

Dirprwyedig / Delegated

Rhif y Cais / Application Reference	A200201
Derbyniwyd / Received	05-03-2020
Y Bwriad / Proposal	C3 (a) Dwelling house (unencumbered and without any agricultural conditions)
Lleoliad Safle / Site Location	Anorfa, Goginan, Aberystwyth. SY23 3PQ
Math o Gais / Application Type	Certificate of Lawful Development Existing/Proposed
Ymgeisydd / Applicant	Mrs J S Dunbar, 19 Victoria Avenue, Halesowey, West Midlands, B62 9BL
Asiant / Agent	Mr B Simkin (Barry Simkin Planning & Building Consultant), Barry Simkin, 63 Bridge Street, Aberystwyth, Ceredigion, SY23 1QD

Y SAFLE A HANES PERTHNASOL / THE SITE AND RELEVANT PLANNING HISTORY

The application site relates to a detached bungalow known as Anorfa, Goginan located within the open countryside. The site has the following relevant planning history:

870968 Full Planning. Agri workers dwelling. Approved Subject to Conditions 13/01/1988.

A051368 Removal of agricultural occupancy condition 870968. Refused 09/02/2006.

A190824 Certificate of Lawful Development Existing/Proposed. Occupation of dwellinghouse in breach of agricultural occupancy condition imposed on planning permission D1/968/87. Withdrawn 11/02/2020.

MANYLION Y DATBLYGIAD / DETAILS OF DEVELOPMENT

The application seeks a Certificate of Lawful Development (CLEUD) for the use of the dwelling in breach of condition 2 of planning permission D1.968.87. The application states that the use of the dwelling in breach of condition 2 of the relevant planning permission began more than 10 years before the date of this application. The application is accompanied by the following information/evidence:

- Mr Harper's (previous owner and occupier of Anorfa) P60 and Death Certificate.
- Sales Particulars from Lloyd Herbert & Jones (Estate Agents)
- Mrs Harper's (previous owner and occupier of Anorfa) Death Certificate.
- Letter from Department for Works and Pensions
- Planning application documents regarding a similar application
- Statutory Declaration made by the applicant, Mrs Dunbar
- Planning/Justification Statement
- Deed of Partition

YSTYRIAETHAU PERTHNASOL ERAILL / OTHER MATERIAL CONSIDERATIONS

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

EQUALITY ACT 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The above duty has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015

The Well-Being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet the seven well-being goals within the Act. This report has been prepared in consideration of the Council's duty and the 'sustainable development principle', as set out in the 2015 Act. In reaching the recommendation, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

YMATEBION YMGYNGHORI / CONSULTATION RESPONSES

Not applicable.

CASGLIAD / CONCLUSION

Section 10 of the Planning and Compensation Act 1991 allows anyone to apply to the local planning authority to determine whether a proposed use or operation is lawful and therefore no planning permission is required and no enforcement action may be taken. The certificate is not a planning permission, and the planning merits of the use, operation or activity are not relevant. In dealing with an application for a certificate of lawful development, the LPA can only take into account factual evidence and the interpretation of any relevant planning law or judicial authority. The onus of proof lies with the applicant, and the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". The courts have also held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

The application argues that the use of the dwelling has been occupied in breach of condition 2 of planning permission D1.968.87 which states the following:

The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined by section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person.

The report will first look at the occupation of the occupants of the dwelling before secondly, looking at the occupancy of the dwelling.

Occupation of Occupants of Dwellings

Planning permission was sought on the 14th August 1987 by Mr J Harper. The justification statement provided with this application notes that this is John Harper, the son of the late Mr and Mrs Harper. However, despite the applicant being Mr John Harper, which attended Moreton Morrell Agricultural College at the time of the original application and was working at a local farm (pre 1987), and therefore, would have been employed in agriculture, the sole occupiers and owners of the dwelling were Mr H Harper and Mrs J.M Harper. This corresponds with Ceredigion's Council Tax records which shows that Mrs Harper has been the registered council tax payer since electronic records in 01/04/1993. Documents have been provided to support that Mr H Harper was not employed or last employed in Agriculture. Copies of P60 slips have been received dating from 1972-1981 which is for Ted Collins (Meats) Lts in Birmingham. The statement notes that Mr H Harper was a butcher and retired from Ted Collins (Meats) Ltd Birmingham in 1981 due to ill health. From 1981 until his death in 1989, his sole income was sickness and invalidity benefit and therefore, was not employed in agriculture. A statutory declaration has been provided by the applicant to confirm this along with a death certificate confirming date of death and occupation.

The justification statement notes that Mrs Harper's occupation was a housewife which is supported by her death certificate and statutory declaration. In addition to this, a letter from the Department for Work & Pension has been received to note that Mrs Harper received State Pension and Pension Credit.

Therefore, from the information submitted and on the balance of probability, it is believed that Mr and Mrs Harper were not

employed or last employed in agriculture and therefore, were in breach of Condition 2 of planning permission D1.968.87.

Occupancy of Dwelling

The justification statement notes that building work commenced soon after planning permission was granted on the 13th January 1988 and was completed in 1989. With Mr Harper passing away in 1989, the death certificate notes his address as Bwa Drain, Goginan (name of dwelling on documents is Anorfa Bwa Drain). Council Tax records show that Mrs Harper was the registered council tax payer and occupied the building since electronic records show on 01/04/1993 to her death (21/01/2018). Although the application is not supported by a large number of documents supporting the occupancy of the dwelling, all documents show and support that the dwelling in question was occupied solely by Mr and Mrs Harper from completion in 1989 until Mrs Harper's death in 2018. Therefore, for a period greater than 10 years.

However, previous planning appeal cases have indicated that a CLEUD can only be granted where a particular breach had subsisted for at least ten years at the date of the application for the CLEUD. Despite this, the justification statement provided notes the following:

"It is further confirmed that the applicant Mrs Dunbar and her immediate family have therefore in order to comply with Anorfa's Insurance Policy Terms have regularly visited the bungalow at least once every month and stayed on average for a minimum three or four days at a time and sometimes longer."

Therefore, the applicant has noted that they visit the property on occasions with their main residence being in West Midlands, England. However, this conflicts with the information that has been given to Ceredigion's Council Tax department as they have the following information. From the 21/08/2018 (death of Mrs Harper) until probate (16/04/2018) Class F was granted which has no charge. The property then became empty of furniture and is not occupied from 01/04/2019 which led to a further 6 month exemption from the council tax charge. Council tax has further correspondence on the 01/10/2019 and 01/04/2019 which notes that the property is unoccupied and this has information has been provided and confirmed by the applicant, Mrs Dunbar. Consequently, the information received from the Council Tax Department supports the information that was previously received in application A190824 which was subsequently withdrawn. Despite this application noting that the applicant and her family stay some three or four days a month in the property, (despite conflicting with Council Tax) it is not enough to demonstrate that the building is occupied and that the breach is subsisting at the time of the application. There has therefore not been a breach of the occupancy condition since January 2018 and the dwelling is deemed unoccupied.

Where the use is in contravention of a planning condition, the breach must be continuing at the date of the application for a CLEUD (*Ellis v Secretary of State for Communities and Local Government* [2009] EQHC 634 (Admin)). This appeal was also for an application for a CLEUD in breach of an agricultural occupancy condition. Information was also presented to demonstrate that there had been a breach of the occupancy condition for many years, however, the breach was not continuing at the date of the application. There had been periods where the dwelling had been vacant for various reasons. The high court ruling of *Ellis v Secretary of State* appeal references *Nicholson v Secretary of State & Maldon DC* 18/08/1997. The judge in the *Nicholson* case held that, under the terms of section 191, an application for a certificate could only be made if there is non-compliance with the condition at the time. If non-compliance ceases, the breach is at an end but the condition continues in force. A subsequent non-compliance is a fresh breach and the 10 year period for enforcement starts again.

It is therefore evident that where a condition is one that requires the use to meet continuing requirements, such as an occupancy condition, should the property become vacant before being occupied again in breach of planning control, the clock will reset and a further ten years will be required before a successful CLEUD application can be made.

Consequently, the LPA are unable to grant a CLEUD as the breach is not subsisting at the time of the application and the dwelling is currently unoccupied. If the application had been made prior to the dwelling becoming unoccupied, it is likely that the LPA would have issued a certificate of lawful use.

ARGYMHELLIAD / RECOMMENDATION:

Certificate shall not be granted due to the dwelling being unoccupied since 2018 and the breach of planning occupancy condition is not subsisting at the time of the application.