



## Appeal Decision

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by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 11/04/2024

Appeal reference: CAS-02148-Y2Z2B0

Site address: Land at Pant Yr Onn, Cwm Maethlon from access track to Dysynant to access track to Ceiceinach, Pennal SY20 9LE

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- 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 Mrs Maggie Francis against the decision of Awdurdod Parc Cenedlaethol Eryri - Snowdonia National Park Authority.
  - The application Ref NP5/75/LU262A, dated 25 April 2022, was refused by notice dated 5 September 2022.
  - 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 “certify land for the lawful siting of 2 railway carriages for multiple uses”.
  - A site visit was made on 6 March 2024.
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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 existing use which is found to be lawful.

### Procedural Matters

2. Where an application is made to a local planning authority for a certificate under section 191 and the Authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the Authority, the applicant may then appeal. Section 195(5) indicates that under this provision on a failure to determine within the prescribed period it shall be assumed that the Authority decided to refuse the application in question.
3. The Authority issued its decision to refuse the application, the appellant has provided a statement of case against the refusal of the application, and I shall determine the appeal as one against refusal of the LDC under Section 195(1)(a). As a result, no prejudice has arisen to any party involved in the appeal.

4. The description of the use has been the subject of clarification between the parties. The appellant has sought to establish the lawful use of the two carriages as set out in the LDC application. The Authority has issued its decision based on the following description, "Certificate of Lawful Use (Existing Use) for use of field for the siting of 2 railway carriages for domestic use in association with the use of the farmhouse". The appellant has indicated in the statement of case that this is the basis of the application. Any description of the existing use found lawful is led and determined by the evidence presented with the appeal. This is considered further below.
5. An earlier LDC application for the same development was withdrawn on 25 April 2022.

### **Main Issue and the test of the balance of probability**

6. The main issue in this case is whether the Authority's decision to refuse to issue a certificate on the grounds that there is insufficient evidence to demonstrate the lawfulness of the siting of two railway carriages on the land for domestic use in association with Plas Yr Onn was well founded.
7. The onus of proof is on the appellant and the test to be applied to the evidence is that of 'on the balance of probability'. It is established that the appellant's own evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict the appellant's version of events, or make it less than probable, and the evidence is sufficiently precise and unambiguous, it should be accepted.

### **The case for the Appellant and the Authority**

8. The application is supported by photographs, aerial images and sworn statements by Mrs Margaret Iona Vaughan and Mr Arwel Evans. Both statements have been dated and the statement of Mr Arwel Evans includes the site plan of the appeal site. The statement of Mrs Vaughan is also witnessed with a stamp of a solicitor's office. The appellant purchased the farm holding from Mrs Vaughan. Mr Evans is Mrs Vaughan's brother.
9. Mr Evans contends that Plas Yr Onn was his family home. It was bought by his grandfather in 1977 which passed to his father in 1990. The property was modernised, and his father moved in 1994. The land at Plas Yr Onn was farmed at that time. Mr Evans lives in Dysyrnant Farm where he farms but began helping his father at the farm at Plas Yr Onn. This was daily until the early 2000s until the farm was purchased by the appellant in May 2021.
10. Mr Evans refers to the statement made by his sister and agrees with its content. He adds that the carriages were placed in the field by his grandfather between 1997 and early in the 1980s. They have not been moved since this time. Mr Evans older brother told him that originally, feed was stored in the carriages for some 8 years. Tack and various farm machinery was stored in the carriages, but this was then stored closer to the farmhouse. Mr Evans topped the appeal field with his farm machinery to keep the grass down, but his bailer was too large to manoeuvre through the field gate.
11. From 1994, Mr Evans was helping to farm the holding, but does not remember farm hands staying in the carriages although he does not rule out the possibility that they did not.
12. Mr Evans recalls things from the house being stored in the carriages when the kitchen was updated around 1994. This was the time when it was first used to store domestic items from the house. In the early 2000s, Mr Evans, took over more of the day-to-day responsibilities for the farm. In 2012, there was need to store more items from the house and again in 2016/2017 for protection after a burst pipe caused damage to the house. Mr

Evans does not recall the carriages being used to store anything else during this time. In 2020, Mr Evans indicates that the stored things were still there, and much of it was present when the property was sold in 2021. Mr Evans contends that the carriages were used for storage of effects from the house from early 1994/1995 until the property and farm was sold in 2021.

13. Mrs Vaughan asserts that the carriages have been in the appeal field for over ten years. They were purchased by her grandfather and were placed there by at least the 1980s, if not earlier. The carriages have remained there since and during the time when the farm was inherited by her father and passed to her in 2020/2021. Mrs Vaughan contends that the carriages have been used for a variety of purposes including domestic storage in association with the farmhouse. She indicates that the carriages were used by farm workers staying overnight during lambing and her grandfather at one time kept tack for his horses in one of the carriages.
14. Following the death of her parents and prior to selling the farm, she was asked whether she would sell the carriages. However, she decided to keep them in situ for any potential buyer of the farm. There was no intention to abandon the use of the carriages, and despite the need for repair, they were considered as useful.
15. The Authority confirm that the photographic evidence is sufficient to confirm the existence of the carriages on the appeal land for more than ten years. However, the Authority disputes the nature of the use in relation to its precision of a singular use and without interruption over the requisite period referring to a case at appeal in Lydstep, Tenby. There is also mention whether these are all ancillary uses to the residential uses of the farmhouse.

### **Assessment and conclusions**

16. The evidence of Mr Evans and Mrs Vaughan who had an intimate knowledge of the appeal site is sufficiently precise and unambiguous, for it be accepted, passing the threshold test of balance of probability. The first-hand statements corroborate the findings of the physical evidence that the carriages have been in situ well over ten years before the date of the application. I do not regard these statements as anecdotal as the Authority claims, and the evidence presented with this appeal is differentiated from the appeal decision at Tenby, on its facts, and having regard to the evidence.
17. The evidence points to a date of 1994 when the carriages were first used for storage of domestic items associated with the property Plas Yr Onn. This continued to 2021. The Authority produce no counter evidence that this use did not continue uninterrupted and was not active when the LDC application was submitted. As the Authority submissions do not contradict the appellant's submissions and that the appellant's evidence is sufficiently precise and unambiguous an LDC should be granted.
18. The breach of planning control took place on the balance of probability in 1994 which is more than ten years and continued uninterrupted thereafter. The time for taking enforcement action has therefore lapsed. In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach under Section 171B(3). The Authority could have taken enforcement action against the breach of planning control after 1994 but did not do so.
19. As no enforcement action had been taken by 2004, on the balance of probability, the use became lawful. Unless a lawful use right has been lost through some event sufficient to terminate it such as abandonment or new use introduced, it is established that a right has

been accrued upon the expiry of a time limit in section 171B. The lawful use right is not lost if the right has not been exercised for a period of time. It is established in case law that a use may be regarded as 'existing' and lawful even if it is dormant or inactive.

20. The evidence suggests as a matter of fact and degree that the appeal land on which the carriages are sited was sufficiently close to the family home to have been used as incidental storage associated with Plas Yr Onn. To this extent, the land has been used functionally and physically as part of the same planning unit and that function was historically used as incidental storage associated with the primary residential use of Plas Yr Onn. Based on the evidence presented no new planning unit has been formed since the accrued lawful use was established. Therefore, as a matter of fact and degree no abandonment has taken place or some event sufficient to terminate the use such as a new use or the creation of a new planning unit.
21. I shall therefore exercise the power under S195 and S191 of the 1990 Act as amended to modify and substitute the description of the matters described by the application to reflect the ongoing and existing use. That use is as described in the LDC, I propose to issue.
22. For the reasons given above I conclude, on the evidence now available, that the Authority's refusal to grant a certificate of lawful use or development 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.

*Iwan Lloyd*

INSPECTOR



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## 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

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**IT IS HEREBY CERTIFIED** that on 25 April 2022 the matter 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:

The use has continued for more than 10 years without interruption, and the time for taking enforcement action in respect of the breach of planning control has expired and the use does not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

The accrued lawful use has not lost lawful use rights by abandonment, or by the formation of a new planning unit or superseded or supplanted by a further material change of use of the land.

Signed

*Iwan Lloyd*

Iwan Lloyd BA BTP MRTPI

Inspector

Date

Reference: CAS-02148-Y2Z2B0

### **First Schedule**

The siting of two railway carriages within the land edged red for use as domestic storage incidental to the enjoyment of the property known as Pant Yr Onn.

### **Second Schedule**

Land at Pant Yr Onn, Cwm Maethlon from access track to Dysynant to access track to Ceiceinach, Pennal SY20 9LE.

## 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 or 187A 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.

## Plan

This is the plan referred to in the Lawful Development Certificate dated:

**by** Iwan Lloyd BA BTP MRTPI

**Land at:** Pant Yr Onn, Cwm Maethlon from access track to Dysynant to access track to Ceiceinach, Pennal SY20 9LE

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**Not to Scale:**

