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## Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 12/5/20

gan Hywel Wyn Jones BA(Hons) BTP  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 09.06.2020

## Appeal Decision

Site visit made on 12/5/20

by Hywel Wyn Jones BA(Hons) BTP  
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 09.06.2020

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**Appeal Ref: APP/D6820/X/19/3239497**

**Site address: Y Beudy Bach, Tynllain, Ciliau Aeron, Lampeter, SA48 7PR**

**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 in part to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mrs Jane Field against the decision of Ceredigion County Council.
  - The application (ref: A190079), dated 30 January 2019, was refused in part by the Council by notice dated 23 April 2019.
  - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is the use of the building as a dwelling without compliance with occupancy restrictions imposed by planning conditions.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, and whether a certificate should be granted.

### Preliminary Matter

3. The subject application was approved in part by the Council insofar as it relates to building works that had deviated from the approved drawings. My consideration of the appeal is limited to the matter refused by the Council as set out in the above banner heading.

### Reasons

4. Planning permission (ref: A050070) was granted by the Council for the 'change of use of redundant agricultural building to provide annexe to existing building' on 31 January 2006. In addition to the standard time limit condition the permission imposed 5 other conditions. Nos 2 to 5 sought to control the use/occupation of the building and, notwithstanding the description of the development, require that, on cessation of the use of the building as an annexe to Tynllain, it be used as a holiday unit. I shall return to these and condition No. 6. The permission is also subject to a legal
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agreement under section 106 of the above Act which limits the use of the building to the occupation of a named son of the appellant and thereafter to use as holiday accommodation.

5. In support of her claim that the planning permission has not been implemented, the appellant relies on 2 considerations. Firstly, that the permission was subject to a condition precedent, specifically condition 6. On the undisputed fact that its requirements were not discharged prior to work commencing the appellant contends that the permission was incapable of being implemented. Secondly, that even if the permission was capable of being lawfully commenced, the works that were undertaken deviated to such an extent from those approved that they did not constitute its implementation. The Council agrees that these are the two critical considerations. I concur, and address each in turn.

#### *Condition Precedent*

6. Condition 6 states that before any development commences a schedule of materials and finishes proposed to be used shall be submitted to the Local Planning Authority and that, where so required a sample panel, shall be provided. None of the requirements of the condition has been complied with.
7. There is no dispute that case law has established that undertaking work without compliance with a true condition precedent results in work which is not authorised by the permission rather than constituting a breach of that condition. It is also agreed that the Courts have identified two tests to establishing a condition precedent. There is no argument that the first test, that the condition must be prohibitive until its requirements are satisfied, is met.
8. The second test, as described in Greyfort<sup>1</sup>, is whether the condition is of such importance that it goes to the heart of the permission. A distinction is to be drawn between a fundamental matter and one that is merely a minor component. The Council explains that in this case the treatment of external materials was not a significant matter given that the extent of the works were relatively minor, the building was of a modest architectural merit and its limited visibility in a landscape which is not sensitive.
9. I note the approved plans and application form provided details of external materials. The appellant suggests that the condition was in response to inconsistencies between these details. This reinforces my view that the condition was not fundamental to the permission, but rather was concerned with relatively minor matters of detail.
10. For this reason, I find that condition 6 is not a true condition precedent. I also note that the condition in question does not contain an implementation clause in the event that acceptable details had been provided. Thus, as it is incapable of having legal effect, this is another reason for finding that the condition does not go to the heart of the permission.

#### *Deviation from drawings*

11. The drawing, ref: 942 03 B, approved by the planning permission is annotated as Rev A, dated 17/1/05. The Council has produced Revision C of the same drawing, dated 3 April 2006 and stamped approved on 5 April 2006 for Building Regulations which showed the same proposed works with construction details added. The conversion works deviated from these approved drawings in several ways, most notably: part of

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<sup>1</sup> Greyfort Properties Ltd v SSCLG [2010] EWHC 3455 (Admin)

the main roof is slightly higher creating a step in the ridgeline; a front projecting extension has a gable roof rather than a lean-to roof; various alterations to doors and fenestration, mostly substituting doors with windows and vice versa; and changes in external materials. These deviations are highlighted in red on a drawing, annotated as Revision B to 942 03, submitted by the appellant. The appellant explains that the works were undertaken by her sons who had no previous experience of this type of building work and did not appreciate the importance of adhering to the approved drawings.

12. The Council broadly agrees with the extent of the deviation from the plans and opines that the works undertaken do not give rise to any planning impact and are acceptable. In any event, on the basis that they were undertaken more than 4 years prior, it has issued an LDC for these works.
13. The extent of the deviation from the plans certainly materially alters the appearance of the building, albeit there is no reason to consider the differences to be objectionable. However, it is not only the degree to which the works differ from the approved scheme that is relevant to this main issue. The Commercial Land case<sup>2</sup> established that the degree of commonality is also relevant, as is the degree to which the works are substantially usable.
14. It is clear that when the works commenced to convert the building it was in response to the grant of permission. Sworn statements from the appellant's sons attest to the fact that the work was undertaken under the guidance of the Council's Building Control Officer who suggested changes to the scheme, which was understood by them to be within the terms of the approved project. The works provided the accommodation that was identified in the approved drawings. Most of the openings are in similar positions to the approved scheme. Whilst the appellant states that the extent of the rebuilding of walls exceeded that approved, the approved drawing showed sections of cavity walls in addition to the traditional stone walls. The finished scheme is readily recognisable as the implementation of the planning permission despite the identified differences. The permission was commenced in May 2006 and was thereafter implemented through the completion of the works.
15. In conclusion I find that, in the absence of any conditions precedent, that the permission was capable of being implemented. The works were commenced within the 5-year lifespan of the permission, and despite deviations in detailed aspects of the works implemented compared to the approved drawings, I find that the permission was implemented. Accordingly, the conditions it imposed to control the occupancy of the building have come into effect.
16. As I have already explained one of the conditions (No. 2) requires that when the use as an annexe ceases it shall "revert" to being occupied as a holiday unit. Setting aside that the reference to 'revert' is inappropriate in the circumstances where no such holiday unit use had been undertaken, as the annexe use appears not to have commenced its requirement in relation to occupation as a holiday unit may not bite. As condition 3 begins 'When used for holiday purposes ...', it is not clear that its provisions bite as such a use has not been undertaken. However, conditions 4 and 5 are clear. They begin 'The holiday unit hereby granted full planning permission ...'. and specify controls over the use - No. 4 prevents use as a full-time self-contained unit and 5 prevents use as a main residence. Thus, notwithstanding any confusion

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<sup>2</sup> Commercial Land Ltd v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 1264 Admin

over the effect of conditions 2 and 3, the suite of conditions, whilst permitting the use of the building as a residential unit, prevent its use as a main residence.

17. There is no dispute that the conditions were breached at the time of first occupation of the building. That occupation began on 9 June 2009 when Mr Derrick Field moved from Devon to occupy the building on its completion as his dwelling, separate from the neighbouring Tynllain, until 1 August 2015. The building remained empty from that time until 1 March 2016 when the present occupiers moved in.
18. At the time that the building became vacant the breach of the occupancy conditions ceased. No enforcement action could have been taken during that period which lasted some 7 months. I consider this to be a significant break in the unlawful use of the building. It means that a new breach of the conditions began when the current occupiers took up residence. As the case of *Nicholson*<sup>3</sup> established, a further 10 years of non-compliance would be required to achieve immunity as the required period for immunity under section 171B(3) of the 1990 Act, has not occurred.

### **Conclusion**

19. For the reasons given above I conclude on the evidence presented that the Council's decision not to grant an LDC was well-founded and that the appeal should be dismissed.

*Hywel Wyn Jones*

INSPECTOR

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<sup>3</sup> *Nicholson v Secretary of State for the Environment & Maldon District Council* (1998) 76 P&CR 191



## Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 12/5/20

gan Hywel Wyn Jones BA (Anrhydedd)  
BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru  
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## Appeal Decision

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an Inspector appointed by the Welsh Ministers  
Date: 09.06.2020

Cyfeiriad y safle: APP/D6820/X/19/3239497

Cyfeiriad y safle: Y Beudy Bach, Tynllain, Ciliau Aeron, Llanbedr Pont Steffan,  
SA48 7PR

**Mae Gweinidogion Cymru wedi trosglwyddo'r awdurdod i benderfynu ar yr apêl hon i mi fel yr Arolygydd penodedig.**

- Gwneir yr apêl o dan adran 195 Deddf Cynllunio Gwlad a Thref 1990, fel y'i diwygiwyd gan Ddeddf Cynllunio a Digolledu 1991, yn erbyn gwrthod rhoi tystysgrif defnydd neu ddatblygiad cyfreithlon (LDC) yn rhannol.
- Gwneir yr apêl gan Mrs Jane Field yn erbyn penderfyniad Cyngor Sir Ceredigion.
- Gwrthodwyd y cais (Cyf: A190079), dyddiedig 30 Ionawr 2019, yn rhannol gan y Cyngor drwy hysbysiad, dyddiedig 23 Ebrill 2019.
- Gwnaed y cais o dan adran 191(1)(c) Deddf Cynllunio Gwlad a Thref 1990, fel y'i diwygiwyd.
- Y defnydd y ceisir tystysgrif defnydd neu ddatblygiad cyfreithiol amdano yw defnyddio'r adeilad fel annedd heb gydymffurfio â chyfyngiadau deiliadaeth a bennir gan amodau cynllunio.

### Penderfyniad

- Gwrthodir yr apêl.

### Prif fater

- Y prif fater yw p'un a oedd sail dda i benderfyniad y Cyngor i wrthod rhoi tystysgrif defnydd neu ddatblygiad cyfreithlon, a ph'un a dylid rhoi tystysgrif ai peidio.

### Mater rhagarweiniol

- Cymeradwywyd y cais yn rhannol gan y Cyngor i'r graddau ag y mae'n ymwneud â gwaith adeiladu a oedd wedi gwro oddi wrth y lluniadau cymeradwy. Mae fy ystyriaeth o'r apêl wedi'i chyfyngu i'r mater a wrthodwyd gan y Cyngor, fel yr amlinellir yn y pennawd uchod.

### Rhesymau

- Rhodddwyd caniatâd cynllunio (Cyf: A050070) gan y Cyngor i 'newid defnydd adeilad amaethyddol segur i ddarparu anecs i'r adeilad cyfredol' ar 31 Ionawr 2006. Yn ogystal â'r amod safonol yn ymwneud â therfyn amser, roedd y caniatâd yn gosod 5 amod arall. Roedd rhifau 2 a 5 yn ceisio rheoli defnydd/deiliadaeth yr adeilad ac, er gwaethaf y disgrifiad o'r datblygiad, yn mynnu, ar ôl i'r defnydd o'r adeilad fel anecs i Tynllain ddod i ben, y dylid ei ddefnyddio fel uned gwyliau.

5. I gefnogi ei honiad nad yw'r caniatâd cynllunio wedi'i roi ar waith, mae'r apelydd yn dibynnu ar ddwy ystyriaeth. Yn gyntaf, bod y caniatâd yn ddarostyngedig i rag-amod, sef amod 6 yn benodol. Yn ôl y ffaith ddiarnheuol na chyflawnwyd ei ofynion cyn dechrau'r gwaith, mae'r apelydd yn dadlau nad oedd modd rhoi'r caniatâd ar waith. Yn ail, hyd yn oed pe byddai modd rhoi'r caniatâd ar waith yn gyfreithlon, roedd y gwaith a gyflawnwyd yn gwyro oddi wrth y gwaith cymeradwy i'r fath raddau fel nad oedd yn gyfystyr â rhoi'r caniatâd ar waith. Mae'r Cyngor yn cytuno mai dyma'r ddwy ystyriaeth hanfodol. Rwy'n cytuno ac af i'r afael â'r ddwy ohonynt yn eu tro.

*Rhag-amod*

6. Dywed amod 6, cyn i unrhyw ddatblygu ddechrau, y dylid cyflwyno rhestr o'r deunyddiau a'r gorffeniadau y bwriedir eu defnyddio i'r Awdurdod Cynllunio Lleol ac y caiff panel enghreifftiol ei ddarparu, yn ôl yr angen. Ni chydymffurfiwyd ag unrhyw un o ofynion yr amod.
7. Nid oes unrhyw anghydfod bod cyfraith achosion wedi cadarnhau bod cyflawni gwaith nad yw'n cydymffurfio â rhag-amod wirioneddol, yn arwain at waith nad yw wedi'i awdurdodi gan y caniatâd, yn hytrach nag yn torri'r amod honno. Cytunir hefyd bod y Llysoedd wedi nodi dau brawf i sefydlu rhag-amod. Nid oes unrhyw ddadl bod y prawf cyntaf, sef bod rhaid i'r amod fod yn waharddol nes y bodloni ei gofynion, wedi'i fodloni.
8. Yr ail brawf, fel y disgrifir yn Greyfort<sup>1</sup>, yw p'un a yw'r amod mor bwysig fel ei bod wrth wraidd y caniatâd. Rhaid gwahaniaethu rhwng mater sylfaenol ac un sy'n fân elfen yn unig. Mae'r Cyngor yn esbonio, yn yr achos hwn, nad oedd triniaeth y deunyddiau allanol yn fater arwyddocaol, o ystyried bod maint y gwaith yn gymharol fach, bod yr adeilad o werth pensaernïol diymhongar, a'i welededd cyfyngedig mewn tirwedd nad yw'n sensitif.
9. Nodaf fod y cynlluniau cymeradwy a'r ffurflen gais yn rhoi manylion am y deunyddiau allanol. Mae'r apelydd yn awgrymu bod yr amod yn ymateb i anghysondebau rhwng y manylion hynny. Mae hyn yn atgyfnerthu fy marn nad oedd yr amod yn rhan sylfaenol o'r caniatâd ond, yn hytrach, ei bod yn ymwneud â materion cymharol ddibwys yn ymwneud â manylion.
10. Am y rheswm hwn, deuaif i'r casgliad nad yw amod 6 yn rhag-amod gywir. Nodaf hefyd nad yw'r amod dan sylw yn cynnwys cymal gweithredu pe byddai manylion derbyniol wedi'u darparu. Felly, gan nad oes modd iddi gael effaith gyfreithiol, mae hynny'n rheswm arall i ddod i'r casgliad nad yw'r amod wrth wraidd y caniatâd.

*Gwyro oddi wrth y lluniadau*

11. Mae'r lluniad, Cyf: 942 03 B, a gymeradwywyd gan y caniatâd cynllunio, wedi'i anodi fel Adolygiad A, dyddiedig 17/1/05. Mae'r Cyngor wedi llunio Adolygiad C o'r un lluniad, dyddiedig 3 Ebrill 2006, â stamp i'w gymeradwyo ar 5 Ebrill 2006 ar gyfer Rheoliadau Adeiladu, a oedd yn dangos yr un gwaith arfaethedig ynghyd â manylion adeiladu. Roedd y gwaith trosi yn gwyro oddi wrth y lluniadau cymeradwy hyn mewn sawl ffordd. Yn fwyaf nodedig, mae rhan o'r brif do ychydig yn uwch, gan greu gris yng nghrib y to; mae gan estyniad i'r tu blaen do talcen yn hytrach na tho ar oledd; newidiadau amrywiol i ddrysau a ffenestri, sef amnewid drysau am ffenestri ac i'r gwrthwyneb, gan mwyaf; a newidiadau i'r deunyddiau allanol. Caiff y gwyradau hyn eu hamlygu'n goch ar luniad sydd wedi'i anodi Adolygiad B i 942 03, a gyflwynwyd

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<sup>1</sup> Greyfort Properties Ltd v SSCLG [2010] EWHC 3455 (Admin)

gan yr apelydd. Mae'r apelydd yn esbonio bod y gwaith wedi'i gwblhau gan ei meibion, nad oedd ganddynt unrhyw brofiad blaenorol o'r math hwn o waith adeiladu ac nad oeddent yn gwerthfawrogi pwysigrwydd cadw at y lluniadau cymeradwy.

12. Mae'r Cyngor yn cytuno'n â graddau'r gwyro oddi wrth y cynlluniau, ar y cyfan, ac yn tybio nad yw'r gwaith a gwblhawyd yn arwain at unrhyw effaith gynllunio a'i fod yn dderbyniol. Beth bynnag, ar y sail yr ymgwymerwyd â'r gwaith dros 4 blynedd ynghynt, mae wedi cyhoeddi tystysgrif defnydd neu ddatblygiad cyfreithlon ar gyfer y gwaith hwn.
13. Mae graddau'r gwyrriad oddi wrth y cynlluniau yn sicr yn newid golwg yr adeilad yn sylweddol, er nad oes unrhyw reswm i ystyried bod y gwahaniaethau'n annymunol. Fodd bynnag, nid dyma'r unig ffordd y mae'r gwaith yn wahanol i'r cynllun cymeradwy sy'n berthnasol i'r prif fater hwn. Cadarnhaodd yr achos Tir Masnachol<sup>2</sup> bod graddau'r cyffredinrwydd yn berthnasol hefyd, ynghyd â'r graddau y mae'r gwaith yn sylweddol ddefnyddiadwy.
14. Mae'n amlwg pan ddechreuodd y gwaith i drosi'r adeilad, bod hynny yn ymateb i'r caniatâd cynllunio. Mae datganiadau ar lw gan feibion yr apelydd yn tystio i'r ffaith bod y gwaith wedi'i gwblhau dan arweiniad Swyddog Rheoli Adeiladu'r Cyngor, a awgrymodd newidiadau i'r cynllun, yr oedden nhw ar ddeall eu bod o fewn telerau'r prosiect cymeradwy. Darparodd y gwaith y llety a nodwyd yn y lluniadau cymeradwy. Mae'r rhan fwyaf o'r agoriadau mewn lleoedd tebyg i'r cynllun cymeradwy. Er y dywed yr apelydd bod y gwaith o ailadeiladu waliau wedi mynd y tu hwnt i'r hyn a gymeradwywyd, roedd y lluniad cymeradwy yn dangos rhannau o waliau ceudod, yn ogystal â'r waliau cerrig traddodiadol. Mae'r cynllun gorffenedig yn edrych fel petai wedi rhoi'r caniatâd cynllunio ar waith, er gwaethaf y gwahaniaethau a nodwyd. Dechreuodd y caniatâd cynllunio ym Mai 2006, ac fe'i rhoddwyd ar waith wedi hynny drwy gwblhau'r gwaith.
15. I gloi, deufaf i'r casgliad, yn niffyg unrhyw rag-amod, bod modd rhoi'r caniatâd cynllunio ar waith. Dechreuodd y gwaith cyn pen terfyn amser y caniatâd, sef 5 mlynedd ac, er gwaethaf gwyrriadau oddi wrth agweddau ar fanylion y gwaith a gyflawnwyd o gymharu â'r lluniadau cymeradwy, deufaf i'r casgliad bod y caniatâd wedi'i roi ar waith. Yn unol â hynny, mae'r amodau a bennwyd ganddo i reoli deiliadaeth yr adeilad wedi dod i rym.
16. Fel rwyf wedi esbonio, mae un o'r amodau (Rhif 2) yn mynnu, wedi i'r defnydd fel anecs ddod i ben, dylai "newid yn ôl" i gael ei ddefnyddio fel uned gwyliau. Gan anwybyddu'r ffaith bod y cyfeiriad at 'newid yn ôl' yn amhriodol mewn amgylchiadau lle na fu unrhyw ddefnydd fel uned gwyliau, gan yr ymddengys nad yw'r defnydd fel anecs wedi dechrau, mae'n bosibl na fydd ei ofynion mewn perthynas â deiliadaeth fel uned gwyliau yn cydio. Gan fod amod 3 yn dechrau 'Pan gaiff ei ddefnyddio at ddibenion gwyliau...', nid yw'n glir bod ei darpariaethau'n cydio, gan nad yw'r defnydd hwnnw wedi'i roi ar waith. Fodd bynnag, mae amodau 4 a 5 yn glir. Maent yn dechrau 'Mae'r uned gwyliau y rhoddir caniatâd cynllunio llawn iddi drwy hyn...', ac yn manylu ar reolaethau yn ymwneud â'r defnydd – mae rhif 4 yn atal ei ddefnyddio fel uned hunangynhwysol amser llawn, ac mae rhif 5 yn atal ei ddefnyddio fel prif gartref.
17. Nid oes unrhyw ddadl ynghylch y ffaith y torrwyd yr amodau adeg deiliadaeth gyntaf yr adeilad. Dechreuodd y deiliadaeth honno ar 9 Mehefin 2009, pan symudodd Mr Derrick Field o Ddyfnaint i fyw yn yr adeilad fel ei gartref ar ôl ei gwblhau, ar wahân i

<sup>2</sup> Commercial Land Ltd v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 1264 Admin

eiddo cyfagos Tynllain, hyd at 1 Awst 2015. Roedd yr adeilad yn wag o'r adeg honno tan 1 Mawrth 2016, pan symudodd y deiliaid presennol yno.

18. Pan ddaeth yr adeilad yn wag, daeth yr achos o dorri'r amodau deiliadaeth i ben. Ni fyddai wedi bod yn bosibl cymryd unrhyw gamau gorfodi yn ystod y cyfnod hwnnw, a barodd tua 7 mis. Rwyf o'r farn bod hwn yn doriad sylweddol yn nefnydd anghyfreithlon yr adeilad. Mae'n golygu y dechreuodd achos newydd o dorri amodau pan symudodd y deiliaid presennol i'r adeilad. Fel y sefydlodd achos Nicholson, byddai angen 10 mlynedd arall o ddiffyg cydymffurfio i gyflawni breintryddid, gan nad yw'r cyfnod gofynnol ar gyfer breintryddid o dan adran 171B(3) Deddf 1990, wedi'i gyrraedd.

### **Casgliad**

19. Am y rhesymau a roddir uchod, deuaif i'r casgliad, yn ôl y dystiolaeth a gyflwynwyd, bod sail dda i benderfyniad y Cyngor i beidio â rhoi tystysgrif defnydd neu ddatblygiad cyfreithlon, ac y dylid gwrthod yr apêl.

*Hywel Wyn Jones*

AROLYGYDD