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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 22/11/21

gan **Richard E. Jenkins BA (Hons) MSC MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 17/01/2022**

## Appeal Decision

Site visit made on 22/11/21

by **Richard E. Jenkins BA (Hons) MSC MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 17/01/2022**

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**Appeal Ref: APP/E6840/X/21/3276396**

**Site address: Ravensnest Fishery, Ravensnest Wood Road, Tintern, 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 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 of development (LDC).
  - The appeal is made by Mr Russell Cassidy against the decision of Monmouthshire County Council.
  - The application Ref: DM/2020/01035, dated 30 July 2020, was refused by notice dated 2 /April 2021
  - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is described on the application form as the siting of a log cabin ancillary to the use of the Ravensnest Fishery which meets the legal definition of a caravan under the Caravans Act 1968.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. A Certificate of Lawful Existing Use or Development (CLEUD) (Ref: DC/2012/00525) was granted on the appeal site in August 2012 for the "*siting of touring caravan ancillary to the use of the fishery*". A subsequent Certificate of Lawful Proposed Use or Development (CLPUD) was issued by the Council on 26 September 2016 (Ref: DC/2016/00729). That CLPUD confirmed the lawfulness of a "*use or operation*" described as: "*Replace touring caravan with a log cabin to provide ancillary accommodation for fishery*".
3. 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, namely 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 also explains that the use should be ancillary accommodation for fishery.

4. An Enforcement Notice was issued on 2 October 2018. The breach of planning control was the erection of an unauthorised timber framed building. That Enforcement Notice was subsequently subject to an appeal under ground (c)<sup>1</sup>, although the appeal was dismissed on the basis that the structure subject of the Notice did not fall within the statutory definition of a caravan, but rather operational development that falls outside of the scope of the previously issued CLPUD. The requirements of the Enforcement Notice upheld in that instance were varied through the appeal process. Subject to variations, the requirements of the Notice were: i) *Remove the timber framed building*; ii) *Remove from the land all building materials and rubble arising from compliance with (i) above*; and iii) *Remove the retaining wall noted and re-seed the immediate are [sic] with grass seed*.

### **Main Issue**

5. The main issue in this case is whether the Council's decision not to issue a Lawful Development Certificate (LDC) was well-founded.

### **Reasons**

6. The appeal proposal seeks an LDC to certify that the structure currently located on the appeal site is lawful. However, Section 191(2) of the above Act states that uses and operations are lawful at any time if: a) *no enforcement action may be taken in respect of them*; and b) *they do not constitute a contravention of any of the requirements of any Enforcement Notice in force*. The appellant's Statement of Case clarifies that the structure has been modified on site to make it accord with the definition of a caravan under the Caravan Sites Act. However, whilst such modifications remain unspecified, I have not seen anything to lead me to believe that the requirements of the Enforcement Notice upheld under Appeal Ref: APP/E6840/C/18/3213252 have been satisfied. As such, and bearing in mind the fact that the Council has confirmed that the Enforcement Notice remains in force, it follows that the development cannot be lawful.
7. For this reason, and having considered all matters raised, I find that the Council's decision not to issue an LDC was well-founded. The appeal should therefore be dismissed.

*Richard E. Jenkins*

INSPECTOR

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<sup>1</sup> Appeal Ref: APP/E6840/C/18/3213252