive in terms of abandonment.

Whether there has been any other use

23. I heard evidence that the buildings had been used to store agricultural equipment and other miscellaneous items. However, I am satisfied that ad hoc and temporary use of the building for such purposes was inconsequential in terms of whether the primary residential use had been abandoned, and it was accepted by the Council that there has been no other intervening use from 1958 to the date of the application.

The owner's intentions

24. From 1958 the buildings were owned by Leonard Skeet. He retained Emily Oram's possessions and furniture in the house until his death in 2007, a period of 49 years, and I have already referred to repairs to the buildings that have been carried out in the past. This reflects the evidence I have read and heard from the witnesses who knew Leonard; that he treated the buildings with respect and care as a family heirloom to keep and maintain for future generations. On the balance of the evidence I am satisfied that is the case.

⁹ Closing submissions for the appellant, para.5

¹⁰ 'Building Survey Inspection Report', GTH, 25 July 2017

- However, that he physically maintained the buildings as structures could be consistent with abandonment or non-abandonment of the *residential use* of the buildings. Thus their maintenance, by itself, is not determinative of Leonard's actual intention.
25. The buildings were removed from the rating register and no rates were paid after 1960. While on the one hand that could be interpreted as an indication of abandonment of the residential use, it would also be consistent with the appellant's case that there was no basis for paying rates on an unoccupied property and the use has merely been dormant without an intention to abandon. In the balance with all other matters I consider this factor carries no significant weight either for or against allowing the appeal.
 26. Lyn Morris recalled conversations with Leonard in which he said that he wanted the buildings to stay as a home. Diane Skeet states in her SD that his intention was always "*to leave this dwelling to Mark and Sarah so that it could be made into a family home one day*". Evidence from other witnesses who knew Leonard also related to having a belief or an impression that Leonard anticipated future residential use of the buildings. Consistent with this Ron Skeet recalled a particular conversation with Leonard in 2005 during which Leonard said that the buildings could be used as a dwelling, but not during his (Leonard's) lifetime.
 27. All of the above, together with all other evidence I have read and heard in support of allowing the appeal, indicates to me the likelihood of a long term desire held by Leonard that the buildings should be used residentially by following generations of the family. He may or may not have had that in mind when he made his will thirteen years earlier in 1992, bequeathing his estate to Sarah and Mark Skeet.
 28. However, given the considerable length of time Leonard owned the unoccupied buildings from 1958, and knowing 34 years later in 1992 that they would not pass on to family members until much later¹¹, it seems more likely to me that any desire Leonard may have had that future generations might use the buildings as a dwellinghouse was no more than a loosely held hope, rather than a genuine intention held by himself to continue the residential use. That is consistent with his 2005 statement to Ron Skeet that the buildings could not be used as a dwelling during his lifetime. To my mind these factors points more towards an abandonment of the residential use by Leonard.
 29. Moreover, while the *actual* intentions of the owner are relevant, they are not decisive. In determining whether there has been abandonment the proper test, as I have previously set out in the relevant case law section, is the view to be taken by "*a reasonable man with knowledge of all the relevant circumstances*". In drawing all the factors together it seems unlikely to me that Leonard, as owner, had any actual intention throughout his own life to continue residential use of the buildings. In my view the balance of the evidence indicates a greater likelihood that he abandoned the use long before his death in 2007 and hence before the date of the application.
 30. Furthermore, even if Leonard had held an *actual* intention to continue the residential use, I consider that a reasonable person taking an objective view

¹¹ When Sarah and Mark Skeet would attain the age of 23 years

and having knowledge of all the facts and circumstances would consider, as I do, that the residential use had been abandoned by him prior to 2007.

31. I therefore conclude overall, and on the balance of probability, that the residential use of the buildings was extinguished by abandonment prior to the buildings' subsequent period of stewardship by Ron Skeet and ownership by Mark and Sarah Skeet from 2007. More pertinently, abandonment therefore occurred prior to the date of the LDC application subject of the appeal.

Conclusion

32. For all the reasons given above I conclude that the Council's refusal to grant an LDC in respect of an existing residential use of two brick and stone buildings known as Aunt Emily's, on land to the rear of Owl Cottage, Low Ham, was well founded. Accordingly, I will exercise the powers transferred to me under Section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ned Westaway of Counsel	Francis Taylor Building
He called:	
Ron Skeet	Appellant's father
Joan Turner	Former Low Ham resident
Gerald Morris	Former Low Ham resident
Michael Jenkins	Former Low Ham resident
Mark Skeet	Appellant's brother
Sarah Skeet	Appellant
Lyn Morris	Former Low Ham resident
Clive Miller	Managing Director - Clive Miller & Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mr Peter Wadsley of Counsel	St. John's Chambers
He called:	
Nicholas Head MRTPI	Planner - South Somerset District Council

THIRD PARTIES:

Eleanor Whitlam	Low Ham resident
Mrs Williams-Key	Low Ham resident

DOCUMENTS SUBMITTED AT THE INQUIRY:

- 1 Opening statement for the Appellant
- 2 Opening statement for the Council
- 3 Copies of pages from work diaries 2007-2012 and typed summary page
- 4 Copy of LDC for site at West Coker - 05/02252/COL
- 5 Extract from 'Ryde on Rating and the Council Tax'
- 6 Copies of pages from the Langport Rural District Council Rate Books (1955-56) & (1968-69)
- 7 Statement of Eleanor Whitlam
- 8 Copy of e-mail exchange between Eleanor Whitlam and English-Homes.co.uk
- 9 Statement of R H Statham
- 10 Closing submissions for the Appellant