

Application Reference: LUP/2021/1

Applicant: T.W & Y Owen

Description: Application for a Certificate of Lawfulness for the proposed use of existing workshop as dwellings (C3) at

Site Address: Workshop, Tre Wen, Pen Lon, Newborough



Report of Head of Regulation and Economic Development Service (David Pryce Jones)

Recommendation: Permit

Reason for Reporting to Committee

The applicant is related to a relevant officer. The application has been scrutinised by the Council's Monitoring Officer

Proposal and Site

The application site is occupied by a brick and metal clad building measuring 18m x 9.5m approximately on plan and with a ridge height of just over 6m, which currently houses a joinery business. Planning permission 45C83E granted permission to convert the workshop into three dwellings, two on the ground floor and a single unit on the first floor with external access.

An application to vary the above planning permission (VAR/2020/74) to include two porches was subsequently approved the foundations of these porches have now been constructed under this permission.

Key Issues

Whether planning permission VAR/2020/74 lawfully commenced.

Policies

Joint Local Development Plan

Planning policies are not applicable to the determination of an application for a Certificate of Lawfulness of Proposed Use or Development.

Response to Consultation and Publicity

Cynghorydd Peter Rogers: No observations received.

Cynghorydd Bryan Owen: No observations received.

Cyngor Cymuned Rhosyr Community Council: No observations received.

Legal Services Manager: Offered the following response:

- The applicant had until 12 April to commence development on permission VAR/2020/74;
- On 3 March he dug trenches to form foundations to the porches to the development. Digging trenches for foundations amounts to a material commencement of development under s56;
- Mr Owen confirms that there are no conditions precedent on the permission which requires any approval before the development may commence;
- It appears to me that a physical inspection of the site should be undertaken and that the matters that need determining are as follows:
 - That the trenches have been dug and are in the positions authorised by the permission;
 - That there are no conditions precedent on the permission as Mr Owen claims.

If all is well then I would recommend that the Committee approve the application as it would appear that the burden of proof has been discharged on the balance of probabilities.

The application was advertised by way of notification letters and the publicity period expired on the 01.04.21. No observations have been received at the time of writing.

Relevant Planning History

45C83 Erection of a joinery workshop together with the formation of a vehicular access at Trewen, Penlon, Newborough – Refused 7-9-88

45C83A Erection of a workshop at Tre Wen, Penlon, Newborough – approved 2-8-89 Section 52

45C83B Erection of a shed for the storage of machinery at Tre Wen, Penlon – approved 4-2-2010

45C83C/DEL Application under Section 73 for the removal of condition (05) (workshop shall be used for the benefit of Mr T.W.Owen and when no longer required by him shall be used for the purposes of agriculture) from planning permission reference 45C83A (erection of a workshop)– approved 4/6/2015

45C83D/SCR Screening opinion for the conversion of the existing workshop into three dwellings on land– EIA not required 24/02/16

45C83E - Full application for conversion of the existing workshop into three dwellings Permitted 06/04/2016

45C83F/DIS - Application to discharge condition (05) (details of windows and stairs) of planning permission 45C83E (change of use of carpenter's workshop into 3 dwellings Condition discharged 20/03/2017.

SCR/2021/6 Screening opinion under Section 73 for the variation of condition (06) of planning permission reference 45C83E (conversion of the existing workshop into three dwellings) so as to allow the addition of 2 porches No EIA required 27.01.21.

VAR/2020/74 - Application under Section 73 for the variation of condition (06) of planning permission reference 45C83E (conversion of the existing workshop into three dwellings) so as to allow the addition of 2 porches Permit 22.02.21.

Main Planning Considerations

This is an application for a Certificate of Lawfulness of Proposed Use or Development "CLPUD". The Local Planning Authority's considerations in relation to an application for a CLPUD are based solely on an assessment of the evidence submitted by the applicant to determine whether the development subject to the application is lawful under the planning act.

In the case of this application the applicant has sought to demonstrate that the construction of concrete foundations in accordance with the approved plans under planning permission VAR/2020/74 prior to the 12/04/2021 amount to what is termed a material operation under the planning act. If a material operation has lawfully been implemented then this would keep a planning permission VAR/2020/74 extant in perpetuity.

The Legal Services Manager recommends that subject to the foundations having been constructed in the approved position that the application should be approved and a CLPUD granted. A site visit has been undertaken and it is confirmed that the foundations have been constructed in the position as shown on the plans approved under planning permission VAR/2020/74.

Conclusion

As per the advice of the Legal Services Manager the balance of proof has been discharged on the balance of probabilities and the burden of proof has been discharged on the balance of probabilities.

Recommendation

That a Certificate of Lawfulness of Proposed Use or Development is granted for the proposed use of existing workshop as dwellings (C3) as 3 dwellings in accord with planning permission VAR/2020/74.

In addition the Head of Service be authorised to add to, remove or amend/vary any condition(s) before the issuing of the planning permission, providing that such changes do not affect the nature or go to the heart of the permission/development.