



Busby-Cozic

15 January 2024

PLANNING STATEMENT

Re. CLEUD application at Ambrose House, Banningham, NR11 7DT

INTRODUCTION

- 1 The applicant owns the land known as "Land at Chapel Cottage, Mill Road, Banningham, Norwich, NR11 7DT" ("the Land") and has done so since January 2020. The Land has been outlined in red on the Plan in Appendix A.
- 2 He purchased it after it had erroneously (in my view) been advertised by Brown & Co. as "Amenity Land, Mill Road, Banningham, Norwich, Norfolk, NR11 7DT"
- 3 The applicant has always intended to demolish the building on the land and erect a single dwelling for him and his family.
- 4 The purpose of this application is to establish that the building, which is shown outlined in green on plan (Appendix A) ("the Lodge") is in lawful use as a residential dwelling.
- 5 This application is accompanied by the following:
 - A site plan
 - Land Registry Documents
 - A Statutory Declaration by Matthew AMBROSE (applicant)
 - A Statutory Declaration by Sandra DIXON
 - A Statement of Truth by Christopher HURN
 - A series of photographs showing the building in question as it stands today
 - A series of photographs showing the building in question as it stood when the applicant purchased the Land
 - A series of aerial photographs showing the land in question
 - Council Tax records for the building
 - Relevant Appeal Decisions
- 6 In addition to this application for a certificate of lawfulness the applicant has already made an application for planning permission in respect of the Site with the intention of enabling a dwelling to be constructed on the land. That application is made entirely without prejudice to any matter that has to be considered under

this certificate application and it does not indicate any acceptance on the part of the Applicants, their professional planning advisors or their lawyers that the use of the site as set out in the certificate application has been abandoned or otherwise lost.

BACKGROUND

- 7 On 9 January 2020 the applicant purchased the land known as The Lodge. A copy of the Land Registry Documents is provided in Appendix B.
- 8 Photographs of situation of Lodge at time of purchase
- 9 Council Tax letter and confirm payments being made to Council.
- 10 On 22 April 2022 the applicant applied to the Council for planning permission to demolish the lodge and erect a detached two storey 4-bed dwelling with associated car parking and landscaping. This application (ref. PF/22/1068) has not yet been determined.
- 11 The applicant offered to make an application for a Certificate of Lawfulness earlier during the determination process but at that time the case officer indicated this would not be necessary.
- 12 The application has remained undetermined for some time and, although there have been no public suggestions that the use of the Lodge is anything but residential, it has now been suggested that the submission of an application for a Certificate would be beneficial.

LOCATION

- 13 It is common with submissions accompanying a “regular” application for planning permission to be accompanied by an analysis of the site and the context within which it sits. However, with the exception of heritage assets that is not relevant in a case such as this. The reason for this is that the determination is one of fact and degree with no reference being made to planning policy.
- 14 The Land is off of Mill Road, Banningham, Norwich, NR11 7DT. It is not in a Conservation Area or within the curtilage of a Listed Building.

RELEVANT PLANNING HISTORY

- 15 There is no relevant planning history with regard to the Site.
- 16 The Statutory Declaration of Sandra Dixon (Appendix C) confirms the building was erected shortly after the Grays bought the land in 1996.
- 17 Earlier aerial photographs are not clear enough to be of value, but the structure can clearly be seen in 1999 on the aerial photograph shown in Appendix D.

STATUTORY PROVISION

- 18 Put at its simplest, an existing use or development is lawful if:
 - a) it is not development within section 55, or
 - b) it is permitted development under the GPDO, or
 - c) it is fully compliant with a planning permission, or
 - d) it took place before 1 July 1948 (the “appointed day” on which the 1947 Act came into force), or
 - e) it is immune from enforcement under the 4-year rule or 10-year
- 19 “Development” is defined by s55 Town and Country Planning Act

1990 (as amended) (TCPA) as.

“The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

- 20 The definition of development is acknowledged to create two broad types of development, operational development and the making of a material change of use. This distinction is important as it has a direct bearing on the time limits that are referred to in determining Certificates of Lawfulness.
- 21 S57 TCPA confirms that planning permission is required to carry out development (with some exceptions). It must be noted that notwithstanding matters such as Listed Buildings and Advertisements, neither of which are at issue here, the legislation does not create an offence of not obtaining planning permission before development. Indeed, s73A TCPA gives Local Planning Authorities (LPAs) the power to grant planning permission for development that has already occurred.
- 22 In the instance where development has occurred there is a further mechanism available under the Planning Acts for an individual to confirm its lawfulness, namely the Certificate of Lawfulness.
- 23 S191(1) and s191(2) TCPA relate to existing use or development and makes the following provisions.

Certificate of lawfulness of existing use or development.

If any person wishes to ascertain whether—

- any existing use of buildings or other land is lawful.
- any operations which have been carried out in, on, over or under land are lawful; or
- any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may¹ make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

- no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

- 24 It should be clearly understood that the lawfulness of a use or development (or a breach of condition) is not dependent on an LDC being issued. Although section 191 is concerned with certificates as to the lawfulness of existing use or development, its effect is not confined to situations where a lawful development certificate has been issued. Sections 191(2) & (3) apply for all

¹ Note the use of the word “may” – there is no requirement on the part of the applicant to do so

purposes of the 1990 Act. This was confirmed by the judgment of the High Court in *Hillingdon*², where it was held that the effect of section 191(2) is to make certain uses “lawful” for “the purposes of this Act”, i.e. the entirety of the Act, and confirmed that there is nothing to indicate that those clear words should be given anything other than their normal meaning. In the course of this judgment attention was also drawn to paragraph 16 of Annex 1 to Circular 17/92 which stated that subsection (2) of section 191 (which provides that, for the purposes of the Act, uses of land and operations are lawful at any time if no enforcement action may then be taken in respect of them) applies “whether or not an LDC has been issued under sections 191 or 192 of the 1990 Act.”

- 25 The former owners have passed away. It is therefore impossible to determine what the original reason for erected the building was. Evidence suggests that residential occupation was the intention but of course it may well be that the building was erected for one purpose which was changed to a different one with the passage of time. Noting the applicant’s clear intention to use the building for residential purposes, and the undetermined planning application, this submission will treat the matter, without prejudice, as “development” amounting to the “making of a material change of use of a land to a residential use”.
- 26 Prior to the Supreme Court’s ruling in *Beesley*³ the statement would have referred to the change of use of the building. However, the Supreme Court noted a distinction that provides an important limitation on the ability of CLEUD applicants to rely on the 4-year rule provided by s.171B(2) in cases involving a newly built structure intended for use of a building as a single dwellinghouse because S.171B(2) is not apt to encompass the use of a newly built dwelling as a dwelling house.
- 27 This submission therefore relates to the material change of use of the Land to residential following the erection of a building for residential purposes.
- 28 As already indicated the provisions make reference to “no enforcement action being taken in respect of the development” because the time for enforcement action has expired. The 1990 Act introduces time limits after which no formal action may be taken.
- 29 The relevant time limit in this instance is as follows:
S171(B)(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- 30 The question therefore has to be when the unauthorised development began, and the answer is provided in statute.
- 31 S.56 TCPA 1990 (as amended) states –

Time when development begun.

1. Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

² *LBC v SSCLG* [2008] EWHC 198 (Admin)

³ *Welwyn Hatfield Council v. SoSCLG & Beesley* [2011] UKSC 15

- (a) if the development consists of the carrying out of operations, at the time when those operations are begun.
- (b) if the development consists of a change in use, at the time when the new use is instituted.
- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

2. For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

- 32 S.4 goes on to give examples of material operations that could be deemed to be sufficient to commence development. It is commonly accepted that those operations can be as simple as the digging of trench to contain part of the foundations of a building.
- 33 Finally, it has been confirmed by the Council that no enforcement action as defined in S171(A)(2) of the Act has taken place.

LOSS OF AN ESTABLISHED USE

- 34 Having discussed the manner in which a use (without planning permission) can become lawful it would be logical to consider how such a use could be lost before analysing the situation in this instance.

Abandonment

- 35 The decision of the House of Lords in *Pioneer Aggregates*⁴ confirmed the general principle that a valid permission, capable of implementation cannot be abandoned by the conduct of an owner or occupier of the land. Notwithstanding this, the House of Lords accepted that there could nonetheless be abandonment of a use. The two principles are not easy to reconcile, but the House of Lords expressly accepted the position regarding the abandonment of a use as stated in *Hartley*⁵.
- 36 *Panton & Farmer*⁶ is a well-known stated case which deals with the proposition that an established use may be lost. In effect the correct means of determining a Certificate of Lawfulness of this type is to first determine whether the use has become lawful (by the passage of time) and then whether that use has been "lost" or "abandoned".
- 37 In that earlier case, the Court of Appeal had held that where there had been an existing use on a site which had ceased, the Minister had been entitled to find as a fact that the previous use had been abandoned by the owner or occupier of the land. This was not a case of abandoning a planning permission. However, the issue is one of fact, as the Court of Appeal had emphasised in that case.
- 38 The question in such cases (per Lord Denning) is "Has the

⁴ *Pioneer Aggregates (UK) Ltd v SSE* [1985] 1 A.C. 132

⁵ *Hartley v MHLG* [1970]

⁶ *Panton and Farmer v SSETR* [1999] J.P.L. 46

cessation of the use (followed by non-use) been merely temporary, or did it amount to an abandonment?" If it is merely temporary, the previous use can be resumed without planning permission being obtained, but if the cessation of the use did amount to abandonment, then it cannot be resumed unless planning permission is obtained. Abandonment depends on the circumstances. If the land has remained unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned, then a decision-maker may hold it to have been abandoned. In other words (per Widgery LJ), it is perfectly feasible in this context to describe a use as having been abandoned when one means that it has not merely been suspended for a short and determined period but has ceased with no intention to resume at any particular time. The comments of Lord Mance in *Beesley*⁷ are worth revisiting,

"The cases on abandonment show that use as a dwelling house should not be judged on a day-by-day basis, but on a broader and longer-term basis. Dwelling houses are frequently left empty for long periods without any question of abandonment or of their not being in or of use. A holiday home visited only yearly remains of and in residential use."

- 39 The test as to whether or not a use has been abandoned is an objective one noting the Lord Mance's comments in particular. There are four factors to be taken into account:
- a) the intention of the owner, the physical condition of the building,
 - b) the period of non-use and
 - c) whether there has been any other use following the cessation of the previous use.
 - d) The subjective intention of the owner is to be ascertained and weighed in the balance, but it is not determinative.
- 40 A mere assertion that the owner did not intend to abandon the use may not be sufficient in itself to negate the objective facts.
- 41 This is bound to be 'a matter of fact and degree' in each case, and numerous examples of the determination of this issue have been provided by appeal decisions over the years (examples of which are provided in Appendix G). There have certainly been cases in which, despite lengthy disuse, a use has been found not to have been abandoned, because the evidence did not point to an intention to abandon the use (or to a lack of any intention to resume the use).

Loss of existing use rights

- 42 In addition to abandonment (as discussed in paragraph 7.3), existing use rights can be lost in other ways.
- 43 This can happen where what has been described as "a new planning unit" has been created. A line of cases (reviewed by the House of Lords in *Newbury*⁸) had shown that existing use rights can

⁷ *Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council (Appellant)* 2011

⁸ *Newbury DC v SSE* [1981] A.C. 578

be lost by reason of a new development sanctioned by a planning permission. The existing use right disappears because the character of the planning unit has been altered by the physical fact of the new development. Another way of putting this is that “the planning history of the site begins afresh ... with the grant of this permission ... which was taken up and used” (see *Prossor*⁹). The point of the words that have been printed in italics in this passage is that where the evidence fails to establish the creation of a new planning unit by development actually having been carried out on the land, the grant of planning permission in itself does not preclude a landowner from relying on an existing use right.

- 44 The same point arose in *Petticoat Lane Rentals*¹⁰ where a new building was erected covering the whole of an area of open land. Physical alteration of the planning unit will normally be made only upon implementation of planning permission for the erection of new buildings, but it could be made upon implementation of planning permission for a change of use in some circumstances.
- 45 This could alternatively be described as creating “a new chapter in the planning history” of the site, where incompatible acts have been carried out, such as physical development incompatible with continuance of the existing use. The House of Lords in *Newbury* did not think that the principle should be limited to cases of planning permission for rebuilding, although it will only seldom apply to planning permission for change of use.

ASSESSMENT AND DETERMINATION

- 46 Having discussed the legislative parameters within which such applications should be determined it is now necessary to apply these tests to the application being submitted on behalf of the applicant.
- 47 The approach to be taken when determining an application for a Certificate of Lawfulness is explained by the Government. The National Planning Practice Guidance reiterates much of the earlier guidance.
- 48 Paragraph 006 of the section entitled “Lawful Development Certificates” makes it clear that, “the applicant is responsible for providing sufficient information to support the application” but it continues to indicate that the local authority must cooperate in that process and should release any information that it holds. In effect the onus of proving the case is on the applicant although it must be noted that the local authority has been invited on numerous occasions to provide evidence that contradicts the applicant’s contention and has not done so.
- 49 To provide balance to this requirement the guidance continues, “if a local 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 on the balance of probability.”
- 50 An application for a Certificate of Lawful Development is merely a snapshot in time. It is important to reiterate that it is concerned simply with whether what is applied for was lawful on the date

⁹ *Prossor v MHLG* (1968) 67 L.G.R. 109, 113

¹⁰ *Petticoat Lane Rentals Ltd v SSE* [1971] 1 W.L.R. 1112; [1971] 2 All E.R. 793

when the application was made. Such matters as planning policy, or the impact of the scheme on the environment are not relevant. The decision is concerned solely with an interpretation of planning law.

- 51 It is for the applicant to prove what he asserts but the evidential test involves just what is the most likely explanation of the facts; that is on the balance of probabilities. In other words, is what is alleged more probable than less probable? Mathematically, this would mean that if it was found that the continued residential use of the Cottage is 51% more likely to have been maintained then the appropriate test has been satisfied and the applicant will have proven his case. *A statement made by numerous Planning Inspectors in explaining their decision making*¹¹ (Appendix G)
- 52 To date, other than expressing a view that the correct time limit to consider in this matter is 10 years (not 4 years as assumed by the applicant), the Council has offered no evidence, despite a number of requests, to counter the applicant's assertions and therefore it is reasonable to assume it is no possession of no such information. The Planning Enforcement Team has confirmed that no formal enforcement action has been taken regarding the Land.
- 53 The deaths of the former owners and the lack of planning history regarding the site means the only way of obtaining evidence about the use of the land is to question those who had knowledge at the time. Unfortunately, those neighbours adjoining the site have already been disenfranchised as a result of the planning application and have been unwilling to engage with this process.
- 54 The applicant has been fortunate to locate witnesses who do have knowledge and are prepared to offer evidence. This is produced in Appendix C and will be referred to below. The witnesses are: -
- Matthew AMBROSE (applicant)
 - Sandra DIXON
 - Christopher HURN
- 55 To simplify (as far as possible) this process the remainder of this statement is set out as follows -
- What "development" is under consideration?
 - What evidence is there that it occurred?
 - What evidence is there that it occurred for 10 years (or more)?
 - Having established the use is there any evidence to indicate that it has been lost?

What development is under consideration?

- 56 As discussed above, prior to the Beesley Case² the matter would have been relatively straight forward with the application focussing on the lawful use of the building itself. This would have fallen to be considered under s.171B(2) – 4 years. However, the Supreme Court noted a distinction in cases where a building was built (without planning permission but with the intention of occupying it as a residence) in that the focus was on the land on which that building had been built and its material change of use dealt with by s.171B(2) – 10 years.
- 57 In this instance it is likely the land was used as land by Wally Guise when he owned Chapel Cottage, although Sandra Dixon confirms

¹¹ 247 Neasden Lane, London, NW10 1QG (APP/T5150/C/17/3181484)

it was physically separated from the curtilage of Chapel Cottage by a hedge (further evidenced by the fact that the Land was sold as an entirely separate entity to Chapel Cottage and has now been registered with the Land Registry in its own right) and used by her to grow corn. This was then transferred to the Grays and the applicant subsequently bought the land from Freida Grays estate.

58 The material change of use is therefore to a residential use (following the erection of a building on the land).

59 It is important to note there is little evidence as to what purpose the building was initially erected for. There is an argument that, if it had been erected first for other purposes and subsequently moved into, the 4 years would apply. However, on the basis that it cannot be proved one way or the other, since the parties who had erected the building have passed on, this argument deals with the matter as if the building were erected for residential purposes and therefore the question is one of a lawful residential use of the land on which it has been erected.

What evidence is there that it occurred?

60 The building in on the land and can be seen clearly on the aerial photograph dated 1999 (Appendix D). Unfortunately, earlier aerial photographs are not detailed enough to be of value in this instance.

61 On the day he purchased the land the applicant took a series of photographs. These are shown in Appendix E.

62 The photographs show a central heating system, a cooking area, a bathroom, a bedroom and obvious living accommodation. The Government has produced Technical Guidance to help interpret the General Permitted Development Order¹². That guidance confirms the following –

Class E: buildings etc.

But the rules also allow, subject to the conditions and limitations below, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

63 From this guidance and the photographs shown of the building in late 2019, early 2020, as it had been left by the previous owner. All of the residential paraphernalia shown in the photographs indicate the building could not have been treated as incidental when taking the guidance reproduced above into account.

64 The Statutory Declaration of Sandra Dixon is very useful in terms of the history of the land. She is able to talk from personal experience about the Land from as far back as 1964 when her parents bought an adjoining building plot. Her father was a personal friend of Wally Guise, the owner and a school friend of

¹² Permitted Development Rights for Householders: Technical Guidance. Ministry of Housing, Communities and Local Government. Sep 2019

Neville Gray, the next owner of the land before the applicant purchased it.

- 65 Mrs Dixon is able to confirm that the building was erected soon after the Grays bought the Land in 1996. She is also able to confirm that Neville Gray, who was not in the best of health, lived in the subject building until his death in 2007.
- 66 Christopher Hurn has provided a Statement which confirms Mrs Dixon's beliefs. His father lived in The Pightle, a few doors away from Mrs Dixon's parents. Mr Hurn confirms that Neville Gray used the building as his main residence.
- 67 Finally, the applicant, Matthew Ambrose, has gone to considerable lengths to establish the truth about Neville Gray's living arrangements. Unfortunately, residents adjoining the land have not been particularly forthcoming, possibly because of their objections regarding Mr. Ambrose's intentions. However, Neville Gray was well known, from his time in farming and latterly his time running a machine workshop, and local people with knowledge of the situation on the Land have discussed it with Mr Ambrose. Those individuals have been reticent to make statements and, mindful of the cost in having Declarations witnessed formerly, a decision was made not to pursue this. However, this is a civil and not a criminal matter, meaning the hearsay rules do not apply. Mr Ambrose has been made fully aware of the penalties for making false statements under the Statutory Declarations Act 1835. His Statutory Declaration must be afforded weight in such circumstances, especially when it simply confirms the independently made statements already provided.

What evidence is there that it occurred for 10 years (or more)?

- 68 Sandra Dixon has confirmed that the building was erected, and Neville Gray started living in it shortly after he purchased the land in 1996.
- 69 Post Beesley² we know that the time from which the measure is taken is that when a material operation took place in the construction of the building which was resided in.
- 70 In assessing these points, it is worth noting Lord Mance's further comments about the approach that ought to be taken when assessing such cases,

"As a matter of law, I consider that the approach taken by Donaldson LJ was correct and is to be preferred to the doubt expressed in Backer. Too much stress has, I think, been placed on the need for "actual use", with its connotations of familiar domestic activities carried on daily. In dealing with a subsection which speaks of "change of use of any building to use as a single dwelling house", it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is. As I have said, I consider it artificial to say that a building has or is of no use at all, or that its use is as anything other than a dwelling house, when its owner has just built it to live in and is about to move in within a few days' time (having, one might speculate, probably also spent a good deal of that time planning the move)."

- 71 The building itself appears to be constructed part on a concrete

base with footings and part on pad stones.

- 72 Neville Gray died on 25 September 2007. It is our understanding that Mr Gray passed away in the building, sleeping in his reclining chair. Although it impossible to be entirely certain, it is feasible that the chair shown on Page 4 of the photo album at Appendix E. Those chairs were in situ when the applicant purchased the property (although they have now been disposed of).
- 73 Viewing this case “in the round” as recommended by Lord Mance (above) it is clear that the creation and occupation of the building as Mr Gray’s principal residence occurred more than 10 years before his death in 2007.

What evidence is there that the established use has been lost?

- 74 After an initially unlawful residential use has become lawful, there will no longer be a requirement that occupation of the dwelling after that date must still be continuous, provided that the use has not been replaced by a different use or has been abandoned¹³.

Different Use

- 75 The Council has confirmed that no planning permissions have been granted on the land.
- 76 The land that was sold following Mrs Gray’s death is the same as that was retained separately by Mr Guise. The physical separation remains and it would appear that an alternative planning unit has not been formed.
- 77 No other use has occurred and a new “planning chapter” has not taken place on the land.

Abandonment

- 78 The Council’s solicitor has already alluded to her belief that the residential use will have been abandoned.
- 79 The concept of abandonment is a difficult one and must, of necessity, involve a methodical assessment of the facts of a particular case and site, rather than an assumption based on one factor. As an objective test the Courts have concluded that there are four key factors for assessing abandonment. *Castell-y-Mynach Estate v SoS for Wales* [1985] These are: -
- The physical condition of a building
 - Whether there has been an intervening use
 - The period of non-use
 - The owner’s intentions
- 80 These can all be addressed relatively simply and will be addressed in turn below.

Condition of Building

- 81 The condition of the building is as shown in the photographs at Appendix E.

- 82 Following purchase, the applicant allowed his cousin to live in the building for a year.
- 83 There is no question that the condition of the building is deteriorating, and the applicant is keen to progress his plans for a replacement dwelling so is understandably not comfortable with investing more into the upkeep of this building.

As Intervening Use

- 84 As discussed above there has been no intervening use.
- 85 The building remains a dwelling.

Period of non-use

- 86 It is a matter of fact that Neville Gray used the building as his principal residence. He passed away in that building on 25 September 2007.
- 87 His wife Frieda continued to live in Chapel Cottage until her death on 21 December 2018.
- 88 It would be reasonable to suggest that during the period between the 2007 and 2017 the use was “dormant”, a concept discussed by Mr Christopher Lockhart-Mummery, Q.C. sitting as a Deputy High Court Judge in the Court of Appeal decision on *Panton & Farmer*¹¹

“During the hearing I suggested the term “dormant use”, as representing a use which had arisen by way of a material change of use, but was now inactive, possibly for a long period of time. Such decline, even cessation, of physical activity could, of course, occur in countless different circumstances. The dormant use would still exist in planning terms, in the sense that the use right had not been lost by operation of law by one of the three events referred to above.”

- 89 This clearly establishes that the rights to a use may legally survive despite that use having become “dormant” as in this case.
- 90 The Land was sold to the applicant in 2020 after it has been through Probate (which can take an excessively long time on occasion).
- 91 Lord Mance’s comments have already been referred to above and do not need repeating. There are a number of houses within Norfolk that for one reason or another have been unoccupied for some time, sometimes leading to a state of disrepair. Should the argument be made that all of these homes should no longer be treated as residential the Housing Land Supply situation in Norfolk would be far worse, especially at a time when matters such as Nutrient Neutrality have had such a devastating impact on supply.

Owner’s intentions

- 92 Court cases and Appeal decisions repeatedly suggest that “intention” to abandon is a relevant factor in making a decision.

Indeed, the High Court¹⁴ indicated that poor physical condition could be a factor to be overridden if it was shown there was intention to reoccupy. A subsequent Court of Appeal decision found it was necessary to have regard to all relevant circumstances and that the intentions of the owner could not be elevated to that of paramount importance. That said, however, whilst intention is but one of the four factors to be assessed when considering the concept of abandonment, it appears to play a particularly important part where there is supporting evidence relating to the other three factors.

- 93 It is impossible to speak as to the intentions of Mrs Gray after her husband's death. The only real indication is that all of the paraphernalia associated with her husband living in the building remained in situ when the applicant purchased the property in 2020.
- 94 The applicant's intention has been clearly stated. It is worth noting that the Council's own Council Tax Department have registered the property as a "Dwelling" and allocated it reference number 780871. This came into effect on 13 January 2020. It is not possible to make comment with regard to the previous owners' reasons for not registering his property for Council Tax although this is not an unusual occurrence. A copy of the .GOV.UK record is provided in Appendix F.
- 95 By way of an example a copy of a Planning Inspector's decision¹⁵ regarding Shropshire Council's erroneous belief that a dwelling had been abandoned and therefore the planning application to replace it was unacceptable in policy terms is provided in Appendix G. In that case the subject property had not been lived in for over 40 years having been rendered uninhabitable by another party's actions. Compared with this case the subject property was not occupied for 13 years and remains habitable. The appellant had applied to replace the existing building and it was clear that there had been no intention to abandon the residential use of the property.

CONCLUSIONS

- 96 It is believed by the Applicant that the use of the property, The Lodge is a lawful dwelling. The applicant purchased the site with the sole intention of demolishing the existing dwelling and rebuilding one for him and his family to live in. They currently live a few miles away from the site. Throughout this period, he has never had reason to doubt this lawfulness.
- 97 The tests for resolving the matter of abandonment, namely those established in *Castell-y-Mynach Estate v SoS for Wales* (1985) have been examined above and it has been shown:
- The building is in sound physical condition although it would benefit from decorating and general maintenance, something the applicant has no reason to consider. It is capable of being lived in at this time.
 - There has been no intervening use of the property since it was last physically occupied. The residential use of the site has continued over the years with no recognisable break in said use.

¹⁴ *Hughes v SSETR* [2000]

¹⁵ 8 Plox Green, Minsterley, Shrewsbury APP/L3245/A/10/2128255

- There has been no identifiable period of non-use; and
 - It has always been an intention of the owner that the dwelling would be replaced.
- 98 In all the circumstances, it is contended that there are far too many positive indicators regarding the use of the site as a single residential dwelling for the use to be considered as anything else and the unfortunate death of the previous occupier, along with a period of probate etc. does not amount to abandonment.
- 99 For all the reasons outlined above it is respectfully suggested that the local authority has no grounds on which to refuse the application.

APPENDICES

- A. SITE PLAN and LOCATION PLAN
- B. LAND REGISTRY DOCUMENTS
- C. STATUTORY DEC AND STATEMENTS OF MR. AMBROSE, MRS SANDRA DIXON AND MR. CHRIS HURN
- D. AERIAL PHOTOGRAPHS
- E. PHOTOGRAPHS
- F. COUNCIL TAX RECORD
- G. PLANNING APPEAL DECISIONS