

**Minutes of Ordinary Meeting of the Council held on Tuesday 12th
September 2023 at Penybont Community Hall at 7.30pm**

PRESENT: Cllrs D.Turner (Chair)
R.Buften:R.Duggan:R.Watkins;J.Lawrence

Apologies: Cllr D.Lyall

Absent: Cllr D.Bayliss

Others: County Councillor Morgan

PD/037/23 Declarations of Interest:

Reminder to members. A personal Interest is also a Prejudicial Interest because under the objective, public perception test (Para 12(1) of the Members' Code of Conduct) where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest. Forms available from the Clerk

- Cllr Lawrence

PD/038/23 Minutes

To authorise the Chairman to sign minutes of the previous meetings of the Council held on the 14th July 2023

Proposed to accept Cllr Buften Unanimous

PD/039/23 Clerk's update:

- Grass and hedges thought Powys have not as yet been attended to.
- Rhos Swydd. The Clerk gave a presentation in relation to the Common boundaries and the councils responsibilities. For documentation see appendix A.

PD/040/23 County Councillors Report

CC Morgan gave an update of a meeting with Dr Boulting following his presentation on the 'GeoPark'. Dr Boulting is currently in China, and further meetings are expected to take place after January.

- Refuse collection – improving still understaffed.

PD/041/23 Planning:

- 23/1025/HH Wide Open, Penybont, LD1 5TY – Erection of garage.

Resolved to make no adverse comments.

- 23/1116/Ful, Spring Rock, LD1 5UE – Erection of storage shed/maintenance, and associated works.

Resolved to make no adverse comments.

- Planning Enforcement Case: USE/21/0246 - Land Adjacent to Penybont Bridge, Penybont. Planning reply. See Appendix B for documentation and conclusion.

- 23/1178/Ful, Hendy Wind Farm, Revision of access track between Turbines 5 & 6, surface water management plan. *(Cllr Lawrence left the room 2030 hrs returning 2040hrs)*

Resolved to make no adverse comments.

Proposed Cllr Duggan, unanimous.

PD/042/23 Community Projects/Issues:

- **Community Church Seat**

- Councillors were informed that Cllr Lawrence took delivery and installed the seat in the graveyard in Penybont. Picture available to be seen on web site.

- **Defibrillator Courses-** the Clark had found a company who would lay on a course for £350 for 12 persons. CC Morgan suggested contacting St Johns at Llandrindod Wells where the restricted numbers attending would be far greater than the quote. Clerk to make enquiries.

- **Community Hall Broadband-** Councillors were disappointed by the response from the hall to their request.

- **Speed Signs to 20MPH-** Clerk advised that their community electric signs were capable of being adjusted when the areas of 20mph were known.

- **Speed Signs footings unsafe for ladders-** Cllrs will together put slabs or make safe the areas, together with a footpath sign at Llandegley.

- **The Pales-** Cllr Turner informed the council that the Pales had now been acquired by Addoldai a Church Charity for redundant chapels of non-conformists' churches in Wales. He suggested that this council would benefit from hearing from the new owners.

PD/043/23 One Voice Wales

Clerk published the last minutes of OVW and suggested that until a permanent member was found, councillors would request the clerk to respond to matters.

PD/044/23 Finance

14/7/23	Recycled Furniture	Community Bench Seat	£408.00*
1/8/23	Mr G Evans	½ year salary	£1117.50**
1/8/23	Mr G Evans	½ year home costs	£156.00
19/8/23	Mr G Evans	Land Registry Search	£39.90
*=VAT to be reclaimed **= Liable to PAYE			

Proposed to pay Cllr Duggan unanimous.

- Bank reconciliation reports submitted.

PD/045/23

Correspondence

Nil

PD/046/23 Public Discussion

- Mr Hulse brought to the council attention matters relating to speed signs and public footpaths, dealt with by above entry.
- Ms Jill Jenkins brought to the attention of the council, the bridge at the rear of Sevens Arms, maybe attracting persons throwing rubbish into the river. Councillors agreed to monitor the matter.

PD/047/23 Date of Next Meeting at Penybont Community Hall 14th November 7.30pm- Hybrid available.



From: Penybont District <penybont.district@hotmail.co.uk>

Sent: Thursday, August 17, 2023 11:26 AM

To: Rights of Way <rights.of.way@powys.gov.uk>

Subject: Penybont Common Land

You don't often get email from penybont.district@hotmail.co.uk. [Learn why this is important](#)

A complaint was recently received by the council in relation to the appropriation of 'Common Land', and cultivation of that land for domestic pleasure.

I understand that this part of the land has been subject to much anxiety in the village for a great number of years. However, this matter has happened in recent times.

Having looked into this matter for the council, I have advised them that it is not a matter they can lawfully become involved with. I have been told the 'common' land is in the ownership of a person not resident in the village and I therefore have no way of forwarding this issue onto her.

I am told that your department is or may have had some dealings with other issues.

I have attached the 'land registry' search for the exact location, that being: 20' outside the front curtilage of The Manse, junction with A44. This has been cultivated with small bushes/garden and a parking area.

I would be grateful for any advice you could give the council.

From: Claire Lewis <claire.lewis@powys.gov.uk>

Sent: Friday, August 18, 2023 5:14 PM

To: penybont.district@hotmail.co.uk

Subject: FW: Penybont Common Land

Dear Geraint

I attach a copy of the Rhos Swydd register map as confirmation of the extent of common land registered in Penybont under the Commons Registration Act 1965.

In relation to its ownership, regrettably, the register does not show who the true owner of the common is. As some background, the ownership section of the register of common land is not conclusive evidence of legal title. A registered title at HM Land Registry supersedes an ownership entry in the common land register. A claim to ownership of Rhos Swydd common was made by J A C Baron Ormathwaite in 1967 however we've been informed that his successors in title have been unable to prove ownership of the land at HM Land Registry and given this have now written to us to relinquish their claim to ownership of the land.

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Commons Act 2006

[UK Public General Acts](#) [2006 c. 26](#) [Part 4](#) [Intervention powers](#) [Section 45](#)

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Changes over time for: Section 45



01/10/2006

Changes to legislation: There are currently no known outstanding effects for the Commons Act 2006, Section 45.



45 Powers of local authorities over unclaimed land

- (1) This section applies where—
- (a) land is registered as common land or a town or village green;

- (b) no person is registered in the register of title as the owner of the land; and
- (c) it appears to a local authority in whose area the land or any part of it is situated that the owner cannot be identified.

(2) The local authority may—

- (a) take any steps to protect the land against unlawful interference that could be taken by an owner in possession of the land; and
- (b) institute proceedings against any person for any offence committed in respect of the land (but without prejudice to any power exercisable apart from this section).

(3) In this section "local authority" means—

- (a) a county, district or parish council in England;
- (b) a London borough council; and
- (c) a county, county borough or community council in Wales.

Commencement Information

11 [S. 45](#) wholly in force at 6.9.2007; [s. 45](#) not in force at Royal Assent see [s. 56\(1\)](#); [s. 45](#) in force for E. at 1.10.2006 by [S.I. 2006/2504](#), [art. 2\(a\)](#) (with [art. 3](#)); [s. 45](#) in force for W. at 6.9.2007 by [S.I. 2007/2386](#), [art. 3](#) (with modifications (temp.) in [art. 4\(4\)](#).)

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However, your Council may be interested to learn that Section 45 of the Commons Act 2006 does allow community councils to take steps to protect common land in their area against unlawful interference if the owner cannot be identified.

I have attached guidance notes around carrying out 'restricted works' on common land. Common land does benefit from a high degree of legal protection. Under section 38 of the Commons Act 2006, any work that may impede or prevent access to, or over the land must have prior consent from the Welsh Ministers. An application would be made via the former Planning Inspectorate, now known as PEDW. Their details can be found at <https://gov.wales/planning-and-environment-decisions-wales>

It is also worth me noting that section 34 of the Road Traffic 1988 states that it is an offence to drive on common land without lawful authority, except within 15 yards of a road in order to park on that land.

I hope the above is of assistance.

Cofion Cynnes/ Kind Regards

Claire Lewis

Swyddog Cynorthwyol Cofrestru Tir Comin a Mapiau Diffiniol, Cyngor Sir Powys

Assistant Commons Registration and Definitive Map Officer, Powys County Council

Ffon/Tel: 01597 827625

Croeso i chi gysylltu â ni yn Gymraeg. Byddwn yn ymateb yn Gymraeg, heb oedi.

You are welcome to contact us in Welsh. We will respond in Welsh, without delay.

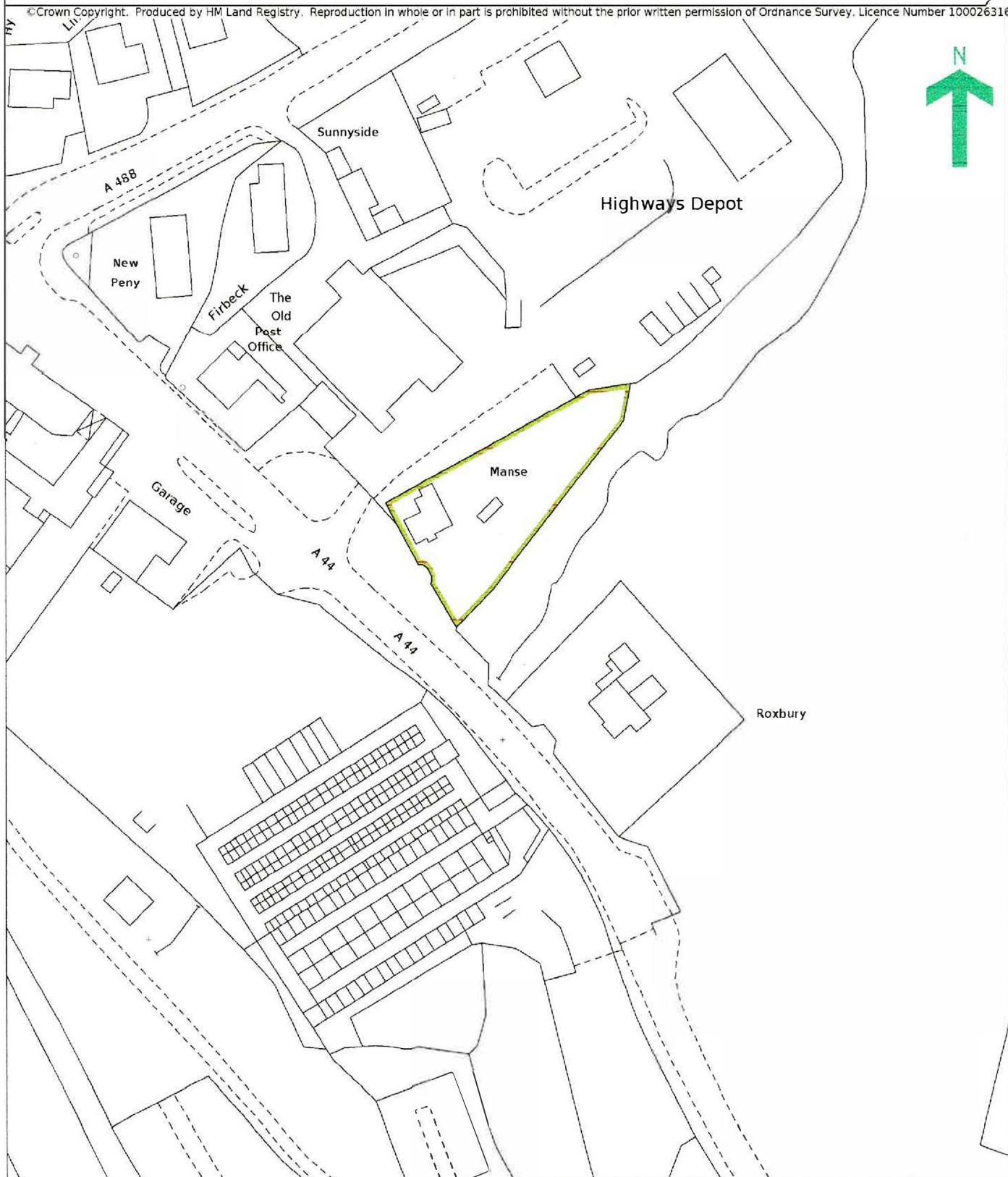
Mae Gwasanaethau Cefn Gwlad a'r Gwasanaeth Hamdden Awyr Agored yn prosesu'ch data personol er mwyn bodloni ein dyletswyddau statudol, ein pwerau a'n cyfrifoldebau mewn perthynas â hawliau tramwy cyhoeddus a'r canlynol: Y Map Diffiniol, Y Gofrestr Tir Comin, parciau, lleoedd chwarae, a'r lleoedd agored rydym yn eu rheoli. Pe ddymunech wybod mwy am sut rydym yn defnyddio data personol, ewch i: <https://cy.powys.gov.uk/article/3793/Gwasanaethau-Cefn-Gwlad--Rhybudd-Preifatrwydd>

HM Land Registry
Official copy of
title plan

Title number **CYM352545**
Ordnance Survey map reference **SO1164SE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Powys**



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ORDNANCE SURVEY

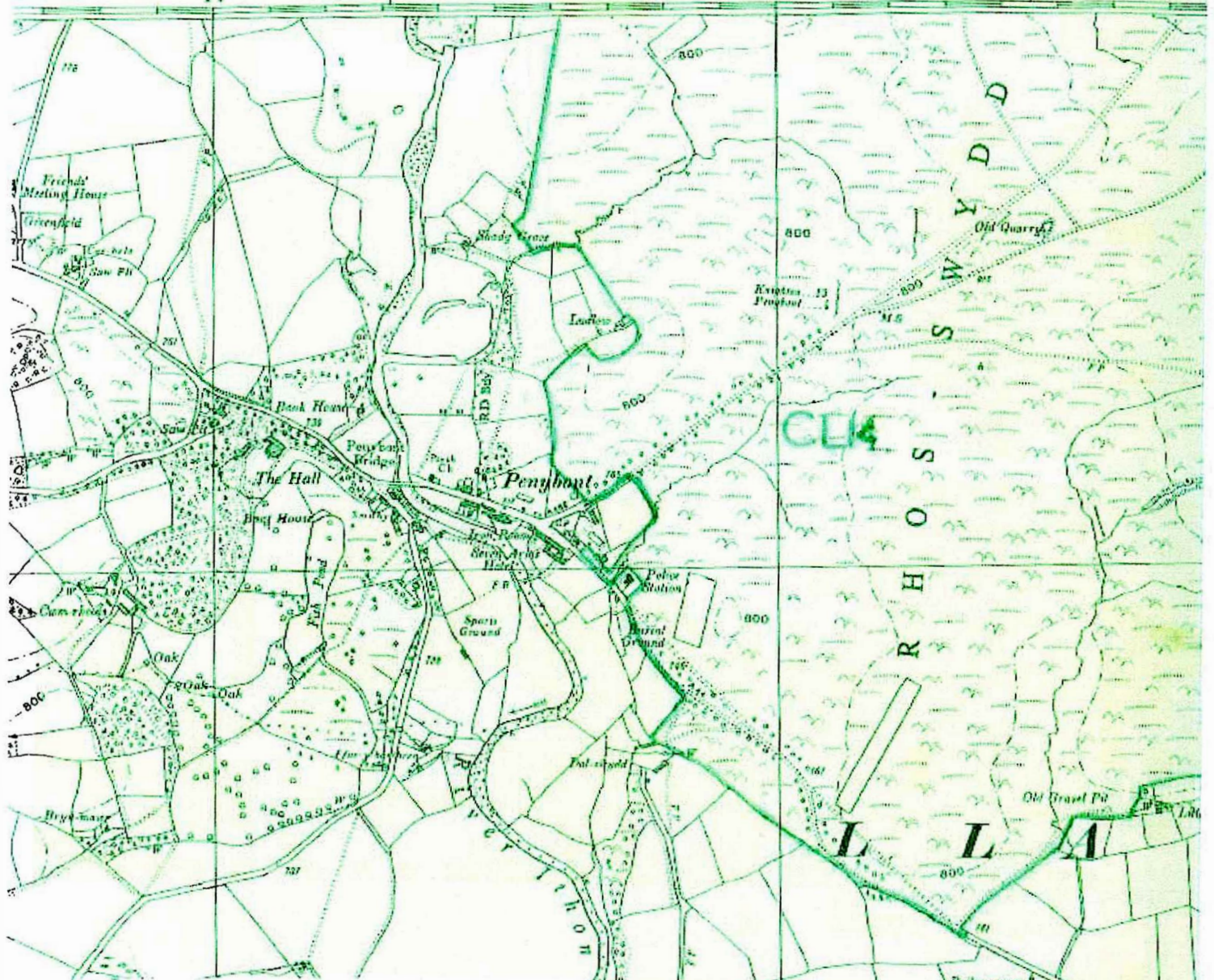
Scale 1:10,560 or 6 Inches to a Mile

RADNORSHIRE
BRECON AND RADNOR CO. CONST.

LLANDADARNAFAWR PH

11

12



Extract from Commons Registration Register Map

Sheet No. **SO16SW**

Unit No. **REL14**



Land Removed from Registration



Common Land Boundary



Ownership or Grazier Boundary

10. Newlfraint / Goron. Cedwir pob hawl 100025371 (2023)

10. Newlfraint / Goron. Cedwir pob hawl 100025371 (2023)

Ni ddylid gwneud unrhyw gopiau ychwanegol heb ganiatâd y Cyngor

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corrected boundaries 2023



APPENDIX 'B'

Good Afternoon,

Thank you for your email concerning the above which has been forwarded to myself. Gwyn has now left the authority who you were previously corresponding with.

An Enforcement Notice was served by Gwyn previously on the owners of the site. However, the Enforcement Notice was appealed and was upheld by the planning inspectorate. I have attached a copy of the decision for your information.

Given the inspectorates decision on this matter, no further action is being undertaken unless the situation doesn't materially change. This will require a new enforcement case to be registered with the authority.

Regards

Richard Kier Edwards MSc BSc

Uwch Swyddog Cynllunio / Senior Planning Officer

Cyngor Sir Powys / Powys County Council

Ffon / Tel: 01597 827218

E-bost / E-mail: richard.edwards2@powys.gov.uk

County Hall, Spa Road East, Llandrindod Wells, LD1 5LG

*Croeso i chi gysylltu â ni yn Gymraeg. Byddwn yn ymateb yn Gymraeg, heb oedi.
You are welcome to contact us in Welsh. We will respond in Welsh, without delay.*



Appeal Decision

By **A L McCooey BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 18/05/2023

Appeal reference: CAS-02194-Q2H8M9

Site address: Land Adjacent to Penybont Bridge, Penybont, Llandrindod Wells, Powys, LD1 5TY

- 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 Ray King and Ms Sharon Mayglothling against an enforcement notice issued by Powys County Council.
 - The enforcement notice, numbered USE/21/0246, was issued on 6 September 2022.
 - The breach of planning control as alleged in the notice is: on the land without planning permission: the erection of a cabin and use for residential (C3) purposes in the approximate location of a red cross marked on the attached plan and the erection of outbuildings/structures and use for storage purposes in the approximate location of a blue cross marked on the attached plan.
 - The requirements of the notice are to:
 - (i) Cease the use of the cabin as shown in the approximate location of a red cross marked on the attached plan for residential (C3) purposes and remove from the land the cabin and all associated temporary structures and possessions brought onto the land for the purpose of that use.
 - (ii) Remove from the land the outbuildings/structures as shown in the approximate location of a blue cross marked on the attached plan (you may keep on the land any equipment or tools which are used solely in connection with the construction of the dwelling house on the land, granted planning permission under application reference: P/2008/0161).
 - The period for compliance with the requirements is:
 - (i) Nine months after this notice takes effect.
 - (ii) Nine months after this notice takes effect.
 - The appeal was made on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
 - A site visit was made by the Inspector on 14 April 2023.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Background and Procedural Matters

2. The site has a history of planning applications and approvals dating back to 2002. Of most relevance to the current appeal is planning permission P/2008/0161 for a split-level dwelling on the site. The Local Planning Authority accepts that this planning permission was implemented and remains extant.
3. The appeal site is located within the settlement limits for Penybont, as defined by the Powys Local Development Plan. The site is bounded by the A44, the River Ithon and an unclassified highway. Excavations have taken place on the site and temporary fencing has been erected. A parking area and lawn have also been provided. The timber clad cabin has a low ridged roof and is in two parts. It sits on timber posts and has a veranda and decking to the front and side. There is a timber clad building at a higher level near the access.

Reasons

The appeal on grounds (b) and (c)

4. There is clear acceptance that the development alleged in the EN has occurred. The appellants' argument is that the development is permitted development. In these circumstances, I conclude that the correct ground of appeal is ground (c) and the appeal on ground (b) fails.
5. Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 [the Order] grants planning permission for the classes of development described as permitted development in Schedule 2 of the Order. The appellants refer to Part 4 Class A Temporary Buildings and Uses of Schedule 2 of the Order in support of their case. This allows for: The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land subject to planning permission having been granted for the operations. It is a condition that any building structure or works permitted by this Class are removed and the land reinstated when the operations have been carried out.
6. The appellants' statement also refers to permitted development rights under Part 5 of the Order in relation to use as a caravan site in the circumstances referred to in paragraph A.2. These circumstances are those specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 [the 1960 Act]. These paragraphs relate to cases where a caravan site licence is not required. The appellants refer to paragraph 9 of Schedule 1, which states:

A site licence shall not be required for the use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out (being operations for the carrying out of which permission under Part III of the Act of 1947 has, if required, been granted) if that use is for the accommodation of a person or persons employed in connection with the said operations.

7. The appellants argue that the caravan is required for a temporary period and once the new dwelling approved under planning permission P/2008/0161 is completed that it will be removed. Reference is made to the response of the Local Planning Authority to a pre-planning application enquiry regarding 2 dwellings on the site, dated 18 April 2019 (Ref: 19/0040/PRE). Under the heading permitted development rights, the Local Planning Authority refers to Part 4 Class A of Schedule 2 of the Order in full. The letter then states: 'In light of the above it is considered that temporary accommodation is allowed, however once the development is complete the temporary structures are to be removed.'

8. Having considered Parts 4 and 5 of the Order in the light of the submissions, I consider that the most relevant provision is Part 5 Use as a Caravan Site, as Part 5 specifically refers to use as of a caravan for accommodation whilst employed on operations that have received planning permission.
9. The Local Planning Authority has not submitted a statement of case or any other comments. The questionnaire response included the Council's enforcement report seeking authority to issue the EN, which does not consider the above permitted development rights or refer to the Local Planning Authority letter of 18 April 2019. The report confirms that a Planning Contravention Notice was served. The appellant's responses to this notice stated that the cabin has been on the site since April 2019 and in use for residential purposes since November 2020. The appeal statement explains that the structures enable the appellants to live on the site whilst working on the site and that this has been confirmed to be permitted development by the Local Planning Authority in writing and verbally.
10. It appears that the cabin is the appellants only residence. It is sited outside the approved siting for the dwelling. Excavation and re-profiling works have taken place on the land to create a platform for the split-level dwelling. Hardcore has been deposited and pegs placed to mark the position of foundations. Some tools were also present and there are secure storage facilities. Whilst the activity on the site has been low key to date, the appellants indicate that there have been ongoing discussions with the Local Planning Authority leading to the submission of planning applications for alternative schemes on the site. I note that the final application was withdrawn in January 2021 and the appellants have relatively recently decided to abandon plans for any alternative and committed to go ahead with the approved scheme under planning permission P/2008/0161.
11. The Council has not supplied any evidence to rebut the appellant's contentions regarding permitted development rights. No consideration of the extent or duration of the ongoing construction activities on the site has been provided by the Local Planning Authority. The evidence is that the accommodation is necessary in connection with building or operations being carried out on the site in connection with an extant planning permission. Of course, if it subsequently transpires that there is no justification for siting the caravan, then the Local Planning Authority would be in position to re-consider whether permitted development rights apply and if necessary, take further enforcement action.
12. The other issue to be considered is whether the cabin meets the statutory definition of a caravan in the 1960 Act. The Council argues that it does not because its construction and design would require significant dismantling in order to move it, therefore failing the test of transportability. I note that the legal definition of a caravan in the 1960 Act, (as amended in the Caravan Sites Act 1968) includes twin unit mobile homes. The appellants' evidence is that the cabin came in two sections that were joined together on site with clamps and bolts and sit onto a wooden chassis. The cabin is not anchored to the ground and could be lifted onto a vehicle to be transported from the site. The timber cladding does not interfere with this in any way or imply any intended permanence. I consider that the dimensions and transportability criteria referred to in the relevant legislation are also met. The Council has not disputed the appellants' submissions. In this evidential context and from my observations on site, I conclude that it appears that the cabin would fall within the definition of a caravan in the relevant legislation.
13. The relevant provisions of the Order allow for a caravan to be provided as temporary accommodation on the site during construction of the dwelling. For the reasons given above, I conclude that the appeal on ground (c) should succeed. As the appeal succeeds on ground (c), there is no need to consider the appeal on ground (f).

Other Matters

14. The Council's enforcement report addresses whether planning permission should be granted for the development. In response, the appellants have provided a great deal of evidence on the visual impact of the development, compliance with the Local Development Plan policy, flooding and heritage impacts and related matters. Comparisons with the development approved by planning permission P/2008/0161 are also made. The appellants also suggest that a condition could be attached requiring the removal of the structures within 6 months of the first occupation of the dwelling. All of this evidence would be relevant to an appeal on ground (a). However, as no such appeal has been made in this case (or fee paid), this evidence is not pertinent to my consideration.
15. The comments made by the appellants in relation to the Local Planning Authority's enforcement policy and reasons for issuing the EN are also not relevant to the appeal that is before me, which is based on grounds (c) and (f).

Conclusion

16. Having taken all relevant matters raised into account, I conclude that the appeal should succeed on ground (c) for the reasons given above. The EN is therefore quashed.

A L McCooey

INSPECTOR