

Liskeard Town Council - Facilities Committee

20 July 2021

Land at Pipewell

OS ref: SX2564NW

Land Registry title no: CL216932



Context

To establish that the land situated in Well Lane and adjacent to Huddys Court is, historically has been, and continues to be, classified as Crown Land.

This is an urgent issue since Rightmove shows that Huddys Court is currently under offer and being sold with parking rights on this land, effectively, it could be argued, annexing the land to Huddys Court in the sale.

History

The Issue over the ownership of this land arose in 2009 when it came to the attention of the Council's Planning Committee when the owner, Mrs Alison Powell, applied to Caradon Council for permission to convert the property - 17 Fore Street, Liskeard - into 4 flats.

LTC's Planning Committee spotted an anomaly in the submitted plans which had drawn a boundary line not only around the house itself but also encompassing the Crown Land at the front of the property in Well Lane (Appendix A). LTC objected to the application on the grounds that the land did not belong to the property.

Following the Objection, the owner of the development retracted the plans and resubmitted them with a boundary line only around the house. In a letter (July 2009) to the Planning Officer, the owner admitted that she **did not** have ownership of the land (Appendix B).

Appendix C shows the site visit notes with a definitive statement under Highways: "Development site does not include car parking".

Consent, including LBC, for the proposed development was subsequently granted but with a caveat in the Officer Report (Appendix D) specifically stating that the "adjacent off street car parking area being outside the development site". The Planning Officer concludes that, "This land therefore remains for the use of all", ie it is Crown Land.

Archive Photographs

To illustrate this land as an open area, a photograph exists in the town's museum showing a herd of horses drinking from the trough, which is believed to have been given to the town and placed on this land for the free watering of livestock.

Adverse Possession

Within months of having been granted permission for the development of the property, and undeterred by the Planning Officer's deliberation, the owner of Huddys Court constructed a wall parallel to the path from Fore Street down to Well Lane, and installed removable bollards in order to enclose the land and presumably to claim ownership by adverse possession (squatters' rights).



No planning permission was sought, nor granted, for the construction of the wall.

At the time, Cornwall's five District Councils were in the process of being rolled into the one Unitary Council we have today with more work falling on town and parish councils and much documentation from Caradon became difficult to access during this changeover.

The extra work on LTC also meant that several ongoing projects had to be temporarily put on a back-burner. Although generally believed that the owner was requested to take down the wall, no written documentation to that effect has been found.

To effectively claim adverse possession, a piece of land must be enclosed and used *exclusively* by the claimant for a continuous period of 12 years. But, since 2 large dumpster bins accessed by other residents of Fore Street have been on this land, the Council can indeed refute any claim of exclusivity and therefore can be used as evidence to put against any claim for adverse possession.

Land Registry

An application to LR in 2019 (see PDF RegisterPlan) distinctly shows that the Pipewell land is outside the red boundary line of Huddys Court, and therefore continued to be classified as Crown land.

Why Maintaining The Land As Crown Land Is Important For The Town

1. This land 'belongs' to the town.
2. It is an adjunct to our historic Pipewell and as such could be landscaped to enhance and promote the Well as a central feature for visitors and as an important landmark which is the raison-d'être for the origins of the settlement of Liskeard.
3. Landscaping this land for the use of residents and visitors would clean up what is currently an eyesore and would trigger further much-needed improvement of this road.
4. The eastern side of the Well has already been tidied up and markedly improved by the initiative of the Town Traders who cleared the rubbish and installed a flower planter.
5. Across the road, the old Jail House has been beautifully restored, further restoration to the west of the land contributes to a more pleasant aspect and shows what can be done to make the area more attractive.



Current Situation

As stated above we believe that Huddy's Court is being or has been sold with the benefit of "allocated Parking". The sales particulars do not define where this allocated parking is but we believe it refers to the subject land adjacent to the Pipewell. The land is un-registered so that ownership would have to be inferred by historic title deeds of which to the best of our knowledge there are none. The land is

not in the ownership of the Town Council and we cannot claim that we have possessed it, though it has upon it a horse trough believed to be owned by the Town Council.

We have been advised by our solicitors that we have no claim to the land via adverse possession, neither do we believe that the current owner of Huddy's Court has a lawful claim to adverse possession. In fact it seems in law that anyone may make use of the land on a non exclusive basis. By partially enclosing the Land the owners of Huddy' Court have tried to infer ownership or control.

We have not seen any record at the Land Registry which suggests that an attempt to take adverse possession has yet been made, though we are just about at the 12 year point where in law a claim might be made.

However from the history above it seems clear that the land has not been exclusively used by the owners of Huddy's Court and thus should not be liable to a claim of adverse possession.

The land Registry have strict criteria to follow when an application for adverse possession is made:

- They must notify anyone they believe may have an interest in the land.
- They will require a statutory declaration from the applicant to show requirements for adverse possession have been met that:
 - The applicant has been in factual possession (control) of the land for at least 12 years
 - The applicant has the necessary intention to posses the land
 - The applicants possession is adverse without the tile owners consent - if any - without force and without secrecy - *nec vi nec clam nec precario*.

It would seem difficult for the owners of Huddy's Court to demonstrate that they meet all these criteria but not impossible, depending upon how rigorous the Land Registry are.

There is little direct legal action open to us, we cannot make our own claim, but we could write to the Land Registry putting them on notice that we object to any claim for adverse possession. Whether we should do this direct as a Town Council or through our solicitors is we suggest subject to the advice of our solicitors and also as to the effect such a letter will have in the process. The only other action we could take is to use the land on a regular basis, perhaps for parking or storage, or undertake some work on the land. This to evidence that the land is in use by other parties and not under the exclusive use of Huddy's Court.

Before taking any of the above actions we could seek to hold a formal meeting with the present own of Huddy's Court to discuss the use of the land and seek to establish their position in respect of this land. If we could come to an amicable agreement that no claim is made to the land and that it is Crown land, which could be used by the town, we may be able to allow parking by local residents.

RECOMMENDATIONS

The Council resolves to seek advice from their solicitors on the effect of writing to the Land registry to place on record an objection to any claim for adverse possession of this land, and to advise on such form of letter.

The Chair of Facilities to arrange a meeting with the current owner to discuss the ownership and use of the land.

Appendices APPENDIX A

Mrs Alison Powell
Lawhippett Farm
Lanteglos Highway
Fowey
Cornwall
PL23 1ND

(C)



**CORNWALL
COUNCIL**

Your ref: 09/00296/INCOMP
My ref
Date: 7 April 2009

Dear Sir/Madam

Application Number 09/00296/INCOMP
Proposal Listed building consent for the conversion of workshops into four flats
Location Land At Pipe Well Well Lane Liskeard Cornwall
Applicant Mrs Alison Powell

I refer to my letter of 24 February 2009 (copy attached) in respect of the above and note that I have not received the additional information requested.

Unless this is received, or I hear from you, within the next 7 days, I shall treat the application as withdrawn and will return all documentation, plans and fee submitted.

On receipt of the requested information, the application will be registered and an official acknowledgement forwarded to you.

If you have any queries regarding this letter please contact me.

Yours faithfully

Eleanor Britton

Planning and Regeneration
Tel: 01579 341435
Email: planning.east2@cornwall.gov.uk

09/00296



Phil Mason, Head of Planning and Regeneration
Cornwall Council, Luxstowe House,
Liskeard, Cornwall PL14 3DZ
Tel: 0300 1234 151 www.cornwall.gov.uk



15 May 2009
Not Set
1:1000

Date:
SLA:
Scale

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APPENDIX B

ALI POWELL
Lawhippet Farm Lanteglos Highway
Fowey Cornwall PL23 1ND

Tel. [REDACTED]

Lyndon Westlake
Planning Officer
Planning and Regeneration
Cornwall Council
Luxtowe House
Liskeard
Cornwall
PL14 3DZ



Date: 6th July 2009

Dear Mr Westlake

Application Number 09/00296/LBC
Listed building consent for the conversion of workshops into four flats.

In reply to your letter dated 10th June 2009 and subsequent telephone calls. I write to inform you that currently I do not own the car parking area in front of my development at 17 Fore Street Liskeard.

I trust the fore going meets with your approval along with the revised plans as requested which I understand my architect has forwarded to you.

I therefore await listed building consent at your earliest convenience.

Yours sincerely

[REDACTED]

Mrs Alison Powell

Appendix C

Site Visit Notes

Case Officer: Cheryl Stansbury

(The information contained within this checklist is for the sole purpose of assisting the case officer to record sufficient information that may be required in order to subsequently review the proposal, compile a report and make a recommendation regarding the determination of the proposal).

Application No:	09/00296/LBC	SITE DESCRIPTION (include topography, levels, street scene character, materials etc): four pmc 2 listed building with two car driveways list.
Description:	Listed building consent for the conversion of workshops into four flats	
Location:	Land At Pipe Well Well Lane Liskeard Cornwall	
Grid Ref:	225222 64520	
Applicant:	Mrs Alison Powell	
Agent:		
Constraints:	Conservation Areas Within Development Limit Historical Sites Historic Settlement	
ADJOINING DEVELOPMENT (include type of development, character, materials, levels etc)		
North - <i>Public Highway</i>		
East - <i>Public Highway</i>		
South - <i>Public Highway</i>		
West - <i>Public Highway</i>		
Health and Safety Assessment: I have made a preliminary site assessment with regard to Health and Safety considerations and confirm that I have sufficient protective clothing and training to carry out a site visit.		
Case Officer's Additional Comments (If Any)		
Residential Property YES/NO <input checked="" type="radio"/> Non Residential Property (State Use) <i>four listed</i>		
Building Works Underway?/building site: YES/NO <input checked="" type="radio"/>		
Signature of Case Officer <i>Cheryl Stansbury</i> Date of Site Visit.....		

alison.powell@orangehome.co.uk

09/00296

BOUNDARY TREATMENTS

North
East -
South -
West -

NEIGHBOUR IMPACTS (include overlooking, loss of daylight etc)

North
East -
South -
West -

HIGHWAYS

Access.....
Visibility.....
Parking Provision.....
Turning/Manoeuvring.....

LANDSCAPING/ECOLOGY

Trees.....
Hedgerows.....
Wildlife.....

DRAINAGE

.....

OTHER

.....

09/00296

Appendix D

Development Management
Planning and Regeneration Service



OFFICER REPORT - DELEGATED

Application number:	09/00296/LBC	Expiry Date:	18 September 2009
Received On:	24 July 2009	Site Visit Date:	26 May 2009
UPRN:	50102075	Neighbour Expiry Date:	
Legal Agreement:	N	Consultation Expiry Date:	5 June 2009
Departure:	N	Site Notice Posted:	26 May 2009
Complies with Development Plan:	Y	Site Notice Expiry:	16 June 2009
If not, ensure you cover in the report how material planning considerations outweigh the plan?			
Contrary to Parish/Town Council?	Yes		

Applicant Mrs Alison Powell
Address Land At Pipe Well Lane, Liskeard, Cornwall
Proposal Listed building consent for the conversion of workshops into four flats

Case Officer: Mr L Westlake	Authorising Officer: PATRICK JAMES
Signature: <i>[Signature]</i>	Signature: <i>[Signature]</i>
Date: 17th September 2009	Date: 18.9.09

Description of site and development:

The site comprises a Grade 2 Listed, two storey stone built former workshop within the Liskeard town centre, which has been converted into four flats.

The proposed development has received planning permission (05/01492/FUL) but listed building consent was not applied for because it was unclear from the listing record as to whether the building was in fact listed. Further advice from the Council clarified that the building was indeed listed and the applicant submitted a listed building application, however, the applicant has submitted a retrospective listed building application to regularize the situation.

Relevant planning history:

05/01492/FUL – Conversion of Workshops to Flats, Well Lane, Liskeard – Approved.

Public representations:

None

Consultee representations:

Liskeard Town Council – Object – The Town Council disputes the ownership of the parking area, which is not registered at the Land Registry. Therefore, it would appear that no one party can have exclusive use of this land.

Conservation Officer - I have had extensive pre apps on this, as the applicant started the work without LBC. Whilst the detailing is in accordance with my discussions, unfortunately the detailing is at variance with the submitted plans. For example all the windows on the east elevation at first floor were originally going to be replaced, however I got the applicant to repair the existing windows and retain them. So whilst the work on site is acceptable, a revised plan is required to show which windows and doors are to be retained and repaired and which are new. I have no objection to the new windows being double glazed. I also agreed to the reslating of the property with an appropriate slate and mitred hips. Application to be approved on the submission of the revised plans.

Constraints and designations:

Conservation Area;
Within Development Limit;
Historical sites;
Historic settlement, and
Listed Building.

Relevant policies, SPGs and Government Guidance:

Caradon Local Plan First Alteration 2007

Policy ALT2 - General Design Principles;

Caradon Local Plan 1999

Saved Policy EV1 – Historic Settlements;
Saved Policy EV2 – Conservation Areas;
Saved Policy EV3 - Listed Buildings and Redevelopment in Conservation Areas;

Cornwall Structure Plan 2004

Saved Policy 1 - Principles for Sustainable Development;
Saved Policy 2 - Character Areas, Design and Environmental Protection;
Saved Policy 3 – Use of Resources;
Saved Policy 10 – Location of Housing Development;
Saved Policy 25 – Other Main Towns and Local Centres;

It is my opinion that the above works undertaken will not have a significant adverse impact on the character and architectural integrity of the listed building and therefore the principle of the works is acceptable. As these works have already been implemented, to the satisfaction of the Council's Conservation Officer, it would therefore be unnecessary to condition the consent for the commencement of development and materials.

Car Parking

The previous planning application (05/01492/FUL) was granted with the adjacent off street car parking area being outside the development site outlined in red. The applicant in submitting this current listed building application chose to include this car parking area within the development site for the exclusive use of the residents of the flats. The inclusion of this land raised an objection from the Town Council regarding ownership of this land and that the applicant did not have exclusive use of the land. To overcome this objection the applicant has resubmitted a location and block plan indicating this land being outside the development site and therefore consistent with the plans approved for the planning application. This land therefore remains for the use of all.

In conclusion, for the reasons outlined above, the application is recommended for approval under delegated authority.

Conclusion:

RECOMMENDATION: Approve subject to the following conditions:

Recommendation

Approve subject to the following conditions and informatives

Conditions

Informatives

1. For the avoidance of doubt the Drawing(s) No(s) to which this decision refers are as follows:- 653-4 received on 19th February, 653-5 received on 8th July 2009 and 882-10A and 882-11A received on 23rd July 2009.

Appendix E

PDF - LR Registry Plan 2019