Appeal Decision

Inquiry held on 10 March 2009
Site visit made on 10 March 2009

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
26 March 2009

Appeal Ref: APP/F9498/X/08/2072772
Northmoor House, Dulverton, Somerset TA22 9QG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (hereinafter "the Act") as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawfulness for an existing use (LDC).
- The appeal is made by Ralph Lambton Nicholson against the decision of the Exmoor National Park Authority (hereinafter "the NPA").
- The application No. 6/9/07/133, dated 21 November 2007, was refused by notice dated 25 February 2008.
- The application was made under section 191(1) (a) of the Act.
- The use for which the LDC is sought is described in answer to question 6 on the application form as "stable block used garage for car, tractor, lawn mower, workshop, storage and horses if application passed".

Summary of Decision: The appeal is dismissed.

Procedural matters including the approach to an LDC

1. The Council amended the description of development prior to refusing the application subject of this appeal. The amended description, contained in the First Schedule to the notice of refusal, reads: *"The use of the first floor of The Coach House as a single unit of independent residential accommodation"*. Allied to this the Appellant confirmed at the Inquiry that whilst 3 alternatives were left open in response to question 8 on the application form, which asks *"Under what grounds is the certificate sought?"*, the correct answer is No (5). This states that: *"The use as a single dwelling house began more than four years before the date of this application"*. In the circumstances, since the Appellant confirmed at the Inquiry that I should determine the appeal on the basis of the revised description and this specific ground, I intend to do so.

2. Paragraph 8.12 of Annex 8 of Circular 10/97 *"Enforcing Planning Control: Legislative Provisions and Procedural Requirements"* places the burden of proof in an LDC application on the Applicant. For this reason the evidence of witnesses who spoke at the Inquiry was taken on oath. The Circular says the relevant test of such evidence is *"the balance of probability"*. To make out his case, the Appellant must demonstrate on the balance of probability that the use commenced 4-years prior to the date upon which the application was made, i.e. 21 November 2003 (hereinafter referred to as *"the material date"*).

Reasons: *Background and description of the existing accommodation*

3. Although not said in the Statement of Common Ground both parties appear to share the view that the accommodation was last occupied on a permanent basis in 1932. In that context the sales particulars for the Northmoor Estate

from 1926 sheds light on the occupier's living conditions. It describes the accommodation, which comprised: *"Kitchen with range and cold water supply, Sitting Room and 3 Bedrooms"*, as a *"Stud Groom's Flat"*. Although, in contrast to the description of the nearby Gardener's Cottage, there was no bathroom or indoor sanitation, there is express reference to a W.C. within the stable yard.

4. It would have been common to separate the W.C. from living accommodation when the stable block was constructed in 1874. I regard it as material that the chronology implies that the Gardener's Cottage was built after the stable block when standards might have evolved. Nevertheless the stabling facilities are still described as *"excellent"* and *"modern"* in 1926, and so I can understand why the Wills family, who owned the property from 1874-1926, would not see fit to update this arrangement. It is common ground that the W.C. within the yard has been demolished by the Appellant. It is plain that the stables had electricity in 1926, which was evidently still something of a novelty at the time.

5. My inspection revealed that the accommodation at the appeal site comprises a suite of rooms at first floor level to which access is gained via a staircase off what is acknowledged to have been the tack room. To the left of the top of the stairs is the former kitchen, which has a fireplace and some original kitchen cupboards. However the cooking range was taken out during the war and the Belfast sink has been removed although I accept that the waste hopper is still visible. Beyond the working electricity meter, to the right of the top of the stairs, are 3 bedrooms that face south, 2 of which have [square pin] electricity sockets and wardrobes. At the far end of the connecting passageway is a sitting room with a fireplace and what is said to be a working chimney.

6. Although some cracks are evident in the fabric of the structure the substantial stone building under a slate roof appears to be generally sound and I noted windows fitted with glass serving all rooms. There are remains of a central heating system serving the accommodation, the boiler for which is at ground floor level beneath the sitting room. Adjacent to the boiler is a cold water tap. There are carpets in some rooms and all the floors are otherwise wooden and in a good condition. The other feature of note is the door bell at ground floor level adjacent to the entrance door. Although a Rayburn oven was stored in the tack room at the time of my inspection it is conceded that this is a recent acquisition. Some items of furniture are also more recent, e.g. the dresser unit in the kitchen that stands where the range and/or sink would have been.

Did the accommodation ever comprise a separate dwelling house?

7. The term 'dwelling' is not defined in the Act and so one must turn to judicial authority to interpret it. The leading case is *Gravesham Borough Council v Secretary of State for the Environment and Michael O'Brien* (1984) 47 P. & C.R. 142, which is quoted in *Grendon v The First Secretary of State & Another* [2006] EWHC 1711 to which the Council draw attention. Mc Cullough J held that the distinctive characteristic of a dwelling is its ability to afford *"to those who use it the facilities required for day to day private domestic existence"*.

8. In *Grendon* the absence of running water and a toilet were considered to be: *"serious shortcomings in terms of the day to day facilities normally expected in a dwelling house"*. Although the Inspector had concerns about the physical

characteristics of the property the absence of such facilities were significant factors that led to the finding that the building was not a dwelling house.

9. The first question that arises is whether the use as a stud groom's flat was ever physically capable of separate occupation by reason of the absence of facilities. Following Mc Cullough J in *Gravesham* the acid test is whether the stud groom's flat afforded to those who used it the facilities required for day to day private domestic existence. I have no doubt that up until 1932 it did so. In my view the accommodation had basic facilities that met the occupier's contemporary needs. The 1926 sales particulars are unambiguous in saying that the flat was *"suitable for Married Quarters"* and on this basis they clearly met the standards of the day. Although this did not include an internal W.C. I do not doubt that such arrangements were common during the period of its occupation between 1874 and 1932. In the circumstances I do not regard its absence within the fabric of the flat to be fatal, but I shall comment further on its location below.

10. This leads me to the second question which is, even if it was physically capable of separate occupation, whether the flat comprised a separate planning unit or lay within the larger planning unit comprising Northmoor House and its estate. Mr Wyborn introduced the concept of the planning unit at the Inquiry, which I did my best to explain to the unrepresented Appellant. Nevertheless at this stage I must refer to judicial authority to explain the term. The leading case in this area of law of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, which says: *"Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered"*.

11. In my view it is quite plain from the submitted documentation that the stud groom's flat was at all material times appurtenant to Northmoor House and its estate, and that this comprised the relevant planning unit. The document entitled *"A brief history"* says John Locke built up the estate of 2000 acres from scratch and that this was sold as one entity in the 1870's to the Wills family. Before the age of the motor car the stabling of horses would have been an essential adjunct to a large mansion such as this, particularly one in such a relatively remote location on Exmoor. The horse was the main transport of the day and the groom would have been required to look after the needs of those horses in what is a large purpose built facility, which the 1926 sale particulars record to comprise 7 stalls, 6 boxes, sick box, hay barn and saddle room.

12. Even though I acknowledge that the accommodation had a front door with its own doorbell I do not doubt that the flat was conceived to be ancillary staff accommodation. That this is so is evident from its description as the stud groom's flat in the 1926 particulars. I also regard it to be material that the sole entrance to the flat is through what is acknowledged to have been the tack room. In my view it was designed to be an integral part of the stabling facility and this is entirely consistent with the location of the W.C. at the far end of the stable yard. Whilst it was suggested for the first time in closing that the last tenant of the flat had no involvement with the stabling of horses I can only attach limited weight to this unsubstantiated claim in the circumstances.

13. The Council claims that it would be *"extraordinary"* if the use of the flat survived when the use of the stables, upon which it says the use depended,

has ceased. However I do not agree with this analysis because the planning unit is the main house and the estate rather than the stables. By illustration I noted that the walled gardens and greenhouses are now sadly vacant but the Gardener's Cottage, its name no doubt derived from the occupier's original function, has evolved into the manager's accommodation. It remains ancillary to the residual estate. Similarly it seems to me perfectly possible that the use of the flat might have evolved and, for example, if the stable block had been turned into garages for the parking of cars to serve a large household in the main house then it is conceivable that the occupier of the flat might have been a driver and otherwise cleaned and maintained the fleet of vehicles. Whilst a theoretical example the point arising is that the mere cessation of the use of the stable facility would not, in my view, have been fatal to the use of the flat.

14. Notwithstanding my findings that the stud groom's flat was physically capable of separate occupation and its use could survive the cessation of the use of the stables, I conclude that the flat never comprised a separate dwelling house. Rather, at all material times, the use of the flat was ancillary to the use of the planning unit, which comprised Northmoor House and its estate. For the estate to be sub-divided into 2 separate units planning permission would be required for a material change of use. Given the Appellant's unambiguous confirmation as to the terms of the declaration sought [see paragraph 1 above] it must follow that this finding is in itself a sound reason to dismiss this appeal. Nevertheless I shall proceed to examine whether any residential use of the flat, e.g. one ancillary to the main house and residual estate, has been abandoned.

Has the residential use of the stud groom's flat been abandoned?

15. The leading judgement on the issue of abandonment is the Court of Appeal in *Hartley v Minister of Housing and Local Government and another* [1970] 1 QB 413. This was applied in *The Trustees of the Castell-y-Mynach Estate v Secretary of State for Wales and Taff Ely BC* [1985] J.P.L. 40 and confirmed in *Hughes v The Secretary of State for the Environment, Transport and the Regions and South Holland District Council* [2000] J.P.L. 826. The Appellant accepts the Council's contention that the following 4 criteria are the relevant criteria: (i) the physical condition of the building; (ii) the length of time for which the building had not been used for residential purposes; (iii) whether it had been used for any other purposes; and (iv) the owner's intentions.

Physical condition of the building

16. The NPA acknowledged at the Inquiry that insofar as the building is wind and weather proof, this test is passed and I agree. However the NPA expressed a concern about the absence of services, particularly the absence of a bathroom, W.C. and kitchen facilities, inferring that it is now no more than a set of rooms.

17. In my view the accommodation retains certain physical attributes, as noted in paragraphs 5 and 6 above, which attest to the former residential use. It was however clear from my inspection that a considerable amount of renovation and updating would be needed to upgrade the accommodation to modern standards and make it fit for human habitation. Section 55(2) (a) of the Act says that such internal works are not development for the purpose of the Act and this includes improvements that do not materially affect the external appearance of the building. Thus it is in prospect that an internal bathroom

and W.C. could be installed in one of the bedrooms and the kitchen could be upgraded without involving development as defined in section 55(1) of the Act.

18. Although section 191(1) (a) of the Act relates to an *"existing use"* the question arising from the construction of section 191(2) (a) of the Act is whether the NPA could take enforcement action were such internal works to take place? In my view, leaving aside for the moment any other findings, the NPA would have no legal basis to take action against any such operational development unless it comprised part of a material change of use [1]. This approach broadly accords with the decision at Eglwys Wen reported at [1986] J.P.L. 846, which is referred to in the decision at Ferny Ball (Ref: APP/F9498/X/02/1093597).

19. On this basis, if it could be shown that the residential use merely lay dormant during the intervening years since 1932 no development would be involved if internal works, to install a bathroom, W.C. and kitchen, were to take place. In the circumstances I do not find the fact that the Appellant has demolished the external W.C., or that the range and sink have been removed from the kitchen, to be factors that count against the Appellant under this heading. On this first point, for the reasons set out above, I conclude that this criterion is met.

Length of time for which the building was not used for residential use

20. As noted above it appears to be common ground that the accommodation has not been lived in since 1932. In reaching this view I understand that limited use of the space has been made in recent years by the Appellant's wife and daughter, who have slept there occasionally, and children associated with the Gardener's Cottage. However I consider the scale of such use to be de minimis and in any event it is acknowledged that such use was dependent upon the facilities in the other dwellings, notably bathroom facilities, and was not an independent use. My view is confirmed by the Appellant's admission at the Inquiry that such use did not come close to use as a single dwelling house.

21. I regard this period of around 77 years to be significant and, on the basis of the Council's research, without precedent. It exceeds the circumstances in *Hughes* where the dwelling had not been occupied since 1964 and I note the Inspector found against the Appellant on that criterion (see [2000] J.P.L. 828). It also contrasts sharply with the period of less than 17 years pertaining in the case of *Castell-y-Mynach Estate*, which was said to be: *"not an exceptionally long period for a dwelling house to remain unused"* [2].

22. The Council has produced a number of appeal decisions to support its view that such a long period of non-residential use is a significant factor that, in itself, is powerful evidence that any residential use has been abandoned. In a case in Ballynagarrick in Northern Ireland (Ref: 2006/A1073) the Commissioner said of a period of some 30 years that whilst it was not: *"a determining factor on its own* [it was a] *considerable period* [that] *would tend towards a suggestion of abandonment"*. This is consistent with the findings of the Secretary of State in a determination reported at [1991] J.P.L. 1094, which concerned a period of about 29 years. Finally the Inspector in the aforementioned Ferny Ball decision considered that a period of approximately 47 years was *"...an exceptionally*

[1] Somak Travel Ltd v Secretary of State for the Environment and London Borough of Brent [1987] J.P.L. 630.
[2] Source of quote: [1985] J.P.L. 41.

long time to leave a dwellinghouse unused and is much longer than other cases cited although this is not of itself a determining factor".

23. I have considered the implications of the fact that the flat was not occupied for residential purposes on the appointed day when the universal system of land use control was established by the Town and Country Planning Act 1947. However I note this was the situation in the Tewkesbury appeal reported at [1978] J.P.L. 651. Whilst the 35 year period at issue in that case was said by the Inspector to: *"...weigh heavily in favour of inferring abandonment"*, no point was taken on the fact that the use was not subsisting on the appointed day and I shall proceed likewise. Nevertheless I share the sentiments of the decision makers cited and consider that this criterion counts against the claim made and strongly points to the conclusion that any residential use has been abandoned.

Whether the building has been used for any other purpose

24. On 25 February 1959 the County of Somerset, in its capacity as Local Planning Authority for the area, granted planning permission for: *"The use of a stable block at Northmoor, Dulverton, for the production and development of machinery, as described in the plans submitted".* The only plan that, on the evidence before me, was submitted shows the entire stable block to be shown coloured red. Although this gives rise to a tension with the note contained on the decision notice, which says that the permission relates to both *"...the stable buildings and adjoining courtyard"* this is of no consequence for my purposes. At this stage I must again refer to judicial authority to examine the permission.

25. The legal principles to be applied when construing a planning permission are set out in *R v Ashford Borough Council ex parte Shepway District Council* [1998] PLCR 12. The general rule set out in *Ashford* is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions. The reason given for normally not having regard to the application is that the public should be able to rely on a document which is plain on its face without having to consider whether there is any discrepancy between the permission and the application.

26. However in accordance with the approach of Sullivan J. in *Barnett v Secretary of State for Communities and Local Government and East Hampshire District Council* [2008] EWHC 1601 (Admin) the drawing approved pursuant to a grant of full planning permission is an integral part of the permission that is granted. At paragraph 29 of the judgement Sullivan J. finds: *"Any member of the public reading such a decision notice will realise that it is incomplete, indeed quite useless, without the approved plans and drawings which are a, if not the, vital part of the permission".* I consider the identical sentiments apply here since the decision notice does not purport to be a complete and self-contained description of the development but must be read in conjunction with the plan.

27. Taking this strict legal approach to interpretation I am in no doubt that the 1959 permission relates to the entirety of the floor space that comprises the stable block and therefore includes the first floor accommodation. Thus the possible discrepancy in the floor space between that which exists and that specified in the application form becomes academic because, regardless of

intention, the permission relates to the entire stable block. I reject the claim that Mr Clayton made a mistake in completing the form for the same reason.

28. The Appellant confirmed that he had no personal knowledge of the stable prior to 1994 and on this basis I attach limited weight to his claim that there was *"no sign"* that the first floor had been used in connection with the business. The claim that it looks as if it has not been used for anything apart from the residential use is pure supposition and does not discharge the onus of proof. In any event the fact that square pin plugs were installed into 2 of the first floor rooms strongly suggests to me that the rooms have been used for some purpose during the post-war period. Square pin plugs were not introduced into Britain until 1957 [3] and so this date would be entirely consistent with the use of the rooms perhaps as a store or, as the Council has suggested, a rest facility or office in connection with the business use of the stable block. In my view this is the only satisfactory explanation for these plugs being there because the Appellant admitted he had no knowledge as to why the sockets were put in.

29. In reaching this view I acknowledge that the plan which accompanied the pre-application correspondence dated 20 December 1958 expressly refers to *"flat over double shaded part"*. However the Council's claim that this merely reflects the historic use to which that part of those premises were put is borne out by the answer to question 5 of the application form. It asks: *"State the purpose for which the land and/or buildings are NOW used and if used for more than one purpose give details"* (*my emphasis*). The stated answer *"Disused stables"* strongly suggests to me that use of the flat had ceased by that time. This is consistent with question 12 which is answered *"N/a"* to the question whether *"...the building is to be used wholly or partly for residential purposes"*.

30. Even if I am wrong, I am in no doubt that the effect of the 1959 permission was to open a new chapter in the planning history of the stable block because there can be no doubt that the permission was implemented. This is accepted by the Appellant who told the Inquiry that vehicles were made there until approximately 1986. This is entirely consistent with the *"brief history"*, which records that David Clayton: *"ran a business making all-terrain 'Supercat' vehicles in the stable yard"*. In this context, for the avoidance of doubt, it is inconceivable to me that the business activity was restricted to the yard [4].

31. Confirmation is also obtained from the answer to question 4 of the application form dated 12 March 1986 that sought planning permission for: *"Conversion of stable block into 2 residential units"*. Question 4 asks for the: *"Present use of buildings/land"*, to which the answer: *"Workshops/storage"* is given on the form. Conversely the second limb of that question, asking about the previous use of the land, if the land were vacant, is left blank. The Committee Report dated 6 May 1986 says: *"...it is understood that this use* [defined previously as *"the production and development of machinery"*] *has continued"*. I conclude from this that the entire stable block was in use as a workshop/store in 1986.

32. In reaching this view I have taken account of the word *"Bedrooms"* on the first floor plan that shows the existing layout plan that was submitted pursuant to

[3] See: http://www.icons.org.uk/nom/nominations/threepinplug
[4] Confirmed by the third paragraph of the letter dated 20 December 1958, which refers to an intention to carry on within the buildings *"...all the usual processes associated with mechanical engineering"*.

the 1986 planning application. However I am not convinced that it comprises anything more than a reflection of their original design. There is nothing else on the application form and associated documents to support the claim that the flat's use subsisted, even if dormant. Amongst other things the application was for change of use [answer to question 2 (e) (iii)] and given the description of development it would have been highly material if one flat already existed.

33. Moreover condition 1 of the 1959 permission states: *"The property shall not be used for any purpose other than that now permitted including any purpose included in Class III of the Town and Country Planning Use Classes Order, 1950"*. The effect of that condition is in my view unambiguous. Of even more importance in my view is that the implementation of the 1959 permission led to the creation of a new planning unit, which comprised the stable block and yard. It was both physically and functionally a separate use from the main house and estate, and the fact that David Clayton was the son of the owner of the estate does not alter my view on this point. Indeed as a matter of fact I note that the application form records that he was in any event the *"Lessee"* of the stables.

34. Taken together I consider that the evidence before me under this heading is overwhelming. I consider that the 1959 planning permission represented a new chapter in the planning history of the stable block, including the first floor that had been used as a stud groom's flat. The implementation of the 1959 permission gave rise to a material change of use to use for *"the production and development of machinery"*, which led to the creation of a new planning unit. On this basis I must inevitably conclude that the residential use of the stud groom's flat attached to the former planning unit was extinguished.

The owner's intentions

35. The Appellant acknowledges the *"Clayton family were not involved in horses and did not require a Groom"*. On this basis there is no positive evidence that Colonel Clayton, who bought the estate in 1926, had any intention to allow the flat to be lived in after 1932. It would appear that Colonel Clayton lived at the main house until at least 1959 because the Appellant told the Inquiry that the reason David Clayton indicated that he was a lessee of the stable block was because he leased it from his parents. The Court of Appeal in *Hughes* held that the test of what the owner's intention was at the time the use ceased was an objective one, i.e. what *"a reasonable man"*, with knowledge of all the relevant circumstances, would conclude. I consider, given the fact that Colonel Clayton left the flat empty for at least 27 years during his ownership, that a reasonable man would find that he intended to abandon the former use. This is entirely consistent with the leading judgement of Lord Denning M.R. in *Hartley v Minister of Housing and Local Government* at [1970] 1 QB 420 E, G and H.

36. I can be more certain of the state of mind of his son David Clayton and indeed I made a note at the Inquiry of the Appellant's admission that he [Clayton] *"...didn't want anyone living in the flat"*. The basis for this appears to be the potential for conflict with his business activities and/or that he had no desire to put anyone in the flat that was unconnected with the estate. As the Appellant puts it: *"...when it was used as a workshop it would not have been convenient to have someone living above it"*. Although the Appellant personally knew

David Clayton, who died in 2004, he told the Inquiry that he only spoke to him generically about the estate and did not discuss specifics such as the flat.

37. Whilst the Appellant told the Inquiry that since acquiring the estate in 1994 he has had no intention of abandoning the use of the flat, I note that Kennedy L.J. says in *Hughes* that *"...the intentions of the site's successive owners, although relevant, were not and could not be decisive"* [5]. Moreover the Appellant has not produced a copy of the estate agents particulars from when he acquired the estate in 1994 that he claimed, for the first time at the Inquiry, described the accommodation as the groom's quarters and had led him to the view that the flat existed. Since the onus of proof in this appeal falls upon the Appellant I attach limited weight to this claim in the absence of sight of those details as he chose not to produce them at the Inquiry, despite an opportunity to do so. In the circumstances I conclude that this criterion is not met, which supports the view that any residential use of the flat has been abandoned.

Overall

38. In my view the decisive factors in this case are:
    (i) my finding that the flat never comprised a separate dwelling house but was at all material times, namely when occupied for residential purposes, ancillary to the use of the planning unit, which comprised Northmoor House and its estate;
    (ii) the lengthy and indeed unprecedented period of non-use;
    (iii) the implementation of the 1959 permission, which gave rise to a material change of use and led to the creation of a new planning unit; and,
    (iv) the inference that can be drawn from the fact that the owner at the time the residential use ceased chose to leave the flat empty for at least 27 years during his ownership.

39. For these reasons I am firmly of the view that the residential use of the flat has been extinguished or otherwise abandoned. It follows from *Hughes* that it would not be right to elevate my positive finding on the first criterion (physical condition of the building) so as to subordinate the other relevant considerations to that factor. I conclude on the balance of probability that the residential use of the first floor of the Coach House as an independent unit of accommodation is not lawful and planning permission would be required for its reinstatement.

Conclusion

40. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC for the use of the first floor of The Coach House as a single unit of independent residential accommodation was well founded and accordingly I shall exercise the powers transferred to me in section 195(3) of the Act.

Formal Decision

41. I dismiss the appeal.

Pete Drew

INSPECTOR

[5] Source of quote: [2000] J.P.L. 831.

APPEARANCES

FOR THE APPELLANT:

Ralph Nicholson	Appellant.
Melinda Nicholson	Appellant's daughter.

FOR THE COUNCIL:

John Whitcutt LL. B (Hons)	Solicitor & Monitoring Officer, Exmoor National Park Authority, Exmoor House, Dulverton.

He called

David Wyborn BSc (Hons) MPhil MRTPI	Head of Planning and Community, Exmoor National Park Authority.

DOCUMENTS

Document	1	Copy of the Council's letters of notification and a list of persons notified.
Document	2	List of appearances for the Council.
Document	3	Missing schedules from the notice of refusal dated 25 February 2008.
Bundle	4	Bundle of missing documents, which were submitted at the Inquiry by the Appellant.
Document	5	Written response to David Wyborn's proof of evidence, which was submitted at the Inquiry by the Appellant.