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# Appeal Decision

Inquiry held on 15 October 2024

**by M Madge Dip TP MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 November 2024**

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**Appeal Ref: APP/L3245/X/24/3345984**

**Site of former Green Lane Cottage (Land north of Greenfields), Green Lane, Bings Heath, Shropshire SY4 4BY**

- 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 Kevin Niblett against the decision of Shropshire Council.
  - The application ref 24/00379/CPE, dated 31 January 2024, was refused by notice dated 25 March 2024.
  - 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 C3 residential use.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. A case management conference was held on 2 August 2024. It resolved that a Pre-inquiry Accompanied Site Visit (PASV) would be undertaken and that evidence at the Inquiry would be dealt with by way of round table discussion as opposed to the formal presentation of evidence and cross examination.
3. The PASV took place at 14:00 on 14 October 2024. I was accompanied on site by the appellant and Ms Jane Raymond for the Council. I was shown the remains of the cottage and associated outbuildings. Adjacent developments and land uses, along with the extent of the byway open to all traffic were also identified.
4. Nothing arose during the Inquiry to require me to re-visit the appeal site. Furthermore, I was not requested to make an inspection of the land as part of the Inquiry process. An Inquiry site visit was not therefore necessary, and one was not carried out.

## Reasons

5. The **main issue** is whether the Council's refusal to grant a lawful development certificate (LDC) was well founded.
6. In this type of appeal, the onus of proof is on the appellant and the relevant test is the balance of probability. It is therefore for the appellant to show that the C3 residential use began and continued without significant interruption for a period of 10 or more years. Any 10-year period is relevant. It may also be necessary to show that any lawful residential use accrued has not been lost.

7. Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended relates to buildings, or part thereof, primarily used as dwelling houses. Green Lane Cottage (the cottage), which formerly occupied the land, was clearly a building. There is no dispute that the cottage was formerly occupied for residential purposes or that the dwellinghouse had been occupied for a period of more than 10 years. The appeal parties agree the lawful use of the cottage as a Class C3 Dwellinghouse had been established more than 10 years before the application for an LDC was made and I concur.
8. A lawful use that is merely dormant or inactive could still be considered as 'existing', so long as it has not been extinguished in one of the following three ways: (i) evidence of abandonment; (ii) formation of a new planning unit; or (iii) by being superseded by a material change of use. There is no suggestion that (ii) or (iii) apply in this case. However, the cottage ceased to be occupied in April 1964 and was subsequently demolished. The appeal parties agree the matter before me is whether the lawful C3 residential use has been abandoned.

### *Legal Authorities*

9. The legal framework on the issue of abandonment sets out that the mere cessation of a use is not development. However, Lord Denning in *Hartley v MHLG* [1970] 1QB 413 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 concept of abandonment applies.
10. In *Trustees of the Castell-y-Mynach Estate v SSW* [1985] JPL 40, the Court identified four criteria to be considered when determining if a use has been abandoned. The four criteria are the physical condition of the building; the period of non-use; whether there has been any intervening use; and the owner's intention as to whether to suspend the use or cease it permanently.
11. With regards to owner's intention, in *Hughes v SSETR* [2000] 80 P &CR 397, the Court of Appeal held that the test of the owner's intention should be objective, the view to be taken by a reasonable man with knowledge of all the relevant circumstances. The owner's intention shall not however be elevated to a paramount status, or conversely subordinate other relevant considerations. The weight to be attached to each of the four criteria when determining abandonment is a matter for the decision taker.
12. I have also been referred to a number of previous appeal decisions which turn 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 merits. 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*.

### *The Evidence*

13. The appellant has provided two statutory declarations (SDs). Both are extremely detailed in terms of the provision of documentary evidence relating to how the cottage came to be demolished including the various local authorities' involvement, the actions taken by successive landowners to maintain and/or replace the cottage, maintenance of the vehicular and

pedestrian access to the land and promoting the land for residential purposes through the development plan process. The documentary evidence is not in dispute. Some of the appellant's commentary in the SDs is of a speculative nature as he could not know with any certainty why his grandfather, uncle or the local authorities took the actions they did in anything other than in general terms.

14. A third statutory declaration is provided by the appellant's mother, who is joint owner of the land. This confirms the sources of the documentation provided by the appellant and includes details of personal circumstances that would have impacted upon decisions and actions taken in respect of pursuing the necessary planning permission to reinstate a dwelling on the land.
15. The appellant's oral evidence reiterated the written evidence, taking us through in more detail what works were required by the local authority to bring the cottage into a condition fit for human habitation. He also provided further detail as to why refurbishment and improvement works to the cottage could not have been completed through permitted development rights available at the time. Predominantly, the oral evidence rested with landowners' intention and actions taken by the various local authorities.

#### *Physical Condition of the building*

16. The cottage was a modest dwelling, tenanted out by the then owner Mr John Prichard (JP), the appellant's grandfather. By January 1963 the local authority, Atcham Rural District Council (ARDC), had formed a view that the cottage was unfit for human habitation and served Notice, under s16(1) of the Housing Act 1957, on JP threatening an order of closure or demolition unless something was done to bring the Cottage to a state fit for human habitation.
17. ARDC's intervention resulted in the cessation of occupation of the cottage in April 1964 after the tenant was rehomed. A succession of planning applications and one appeal to replace the cottage or secure its extension and refurbishment were pursued by JP over the subsequent 11-year period. None were successful. Furthermore, the cottage had been demolished by the actions of others in approximately 1968.
18. There is no evidence to suggest that the various local planning authorities had regard to ARDC's intervention being the cause of the cottage being unoccupied in the determination of the four planning applications. However, in the appeal<sup>1</sup>, relating to '*the erection of a new dwelling to replace a demolished cottage*', the Inspector had regard to the former cottage being on the land, but confirms in DL5 that this, along with '*other personal*' and '*domestic experiences*', did not outweigh the policy conflict and other harms he had identified. From this it is reasonable to conclude that regard was given to other relevant considerations, including the circumstances that led to the loss of the building.
19. I saw on site that the remains of the cottage amount to low level brickwork, of between 1 and 3 brick courses, from which its external footprint can be deduced. Similar evidence of some of the internal dividing walls and a former fireplace is also evident. A surface water drain grate is visible, and brickwork of a similar appearance to that of the cottage allows the location of the former

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<sup>1</sup> APP/5360/A/75/2073 Dismissed 10 October 1975

earth closet and pigsties to be deduced. The site was somewhat overgrown, but several piles of rubble were readily identifiable, which I was told are formed from the physical remains of the cottage.

20. While the physical condition of the building is not by itself decisive of whether its use has been abandoned, in this case, there has been no building on the land for some considerable time. How the cottage came to be demolished does not change the fact that it was demolished before 1974 or that the land has been without a building for over 50 years. The demolition of the building therefore represents a new chapter in the planning history of the land as it could not be used for any purpose, other than those activities and uses that are not development.

#### *Period of non-use*

21. There has been no active residential use of the land since April 1964 when it is agreed the tenant moved out. The appellant and Council agree that the period of non-use amounts to some 60 years, which I find to be a substantial period. Furthermore, a building has not existed on the land for over 50 years. The period of non-use is not decisive of itself.

#### *Intervening use*

22. I understand that there was a brief period when the appeal site was occupied by gypsies and travellers. The owner had not authorised such occupation, nor had planning permission been granted for such a use. The appellant and Council agree that this brief, unauthorised interlude did not amount to an intervening use of the land, and I see no reason to disagree. There has therefore been no intervening use of the land in the 60 years since the C3 residential use last occurred.

#### *Owner's Intention*

23. The appeal site has been in the appellant's family since 1928. JP inherited it in 1950 and it passed to the appellant's mother and uncle in 1995. The evidence shows, at least since JP inherited it, that the cottage was occupied by a tenant.
24. JP accepted in 1963 that the cottage was unfit for human habitation and entered into a legal agreement with ARDC that the cottage could not be occupied again until the local authority confirmed it was fit for human habitation. Plans were produced to extend and improve the cottage in 1963, but these plans were not brought before the local planning authority for consideration until 1967. This was after there had been two previous refusals of planning permission to replace the cottage, firstly with two dwellings and then with a single dwelling. A fourth proposal, to erect a new dwelling to replace the cottage, was refused and dismissed on appeal. I do not doubt that all these actions demonstrate JP's intention to maintain the residential use of the land.
25. Three reasons were cited for refusing JP's planning applications and it is the appellant's contention that:
- the highway reason for refusal failed to acknowledge the legal right of access afforded to the land;

- the drainage reason could have been dealt with by condition (and did not feature on the extension and improvements scheme); and
- there would be no change of use of the land as its residential use was lawful.

While the appellant considers the reasons given for refusing all four applications to be without foundation, none of the refusals of planning permission were challenged. Judicial review may not have been a commonly taken route in the late 1960's/early 1970's, but that course of action was available and not taken up.

26. Subsequent owners have sought to promote the use of the land through the development plan process for a variety of residential uses. While they may desire to reinstate the former residential use of the land, this could not be achieved without a grant of planning permission.
27. Even if I were minded to accept the appellant has demonstrated, on the balance of probability, the landowners' intention to resume the residential use of the land, this is not by itself decisive and could not be elevated to paramount status in any event.

#### *Assessment of the evidence*

28. As previously identified, Class C3 relates to the use of a building as a dwellinghouse. It is the primary use of that building as a dwellinghouse that establishes the lawful use of the land upon which it stands and its associated curtilage and/or garden as having a residential use. Following the demolition of the cottage there ceased to be a building within which the primary C3 residential use could take place. Any resumption of that primary C3 residential use would, as a matter of fact, require planning permission, thereby starting a new chapter in the land's planning history.
29. Furthermore, in the absence of a building/dwellinghouse, there can be no primary residential use of the land. Similarly, the residential use of the garden land would not subsist as there is no primary use to which it would be ancillary. On this basis, it seems to me the C3 residential use could have been lost through the demolition of the building.
30. When discussing whether the cottage could have been made fit for human habitation by exercising permitted development rights, the appellant argued that once the cottage was demolished, it did not benefit from such rights. This adds support to my finding that the demolition of the cottage amounted to a new planning chapter in the land's history.
31. *Iddenden*<sup>2</sup> was not brought to my attention by the appeal parties, it was however referenced in the 'Four Square Oast' appeal decision<sup>3</sup>, which was. It states at DL6 that "*The parties refer to the Iddenden judgement, which found that a use cannot survive if the buildings and installations necessary to sustain it are removed or destroyed.*" This confirms my finding that the primary C3 residential use was lost through the demolition of the cottage.

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<sup>2</sup> *Iddenden v SSE* [1972] WLR 1433

<sup>3</sup> APP/M2270/W/22/3305766 – Proposed repair and reinstatement of a four kiln former Oast House – dismissed 4 August 2023

32. I acknowledge that the demolition of the cottage was not brought about by direct actions of the landowner. JP made considerable efforts to replace the cottage within a relatively short period of time. Those efforts were however unsuccessful and opportunities to challenge those decisions were not taken. Furthermore, no effort was made to establish the lawful C3 residential use of the land before or at the time the cottage was demolished, or at any other time until this LDC application was made; a period of approximately 50 years.
33. I appreciate the legal authorities relating to abandonment were established after JP's series of planning applications. JP may also have had personal reasons for not pursuing the lawful use of the land or any further planning applications after the appeal was dismissed. More likely than not, that would have amounted to a conscious decision by JP to take no further action.
34. I do not doubt that JP held an actual intention to resume the C3 residential use. That intention could not however have been achieved without a grant of planning permission for some form of new building, which he had failed to secure. There being no building on the land and the time that has passed within which planning permission has not been granted to replace the cottage are factors that point towards abandonment of the C3 residential use by JP and weigh against issuing an LDC.
35. Subsequent landowners have recognised the need to secure planning permission before any C3 residential use can be resumed. They have demonstrated an awareness that such planning permission would be unlikely to be granted. In the alternative, they have sought to have the land allocated through the development plan process for several forms of residential use, without success. In my judgement, these actions demonstrate an understanding that the residential use of the land has been abandoned. These factors also weigh against issuing an LDC.
36. I therefore find it more likely than not, that a reasonable person taking an objective view and having knowledge of all the facts and circumstances would consider, as I do, that the C3 residential use had been abandoned following the cottage's demolition and failure to secure planning permission for its replacement within a reasonable period, i.e. by October 1975. Abandonment therefore occurred prior to the date of the LDC application the subject of this appeal.

## **Conclusion**

37. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of an existing C3 residential use was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

*M Madge*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Ben Garbett	of Keystone Law, Consultant Solicitor instructed by appellant
Mr Kevin Niblett	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Piers Riley Smith	of Kings Chambers, Counsel for the Council, instructed by Ms Kim Brown of Shropshire Council
Ms Jane Raymond	Senior Planning Officer, Shropshire Council

## **DOCUMENTS**

ID1	Map showing buildings on the appeal site coloured red and black
ID2	Opening by Mr Garbett for the appellant
ID3	Opening by Mr Riley Smith for the Council
ID4	Closing by Mr Garbett for the appellant