



Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 09/01/19

gan Hywel Wyn Jones BA (Hons) BTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 04.03.2019

Appeal Decision

Site visit made on 09/01/19

by Hywel Wyn Jones BA (Hons) BTP
MRTPI

an Inspector appointed by the Welsh Ministers
Date: 04.03.2019

Appeal Ref: APP/E6840/C/18/3213252

**Site address: Ravensnest Fishery, Ravensnest Wood Road, Tintern,
Monmouthshire, NP16 6TP**

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Russell Cassidy-Kojima against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice, which is not numbered, was issued on 2 October 2018.
 - The breach of planning control as alleged in the notice is an unauthorised timber framed building.
 - The requirements of the notice are
 - i) Remove the timber framed building
 - ii) Cease the use of the land for residential purposes
 - iii) Remove from the land all building materials and rubble arising from compliance with requirement (i) above
 - iv) Remove the retaining wall noted and re-seed the immediate area [sic] with grass seed
 - The period for compliance with the requirements is six months from the date that this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied in Schedule 4 by the deletion of requirement ii) "Cease the use of the land for residential purposes".
2. Subject to this variation the appeal is dismissed, the enforcement notice is upheld.

Background Matters

3. A Certificate of Lawful Existing Use or Development (CLEUD) (ref: DC/2012/00525) was granted on the appeal site in August 2012 for "siting of touring caravan ancillary to the use of the fishery". A subsequent Certificate of Lawful Proposed Use or Development (CLPUD)¹ was issued by the Council on 26 September 2016 (ref: DC/2016/00729). It confirmed the lawfulness of a "use or operation" described as

¹ The heading to the certificate refers to Section 192 of the Town and Country Planning Act 1990. A reference in the same document to section 191 appears to be in error given that it clearly related to a proposed use or development.

"Replace touring caravan with a log cabin to provide ancillary accommodation for fishery".

4. The CLPUD not only makes reference to the above description but it also refers to "plans referred to in the Third Schedule" to the Certificate. That schedule, in turn, refers to an email dated 4 September 2016 from a company, Polar Lodges, who were looking to supply the applicants for the certificate with a "mobile lodge to replace a static caravan that has historically been on the site". The reasons given for granting the certificate includes that "it would meet the requirements outlined in the Caravan Act 1968 Part III Section 13 for a twin unit caravan". It goes on to state that provided the "replacement twin caravan is sited in accordance with the Caravan Act 1968 the development would be deemed lawful". It then explains that the use should be ancillary accommodation for fishery.
5. The Polar Lodge email is a detailed one which provides information on the size of the proposed structure, confirming it falls within the statutory size limits for a twin unit caravan. It explains that the lodge would be brought to site in 4 sections that would be assembled to form two halves that would then be bolted together on a concrete base or pads. Reference is made to 2 appeal decisions that deal with whether a structure complies with the legal definition of a twin unit caravan, and included the construction, mobility and size tests. The email concludes by confirming that the "proposed lodge will be fully compliant with the Caravan Sites Act of 1968".
6. The appeal site incorporates land associated with the Fishery business, which the appellant purchased after the grant of the Certificates. The subject structure straddles a hard-surfaced terrace of flat ground and ground that falls steeply towards a fishing pond.

The Notice

7. The appellant points out that requirement iv) of the notice refers to "retaining wall noted" yet no mention of those works is included in the allegation. My visit confirmed that the works included at one end of the structure a retaining wall to support excavations into the ground and, at the other, the construction of gabion baskets of rock and block walling which together serve to facilitate a level platform for the timber framed structure. These below floor level works form an integral element of the operational development that has been undertaken. The removal of the retaining wall is required to enable the reinstatement of the land to its previous condition. No prejudice has been caused to the appellant by the absence of a specific reference to the retaining wall in the allegation.
8. Requirement ii) of the notice requires the cessation of the residential use of the land. In addition to the site of the subject works the land to which the notice relates encompasses the extensive area of land owned by the appellant which includes the appellant's fishery business including the site identified in the Certificates of Lawful Use. I note that there is a difference of interpretation between the main parties over the use that was deemed lawful by these Certificates, but this is not a matter relevant to my determination of the appeal.
9. At the time of my site visit it was clear that the building had not been internally completed and there is no suggestion that it was being used. The notice makes no reference to the use of the building in the allegation. Against this background it seems to me that the requirement to cease residential use of the land goes beyond that which is related to the structure in question and may cause conflict with the lawful use certificates. Given that compliance with the remaining requirements of the

notice would effectively prevent any residential use of the building, I propose to remove this requirement satisfied that no injustice would be caused to any party.

Ground (c) Appeal

10. Section 192 (4) of the Act confirms that the lawfulness of any use or operations for which a certificate is in force shall be conclusively presumed unless there is a material change before the use or operation begin. There is no suggestion of any such change in this case.
11. The appellant and the Council disagree over the interpretation of the effect of the Certificates granted on the site. In addition to the dispute over the precise use which is deemed lawful to which I have already referred, there is also disagreement over the precise site on which the lawfulness has been established and the type of structure confirmed to be lawful. I shall deal with the type of structure first.
12. Despite the mention of 'log cabin' the reference in the certificate to the third schedule and to the email narrows the type of structure that was deemed to be lawful. This is a significant qualification to the type of structure to which the certificate relates. This was made very clear in the case presented in the application and in the Council's reasons for granting the certificate. Indeed, it is patently the case that replacing a caravan, which is a use of the land, with a building would require planning permission. Thus I turn to consider whether the structure that is on the site is a caravan for the purposes of the CLPUD.
13. Local residents explain that the building did not arrive in sections but has been constructed on site. This evidence is not disputed and is wholly consistent with the drawings of the structure which the appellant has provided. These show a timber-framed structure to be assembled as a single operation built in situ. This is consistent with that observed on site where the roof timbers, for example, span the whole of the structure. Indeed, the work of constructing the structure was ongoing at the time of my visit. There remained significant works to be completed such as external cladding and the boarding of the internal stud partition walls and ceiling.
14. As noted in the appeal decisions cited in the Polar Lodge email, the construction test for a twin unit caravan includes that it comprises two halves that are brought together to create the twin-unit. It is clear that the structure does not meet this test. Its construction is akin to a timber-framed dwelling. It was not clear to me from my visit how the floor was fixed to the masonry walls below. However, the gabion basket supporting walls and the concrete block retaining walls that I observed are an integral part of the building operations that have taken place to erect the structure and to provide its necessary structural support.
15. Even if it were possible to readily disconnect the timber-framed structure from the supporting walls, there is no indication that the structure has been designed to enable its transportation. The mobility test for a caravan is whether the structure is physically capable of being moved by road in its assembled state. There is no information to suggest that the structure is capable of being towed or lifted in one piece and thereafter transported. The means of construction detailed in the drawings, consistent with my own observations on site, suggests that it lacks the structural strength to withstand the loadings that any attempt to move it would impose.
16. The Council does not dispute that in terms of its external dimensions the structure falls within the statutory definition of a twin unit caravan but considers that the ceiling height exceeds the 3.05m limit. According to the construction drawing of the structure submitted by the appellant that is correct, but the ceiling had not been

constructed at the time of my visit. In light of my findings in relation to the other 2 tests this matter is not determinative.

17. The Council argues that the CLPUD approved a siting which was specific to the identified position of the previous caravan whereas the appellant submits that the certificate confirms lawfulness within the planning unit. As the work that has been undertaken constitutes operational development rather than being a use of the land it falls outside the scope of the CLPUD. Accordingly, it is not necessary for me to reach a view on the significance of the fact that the appeal structure is in a position which is some distance from that of the caravan as shown on the location plans accompanying both certificate applications.
18. For the above reasons I find that the structure the subject of the notice does not fall within the statutory definition of a caravan. It constitutes operational development and is therefore outside the scope of the CLPUD. It is development requiring planning permission, and in the absence of such a permission ground (c) must fail.

Conclusion

19. I have found that the development constitutes a breach of planning control and thus I shall uphold the notice, subject to varying the requirements to delete the reference to residential use.

Hywel Wyn Jones

INSPECTOR