

(1985) JPL 40

A IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. CO/1459/83

B Royal Courts of Justice,
Friday, 8th June, 1984.

Before:

C MR. JUSTICE NOLAN
 - - - - -

Crown Office List

THE TRUSTEES OF THE CASTELL-Y-MYNACH ESTATE (Applicants)

-v-

D THE SECRETARY OF STATE FOR WALES (First
Respondent)

and

THE TAFF-ELY BOROUGH COUNCIL (Second
Respondent)

E (Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.,
 36-38 Whitefriars Street, London, EC4Y 8BJ.
 Telephone Number: 01-583 7635. Shorthand Writers to the Court.)
 - - - - -

F MR. P. RODERICK (instructed by Messrs. L.C. Williams & Prichard,
 Cardiff) appeared for the Applicants.

MR. S. BROWN (instructed by the Treasury Solicitor) appeared for
 the First Respondent.

THE SECOND RESPONDENT was not present and was not represented.

G - - - - -
J U D G M E N T
 (As approved by judge)
 - - - - -

H

A MR. JUSTICE NOLAN: By this motion, the Applicants seek the
reversal of the decision of the First Respondent under
Sections 53 and 36 and the Ninth Schedule of the Town and
B Country Planning Act 1971, dated the 23rd November, 1983,
dismissing the Applicants' appeal to the First Respondent
against the determination of the Second Respondent, the
Taff-Ely Borough Council, that the repairs and restoration
C of the property known as Brystafach, Pentyrch in the County
of Mid Glamorgan to its former condition for residential
use required planning permission. The substantial issue which
had to be considered by the First Respondent was whether those
repairs and restorations involved a material change of use.
D The Second Respondent is not represented in the proceedings
before me.

E The decision of the First Respondent is contained in a
letter dated the 23rd November and is addressed to the solicitors
acting for the Applicants. In the course of that letter, the
First Respondent quoted paragraph 22 in the report of the
Inspector appointed by him. That passage reads: "During the
F period from 1965 when the building was last occupied as a
dwelling until 1967 there remained some likelihood that land
surrounding and including the appeal site might be developed
for residential purposes. Since 1967 however the development
G plan position has been that no proposals for redevelopment
affecting the site remained. Although the estate owners
retained Brystafach they had made no attempts to maintain the
building in a condition suitable for it to be used as a
H dwellinghouse. Indeed no effort had been made to secure the

A building in any way. The implication of their lack of action
over a period of some 18 years and the deterioration of the
building to a near derelict and totally uninhabitable state
is that a reasonable person might assume that the residential
B use of Brystafach had been abandoned."

The First Respondent, in his decision, said: "As to the
issues to be decided he notes the evidence on the structural
condition of the building and agrees with the Inspector's
C views expressed in paragraph 22 of the report that no attempt
had been made to maintain the building in a condition suitable
for it to be used as a dwelling house even though since 1967
no proposals for redevelopment affecting the site remained,
D and that the condition of the building has deteriorated to
such an extent that a reasonable person might assume that
the residential use has to all intents and purposes been
E abandoned."

In the first part of the submissions deployed by Mr.
Roderick before me, he argued that a wrong approach is to be
detected in this passage from the decision letter of the First
Respondent with regard to the relevant considerations. In
F particular, he submits, there is an undue reliance upon the
objective appraisal of the condition of the building when what
should have been taken into account were four factors, of which
G the actual physical state of the building is only one. I shall
return to that point later.

Before doing that, it will be convenient to give a little
more information about the site and the contentions of the
H parties as they appear in the Inspector's report. In paragraph

A 5 of his report, the Inspector said: "The appeal building
itself was used as a dwelling until 1965 and clearly retains
the general appearance of having been a dwelling which has
now fallen into considerable disrepair. The building is
B constructed of stone and brick under a pitched slate roof.
The western and eastern stone gable walls appear fairly sound
but a large part of the northern flank wall has collapsed leaving
a section of severely damaged roof hanging unsupported. The
C northern and southern flanking walls are mostly constructed
of stone to the ground floor with a cavity brick wall to the
first floor. Both flank walls, particularly the northern wall,
appear unsound. Many slates have been lost from the roof and
D evidence of substantial rot and structural damage to the roof
timbers can be seen. No doors or window frames remain to the
building. Internally all fittings have been removed. No ground
E floor construction can be seen and all internal timber including
floor joists, staircase and some ceiling joists to the roof have
been removed. The general internal appearance is one of almost
total disrepair and dereliction. Some signs of entry by cattle
F could be seen amongst the rubble on the floor."

I pause at this point to observe that one argument that
had been canvassed against the Applicant was that the original
residential use of the property had been replaced by
G agricultural use involving the occupation of the premises by
cattle as a shelter. That, as we shall see, was not an argument
which commended itself to the Inspector.

H The report of the Inspector goes on in the ordinary way
to set out first the case for the Applicants. In the course of

A setting it out, the Inspector observes that at no time did the owners of the estate have any intention of abandoning the rights of the existing use. He repeats this part of their submission at the end of paragraph 12 of his report. He says:

B "On the fourth factor the specific exclusion of the property from the agricultural tenancy of the surrounding land indicated a specific intention on the part of the owners to retain the property."

C In that same paragraph, it is clear the Applicants had begun by making these submissions: "In considering cases of this nature it was agreed that four factors should be considered
D (a) physical condition of the building; (b) period of non-use; (c) whether there had been any other use; and (d) evidence regarding the owner's intentions." It is common ground before me, as appears from the authorities, that these are the four
E principal factors to be taken into account in a case of this sort.

In setting out the case for the Council, the Inspector notes the submission that the Appellants themselves - the Applicants before me - had made a conscious decision not to
F re-let the property after the licensee had died in 1965. The Inspector went on to make a number of findings of fact after completing the summary of the case for the Council. The general nature of those findings may be anticipated from what I have
G said. As far as the building itself is concerned, he described it in his findings as having "fallen into considerable disrepair. No internal fittings, ceilings, first floor, staircase, windows or doors remained at the time of my inspection. It was agreed
H by the parties that the structure retained the general

A appearance of a house."

B In paragraph 21 of his conclusions, the Inspector rejects the submissions of intermediate use for agricultural purposes. In doing so, he uses these words: "Judging from the precarious state of parts of the structure I would consider it unlikely that a farmer concerned about the welfare of his stock would regard the building as a safe or useful shelter for his cattle."

C In substance, the issue was whether the building was abandoned or not. It was on that basis that the Secretary of State made his decision. In developing his argument before me, Mr. Roderick dwelt on the four factors. He submitted that inadequate attention was paid to the owners' express intentions, supported as they were by corroborative evidence. I think that there is force in Mr. Brown's remarks that in a contest of this sort, the owner's declarations of his own intentions cannot avoid being self-serving. Unless he claimed such an intention, he would be abandoning the contest. It is therefore not surprising that the courts should have approached all four factors, taking them together, in order to establish whether abandonment had occurred.

F The position is, to my mind, helpfully summarised by Mr. Justice Bridge, as he then was, in Ratcliffe v. Secretary of State for the Environment and another (1975) 235 E.G. 901, which was quoted by Mr. Justice McNeill in Nicholls v. Secretary of State for the Environment and another (1981) Journal of Planning and Environment Law 892. Mr. Justice McNeill, quoting Mr. Justice Bridge, said: "'There" - referring to Hartley - "one found the clearest explanation of the principles to be

A applied to resolve any question whether a use of land had been
abandoned for planning purposes. It was clear from that case
that once a use has been abandoned, it could not be resumed
without planning permission. Cessation of use followed by
B non-use might be merely temporary or might amount to abandonment.
Abandonment depended on the circumstances. If land remained
unused in such circumstances that a reasonable man might conclude
that the previous use had been abandoned, then a tribunal
C should conclude that it had been abandoned."''

However, Mr. Roderick submitted that one should look at
the evidence before the Inspector and the Secretary of State
relating to the four factors. There was no intermediate use
D in this case, the suggestion of occupation by the cows having
been discounted. Although the period of non-use was 16 or 17
years, that is not an exceptionally long period for a dwelling
house to remain unused. Mr. Roderick referred me to other
E instances in which dwelling houses, although in similar states
of disrepair to the house in the present case, were not treated
as demonstrating abandonment. The physical condition,
F submitted Mr. Roderick, was such as to leave this building
still resembling a house and on that ground, the Secretary of
State misdirected himself in going by the view of a reasonable
man rather than apprising his mind of the crucial issue, which
G was the true intention of the owners. But where as here you
have an extreme case of dereliction, a building considered by
the Inspector as unlikely to be fit for use as a cattle
shelter, it seems to me that the objective view of a reasonable
H man was a highly relevant matter for the Inspector and the First

A Respondent to take into account.

B Mr. Roderick also relied on the fact that the site had not been included in an agricultural tenancy as corroboration of the intention of the owners. Secondly, he submitted that there had been no positive act of abandonment. In the sense that there had been no formal abandonment that too is true, although it is perhaps fair to say that the acknowledged and conscious decision not to re-let the property after the licensee had died in 1965, coupled with the fact that the property was allowed to fall into an uninhabitable state must come close to positive abandonment.

D Finally, as corroborative evidence, Mr. Roderick relied on the approach made by the owners to the Council in 1981 when they suggested giving up the house as residents and abandoning their claim for residential use in return for permission to build a house elsewhere. Mr. Roderick submitted that that supports the genuineness of their view that it was still a residential property.

F To my mind, what is decisive is that the argument before the Inspector, reviewed by the First Respondent, was conducted on the agreed basis that all four factors relevant to this matter were taken into account. The weight that any particular factor bears must depend on the particular case. It is true that in this case the extreme state of disrepair seems to have affected the mind of the First Respondent, as it did the Inspector, more than anything else. However, to my mind, that was not at all inconsistent with the view formed, whichever one of the four factors one looks at. The only strong evidence

A the other way was the expressed intention of the owners, which
was repeated at the hearing. However, genuinely expressed
and put forward, it appears to have yielded to the weight of
the other factors in the mind of the Inspector. Therefore, I
B can see no error of law on the grounds advanced by Mr. Roderick
in his first submission.

His second submission is to the effect that the Inspector
ignored an important and crucial argument put forward by the
C Applicants, namely, he ignored their argument that applications
in respect of three other properties in the locality had been
allowed in the sense that it was agreed that no planning
permission was required for them to be used again as residences.
D It was said that all these properties were in a similar state of
disrepair and had been vacated for a similar period of time to
that of the building in this case. The one distinction drawn
E between those properties and the property in the present case
by the Second Respondent was the use by cattle, which the
Inspector discounted. That argument was put before the
Inspector and recorded in paragraph 12 of his report. The
F Council's counter-argument is set out in paragraph 17 of the
report. Paragraph 17 states: "It was accepted that the
evidence of an agricultural use was a significant difference
between this case and the three other cases referred to by the
G appellants. However the degree of dereliction and the absence
of any action by the owners to maintain or secure the building
was sufficient evidence of an intention to abandon any
residential use of the building. That was a view supported
H by the county planning officer to the Mid-Glamorgan County

A Council in a letter of consultation dated 13 January 1983. He considered that the period of non-use and the condition of the building to be evidence of an intention to abandon it as a residence."

B Here one finds, in relation to those other three properties, a decision made partly - although not entirely - on the basis of there being no question of agricultural use in their cases. C The decision was made by the Council. The Inspector had information about the applications in respect of those properties. He acknowledged what had happened, but they were not before him. It was for him to make his own recommendations D in relation to the property in question and he did so. He could not be bound by decisions made by another body in relation to other properties. Although the circumstances were similar, they were not accepted as being identical. It follows that I E can see no error of law in the approach adopted by the Inspector or by the First Respondent in relation to the matter which the Inspector had to decide. Therefore, the application must fail.

MR. BROWN: Would your Lordship dismiss the application with costs?

F MR. JUSTICE NOLAN: Yes.

MR. RODERICK: That must follow.

- - - - -

G

H