

SECTION A – MATTERS FOR DECISION

Planning Applications Recommended For Refusal

<u>APPLICATION NO:</u> P2016/0337	<u>DATE:</u> 20/04/2016
PROPOSAL:	Retention of caravan as a domestic dwelling. (Certificate of Existing Lawful Development)
LOCATION:	Aberdrychwallt Farm, Aberdrychwallt Farm Access Road , Pontrhydyfen , Port Talbot SA12 9SN
APPLICANT:	Mr David Price
TYPE:	LawfulDev.Cert-Exist
WARD:	Pelenna

Background

Members should note that this is the second of two applications (the other being P2016/0287) 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.

The application 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.

Planning History:

None

Publicity and Responses if applicable:

Statutory Consultees

There is no statutory need for notifications, but the Pelenna Ward Member was notified and a Site Notice displayed.

Councillor Ellis has submitted representations which are summarised as follows: -

- When this caravan was brought onto the farm planning officers were asked for their opinion on the need for permission and at an informal site meeting the family were told that they were entitled to site the caravan and that no planning permission was needed.
- Believes that there is a case for considering the current caravan to be a dwelling for an essential agricultural family member carrying out duties on the farm that are now beyond the capacity of the owner. The business of the farm involves both livestock management, mainly livery, and a series of leisure fishing ponds.
- This caravan has been in place for over 5 years and therefore has lawful place as a temporary structure if not as a permanent dwelling. There should be some mitigation in relation to any advice provided by officers at the time and an objective decision made on this point.
- The caravan replaces a previous caravan sited a few metres to the rear of this site. A question of whether or not this then extends the period of effective use of a caravan should be considered. Committee may ask why the actual caravan itself rather than a “generic” caravan sited in excess of 10 years is the determining factor. There will be case law where caravans sited for leisure and commercial use have provided a lawful use of other caravans on the same site even though not the same specific position. An example of this in my personal knowledge is where the site owner Mr. R. Grove of Carregllwyd at Port Eynon successfully defended action against the right to site caravans on fields used for camping.
- As a planning authority the Council has the power to make decisions on applications on both their merits, planning regulations and to interpret these in individual cases. There is always some flexibility in making a determination and there should always be the question asked “what is the harm” of any application. States that that this caravan and its use have no visual impact on the landscape, causes no obvious problems to anyone in the area, provides a home for an essential worker, supports a local business and family and reduces pressures on housing demands in the area.

Description of Site and its Surroundings:

The application 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 approach to an existing farmyard, to the west of an existing farmhouse and caravan 'A' (see application ref. P2016/0287).

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 the retention of a caravan on site as a dwellinghouse designated as C3 for the purposes of the Use Class Order. It is clear from the applicant's submission that he is seeking the retention of the caravan as a residential unit only.

It is noted that the application is for a legal certificate and is not an application for planning permission to retain the caravan. Accordingly, there has been no supporting evidence seeking to justify the caravan as an agricultural workers dwelling, nor has this formed part of the assessment below. It is, however, discussed under the enforcement matter at the end of the report.

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.

Siting of a caravan constitutes a use of land and, therefore, the relevant test is whether the use began more than 10 years before the date of this application.

Evidence Submitted

The application has been accompanied by the following evidence:

- Aerial imagery taken from Google Earth, marked by the applicant 2012.

- Photographs of the premises labelled 'Caravan in place Oct 2011'.
- 3 letters stating that a caravan has been present in the vicinity since the 1980s before being replaced with the current 'caravan'.
- Photograph showing Caravan 'A' (subject of separate application) and another caravan (identified as caravan 'B') in place dated 1995.
- Photographs dated October 2011 showing the caravan in place completed with tow hitches.
- An invoice dated 15/10/2011 showing the purchase of the mobile home.
- Letter of receipt from the trader acknowledging payment for the mobile home date 29/09/2011.
- Photographs dated spring 2012 showing the tow hitched removed and skirting positioned round the side of the caravan.
- Photographs dated September 2011 showing site clearance in anticipation of the new caravan.

Considering 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 failure to comply with a condition, specified in the application, is, or is not, lawful.

The submitted evidence indicates that the caravan subject of this application was positioned on site in Autumn 2011. This contention is supported by a number of photographs and supporting statements. While the submissions make reference to a previous caravan elsewhere on the site as a whole, that caravan no longer exists. In any respect, that caravan is alleged to have been positioned in an area that does not form part of the LDC certificate submission. Therefore in the interest of clarity, the LDC submission and the evidence accompanying it has been assessed on the basis that the red line Location Plan submitted by the applicant comprises the planning unit.

In view of the above, it is considered that the applicant's claim of immunity of ten years continuous residential use cannot be proven, since the applicants own evidence demonstrates that it has only been sited since autumn 2011, which is significantly less than the ten years necessary to provide lawfulness in this case. The claim from Councillor Ellis that the caravan has been in place for over 5 years as a 'temporary' structure is also not supported by the evidence.

Submissions from the applicant, and supported by Councillor Ellis, note that a previous caravan existed on site in a different position, with a photograph allegedly from 1995 showing a caravan sited to the northeast of 'caravan B'. Councillor Ellis also notes that there is case law where caravans sited for leisure and commercial use have provided a lawful use of other caravans on site even though not in the specific same position.

In response, it is first noted that the 'description of proposal' section of this report has clarified the nature of this application, and the evidence submitted relates to the caravan in question and not the previous location of a caravan that is no longer present on site.

In any respect, there is no lawful use for the siting of a caravan in the location referred to in the photograph in question, nor any evidence to indicate the length of time such a structure was sited, or the use to which it was put. That caravan has also been removed from the site at an unspecified date. Therefore it is considered that no such lawful certificate could be issued, nor can the previous existence of another caravan at a different location to the northeast of the current caravan be relied upon to form part of the required ten years evidence relating to the use of the land (even if it were extended from the application site to incorporate the area on which a caravan was previously located). No case law has been supplied which would indicate that there are reasonable grounds to conclude otherwise.

The application caravan is claimed to have been used as single dwellinghouse for more than four years. Regardless of any supporting evidence which alludes to an immunity period of 4 years or more, this period of immunity will only be beneficial to the applicant in terms of obtaining a Certificate if the application structure were concluded to comprise a building and not a mobile home.

Is Caravan 'B' still a Caravan?

The definition of a caravan is set out in section 29(1) of the Caravan Sites and Control of Development Act 1960 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 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 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's sited but rather down a hypothetical road.

A site visit by the case officer and the Planning Manager was undertaken to the application site. During this visit it was acknowledged that the structure retained the appearance of a static caravan. Following further inspection the applicant opened a door located in the skirting which ran along the bottom of the unit. When the officers looked through the door it was clear to see that the unit was still raised above the ground level and retained its mobility. The unit was not fixed in any way to a solid foundation and remained intact and almost identical to the photographs submitted as part of the application dated in the year 2011. It should be noted that in forming a judgement of fact as to whether or not a structure is a building for the purpose of the Act, the question of fixation is not conclusive but may depend on the degree of fixation.

Following the site visit, Officers are wholly satisfied as a matter of fact and degree that the structure could be removed without a large amount of dismantling, save for the removal of the skirting positioned around the bottom of the premises.

In view of the above investigative work it is concluded that the structure remains movable and therefore meets the definition of a Caravan/Mobile home rather than that of operational development, and that therefore the four year rule does not apply.

Enforcement Matters

Having regard to the above, it is concluded that the siting of a caravan on the land and its use for residential purposes represents a breach of planning control against which enforcement action can be taken.

Councillor Ellis has stated that that the Planning Authority has the power to make decisions on application on both their merits, planning regulations and to interpret these in individual cases. He also considers there to be no 'harm' caused by the development. Whether the use of land in question is acceptable is not related to the current application, but instead forms part of the assessment of acceptability under the enforcement options.

In this regard, it is noted that there has been no supporting information regarding justification of the premises as an agricultural or rural enterprise workers dwelling. Discussions involving the applicant, Councillor Ellis and the Council's Development Manager – Planning have also led Officers to the clear conclusions that there are no grounds for the retention of the caravan for residential use, either in respect of the specific nature of the 'rural enterprise' - which would be unlikely to pass the required functional or financial tests of such a dwelling - while in any respect the 'farm' already has a dwelling, plus a lawful development certificate for a second dwelling is being considered concurrently with this application.

Accordingly, in the absence of any agricultural or rural enterprise justification, having regard to Planning Policy Wales and Technical Advice Note 6 (TAN6), it is concluded that the unauthorised development amounts to an unjustified form of residential development in the countryside, contrary to LDP Policies including Policy SP3 Sustainable Communities, Policy SC1 Settlement Limits and Policy BE1 Design.

A second recommendation is therefore made that enforcement action is taken to cease the existing residential use of the land and remove the unauthorised caravan and associated structures from the site, and to restore the land to its former condition.

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 applicant's evidence submitted is not enough to substantiate the applicant's claim that the land was utilised for residential use for a period of ten years and the structure does not qualify to be assessed under the 4 year rule as the retained mobility of the structure means that it must be considered as a caravan as opposed to a dwelling house. As such, the development is not considered to be lawful as defined under section 191 of the Town and Country Planning Act 1990 (as amended) and a lawful development certificate cannot be issued.

RECOMMENDATION:

- (1) That the Lawful Development Certificate is refused on the grounds that insufficient evidence has been provided to demonstrate that the caravan has been in situ on the application site and used for residential purposes for in excess of ten years;
- (2) That enforcement action is authorised to cease the existing residential use of the land and remove the unauthorised caravan and associated structures from the site, and to restore the land to its former condition.