



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 30/04/21

gan Mr A Thickett, BA (Hons) BTP Dip
RSA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13/5/21

Appeal Decision

Site visit made on 30/04/21

by Mr A Thickett, BA (Hons) BTP Dip RSA
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 13/5/21

Appeal Ref: APP/E6840/X/20/3249614

Site address: Cwmgyst, Pentre Lane, Abergavenny, NP7 7HE

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

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms A Symes against the decision of Monmouthshire County Council.
 - The application Ref: DM/2018/01989 dated 3 December 2018, was refused by notice dated 12 December 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is: Dwelling house which is without any residential occupancy restriction and which is immune from future enforcement action relating to any residential occupancy restriction.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use of Cwmgyst, Pentre Lane, Abergavenny, NP7 7HE as a dwelling house without any occupancy restriction.

Main Issue

2. The main issue is whether the agricultural occupancy condition imposed on planning permission A26366 limits the occupation of Cwmgyst.

Reasons

3. Planning permission for Cwmgyst was granted in 1986 subject to, amongst other things, an agricultural occupancy condition (Reference A26366). The appellant's contention that the condition is unenforceable is predicated on the assertion that the dwelling was not constructed in accordance with the approved plans and that, as a consequence, it was unlawful when built and the condition limiting occupation does not apply. There is no dispute that the building is different from that shown on the approved plans. The questions I need to address, having regard to the caselaw cited by both parties are; (i) was the building originally built as approved and, if not was the dwelling built as it is now? i.e. not built as approved and subsequently altered, and (ii) are the differences between approved and as built material?

4. I will address the last question first. The approved plans for Cwmgyst show an upper ground level including garage, living room, kitchen, office, hall and utility and at lower ground two bedrooms and a bathroom. At upper ground, a door opens from a utility room on to a landing with steps down to the garden. The lower ground floor plan shows nothing below the landing indicating that the space below it was a void or filled.
5. The building today differs from the approved plans as it includes an additional room and store at lower ground floor level and at upper ground level a terrace extending from the kitchen and forming the ceiling of the store. The store/terrace is much larger than the landing shown on the approved plans and the steps down to the garden are orientated in line with the rear elevation rather than at 90° to it and are much more substantial. There is a patio door opening on to the terrace next to the kitchen door rather than a window with nothing below. At lower ground on the south elevation, a patio door and window have swapped positions.
6. The parties argue over the meaning of the walls of what is now the store/den being shown as dotted lines on the approved plans and whether this denoted that this area would have been filled or a void (the site slopes). If it denoted a void, I do not consider that turning it into a usable space would, in itself, be a material change. However, I consider that, taken together, the differences described above are significant and material, such that were the dwelling constructed as seen today, it could not have been said to have been built in accordance with the approved plans. Consequently, unlawful, at risk of enforcement action (at that time) and the conditions imposed on planning permission A26366 would not bite.
7. Neither party has provided any definitive evidence to demonstrate that Cwmgyst was or was not originally built in accordance with or not materially different from the approved plans. The Council refer to but do not provide aerial photographs dating back to 2000. According to the Council, although the images show that there was a terrace, the quality of the images is too poor to determine its size. As planning permission was granted in 1986, to keep the permission alive, construction would need to have started in 1991 at the latest and so was probably completed well before 2000. Consequently, had the images been clear they would not have assisted in determining whether the terrace was built with the house or was a later addition.
8. I now turn to the question of whether the dwelling was originally built as approved and, if not, was it built in its current form? In 2018 the appellant commissioned a survey to try to ascertain when the den/store was created. The survey found that they could have been added later but the authors would have expected to see evidence of the substantial civil engineering and ground works required to build these rooms at a later date. The authors found no such evidence reporting that the condition of the walls internally and externally and the weathering of the building indicates that the construction of the den/store and terrace was contemporary with the building of the house.
9. Given the age of the house, any later additions could have weathered and look the same as the original, but I saw nothing to indicate that the building has been altered or extended. The appellant's surveyors state that they would have expected to see a joint or step in the walls within the den/store had any underpinning or other groundworks been undertaken after the house was built. I saw what looked to be the recent addition of a radiator and associated pipework in the den. However, my observations suggested that the plastered walls and ceiling have been there for some time and, other than confirming the absence of a joint or step in the walls, my internal inspection revealed nothing else to support either side in this case.

Conclusions

10. There is no dispute that the existing building is different to that shown on the approved plans and the development permitted under planning permission A26366. For the reasons given above, I find that were Cwmgyst originally built as it is now, it cannot be said to have been constructed in accordance with planning permission A26366. The Council does not dispute that a joint or step in the walls would exist had the den/store been created later. I also find, having considered all the evidence including my external and internal inspection, that on the balance of probabilities, Cwmgyst was built as it is now.
11. I conclude, therefore, that as Cwmgyst was not constructed in accordance with planning permission A26366, it was unlawful when built and none of the conditions imposed on that planning permission apply or can be enforced. The lawful use of Cwmgyst is as a dwelling house with no restrictions on occupancy.
12. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of 'dwelling house which is without any residential occupancy restriction and which is immune from future enforcement action relating to any residential occupancy restriction' was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Anthony Thickett

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (WALES)
ORDER 2012: ARTICLE 28

IT IS HEREBY CERTIFIED that on 3 December 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Cwmgyast was not constructed in accordance with planning permission A26366, it was unlawful when built and none of the conditions imposed on that planning permission apply or can be enforced.

Signed

A Thickett

Inspector

Date

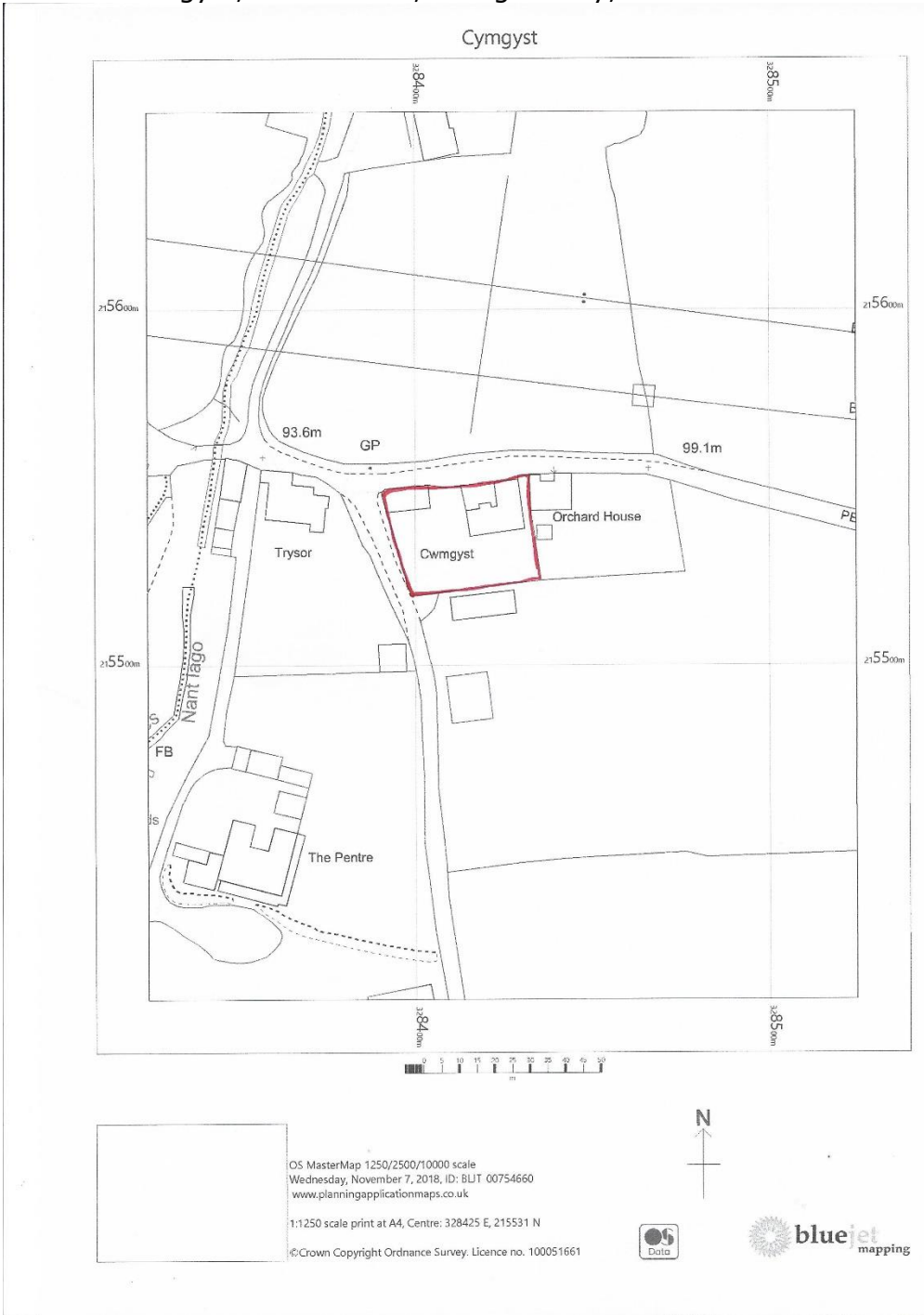
Reference: APP/E6840/X/20/3249614

First Schedule

Dwelling house which is without any residential occupancy restriction.

Second Schedule

Land at Cwmgyst, Pentre Lane, Abergavenny, NP7 7HE



NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.