

SECTION A – MATTERS FOR DECISION

Planning Applications Recommended For Approval

<u>APPLICATION NO:</u> P2016/0287	<u>DATE:</u> 06/04/2016
PROPOSAL:	Lawful Development Certificate for an existing use of family home dwellinghouse (C3)
LOCATION:	Caravan 'A', Aberdrychwallt Farm, Pontrhydyfen, Port Talbot SA12 9SN
APPLICANT:	Mr David Price
TYPE:	LawfulDev.Cert-Exist
WARD:	Pelenna

Background

Members should note that this is the first of two applications (the other being P2016/0337) for Certificates of Lawful Development for Existing Use or Development (CLEUD) reported concurrently to Planning Committee, both of which also include related enforcement recommendations, and relating to the same Farm.

Application ref. P2016/0337 has been called into Planning Committee by Ward Member Councillor Ellis on the grounds that he believes some issues should be considered relating to the siting of a previous older caravan, the potential of the caravan for use as not a domestic dwelling but one needed in relation to agriculture and finally the advice the applicant alleges he received at a previous meeting with Planning Officers.

This application has not been called in by Councillor Ellis, but is nevertheless reported to Members insofar as both applications have additional enforcement recommendations associated with them, thus allowing Members to consider all such matters together, having regard to the points raised in the ward Member's representations.

Planning History:

None

Publicity and Responses if applicable:

Statutory Consultees

There is no statutory need for notifications, but the Pelenna Ward Member was notified.

Description of Site and its Surroundings:

The site is located within the countryside and forms part of the wider property known as Aberdrychwallt Farm.

The application site specifically relates to a parcel of land on the western edge of an existing farmyard, to the north an existing farmhouse.

The Council undertook a site visit earlier this year following a complaint that development had taken place without the benefit of planning permission. The enforcement officer visited the farm and upon arrival at the site encountered what appeared to be a new dwellinghouse. Following further inspection the officer discovered a mobile home/caravan encased within the outer shell of the unlawful structure. The caravan appears to be affixed to a single storey building with a new two-storey building shell built around the caravan.

Brief description of proposal:

The applicant seeks a Lawful Development Certificate (LDC) under Section 191 of the Town and Country Planning Act 1990 (as amended) in relation to an 'existing use of family home dwellinghouse (C3)'. The applicant has explicitly stated that the LDC only relates to the caravan and attached adjoining single storey extension. It does not therefore cover the new development surrounding the same (which is covered under enforcement matters below).

The combined extension and mobile home measure approximately 10.1m in width, 9.2m in length and 3.1m in height. The extension element is of cavity wall construction and an external render finish.

For the purposes of this appraisal, the premises IS referred to as Caravan 'A' (caravan 'B' being the subject of application P2016/0337).

Material Considerations:

The main issue is whether, at the date of the application, the use / development claimed had achieved immunity from enforcement action due to the passage of time. The appropriate test is whether 'on balance of probability' sufficient evidence has been provided to substantiate such a claim.

Evidence Submitted

The Applicant has provided the following evidence in support of the Application:-

- Aerial imagery dated 2006
- Caravan purchase Invoice dated 1992
- Council Tax records dated 2001-2016

Consideration of the Evidence

The onus of proof in a LDC application is firmly on the applicant.

Circular 24/97 (Welsh Office) para. 8.12

The onus of proof in a LDC application is firmly on the applicant. While the LPA should always co-operate with an applicant seeking information they may hold about the planning status of land, by making records readily available, they need not go to great lengths to show that the use, operations, or failures to comply with a condition, specified in the application, is, or is not, lawful.

The grounds on which the certificate are sought are that the use began more than 10 years ago before the date of this application and the use as a single dwellinghouse began more than 4 years from the date of the application. The applicant states that the use began on 1st February 2001.

The submitted location plan notes that Caravan 'A' is now located within a new blockwork (not part of this submission).

Having regard to the evidence submitted and, more particularly, the evidence 'on the ground', it is considered necessary to consider the following matters: -

- Does the development comprise 'siting of a caravan;' on land, and therefore the 10 year rule for material change of use of land applies; or
- Following its initial siting, has the caravan been altered / extended to such an extent that it would instead comprise operational development, and therefore as a 'dwelling' the four year rule applies.

Is the caravan / structure still a caravan?

The definition of a caravan is set out in section 29(1) of the Caravan Sites and Control of Development Act 1990 as "any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)." Therefore primarily a caravan must be movable and designed for human habitation.

The siting of a caravan normally constitutes a use of land, although it may be in permanent or semi-permanent residential use. If a caravan remains mobile, then it is likely that a use of land is involved.

To be deemed mobile, it is not essential that a caravan can be moved on its wheels and axles or by a tow bar. It is enough that the unit can be picked up intact and put on a lorry by crane or hoist. It can be craned onto a trailer and transported from one place to another, not necessarily down the access drive to the plot on which it is sited but rather down a hypothetical road.

When the caravan was sited on the land, it is clear that it would have been a change of use of the land, insofar as it would have met the above definitions. In excess of ten years ago, however (evidenced by aerial photographs) the 'caravan' was altered by the addition of a block-built, flat-roofed extension to its western side.

Under section 336 of the Town and Country Planning Act 1990 a "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. Where there is doubt as to whether an activity amounts to a building operation, it should be considered whether the end result could be described as an erection or structure.

The extension is a cavity wall construction with a rendered finish and is certainly a structure for the purposes of section 336. Accordingly the assessment has considered whether the extension together with the caravan can be said to amount to a building / operational development. In this respect, the floor plan shows that the extension runs along the full length of the caravan, while the size of the extension relative to that of the caravan (taking up approximately 40% of the overall floor area including two bedrooms) gives the caravan a degree of permanence and physical attachment. Furthermore, during the site visit Officers viewed the interior of the property and there was considered to be no obvious signs at the point where caravan ended and the extension began.

Having regard to the way the premises 'flows' internally and substantial fixation to the cavity wall extension, it is concluded that operational development occurred at the time of the extension, and that as a consequence the caravan together with the extension constitute a building. The applicant's evidence needs to confirm that the building has been used as a dwelling house for a period of 4 years.

Assessment of the Evidence

The applicant has provided the receipt for the purchase of the caravan dated 1992, and that the applicant has been paying Council Tax on the caravan since 2001, as evidenced by the submitted Council Tax demand notices. Little other evidence has been supplied.

It is necessary, however, to consider whether there is evidence available to the Council to corroborate submissions and in this respect aerial imagery dated 2006 clearly shows the extension in place connected to the 'caravan'. Accordingly it is clear that the operational development has been in existence in excess of the relevant four year period.

The council tax evidence also indicates that the building has been used as a dwelling within this time period. Internally the premises has living room, fully fitted kitchen with sink and cooker, washing machine, hot and cold running water, bedrooms, bathrooms complete with toilet, sink and bath. The floors are carpeted, the rooms had electric lighting and there was a television on in the living room. It clear that the premises had been designed and used as dwelling, and has all the normal attributes and facilities needed for modern living. From inspection it was clear that the use had been taking place for some time. The submission of utility bills referencing electricity, water and telephone services are normally helpful

in cases of this type. However, such independent evidence is not necessary in order to corroborate the Appellants version of events.

Due to the aerial imagery and Council tax records it considered on the balance of probability that the building has been used as a dwelling house for a period of at least four years. Accordingly a Certificate should be issued.

Enforcement Matters

As referred to earlier in this report, there are some elements of development surrounding Caravan “A” that were excluded from consideration for the purpose of this LDC. These elements relate to the block construction around the caravan that has the appearance of a design commonly associated with that of a two-storey dwelling house. This outer shell is still in the process of being constructed, and represents a clear breach of planning control, amounting to (at best) a substantial and unjustified enlargement of a residential unit in the countryside and, at worst, construction of a new dwellinghouse.

Given the absence of justification for the new built development, it is considered appropriate for enforcement action to be authorised to remove the unauthorised development. On the basis that Members agree to issue the requested Certificate as detailed above, it is considered that a reasonable approach – having regard also the poor living conditions experienced within Caravan ‘A’ – would be to allow a small proportion of the unauthorised development to remain. Accordingly it is considered reasonable to allow the blockwork built tightly around the caravan to be retained and a flat roof added to the same height as the cavity wall ‘extension’, thus retaining the footprint/dimensions and identity of the lawful dwellinghouse. All other elements would need to be removed.

This could be actioned either by ‘under-enforcing’, or by encouraging submission of a new application, but it is considered necessary to seek Members’ authorisation for such enforcement action to be taken.

Conclusion

The relevant test in an application for a certificate of lawfulness is whether, on the balance of probability, sufficient evidence has been provided, or is available, to demonstrate that development is lawful.

As detailed above, it is concluded that the caravan as extended now comprises operational development, and that it has been sited, and used as a dwelling, for in excess of a continuous four year period. As such, the development is lawful as defined under section 191 of the Town and Country Planning Act 1990 (as amended) and a lawful development certificate should be issued.

RECOMMENDATION:

- (1) That the Lawful Development Certificate is issued for use of a building comprising the siting of a caravan with additional block-built extension to its western elevation as a single dwelling house
- (2) That enforcement action is authorised to secure the removal of the unauthorised built development, with the exception of the brickwork built around the caravan up to the height of the existing 'extension' to the caravan