

PLANNING COMMITTEE – 13TH MARCH 2013

SUBJECT: ENFORCEMENT REPORT ENF/12/0161 – LAND AND BUILDINGS AT NANT Y CWM FARM, CEFN-ONN FARM LANE, RUDRY, CAERPHILLY, CF83 3EJ

UNAUTHORISED CONSTRUCTION OF A DWELLINGHOUSE AND MATERIAL CHANGE OF USE OF THE LAND TO A MIXED USE OF AGRICULTURE AND RESIDENTIAL

UNAUTHORISED CONSTRUCTION OF AGRICULTURAL FARM BUILDINGS

REPORT BY: CHIEF EXECUTIVE

1. SITE AND DEVELOPMENT

- 1.1 In 2012, the Council received a request for a postal address to be created at a property described as Nant Y Cwm Farm, which is situated at Cefn-Onn-Farm Lane, near Rudry.
- 1.2 As there is no record of any dwelling in this location, the Council's Planning Enforcement Officer subsequently visited the site and noted that a dwellinghouse has been constructed on the land and is occupied by a family, in breach of planning control. In addition to the unauthorised dwelling, a number of associated residential outbuildings/chattels have been sited on the land and various agricultural buildings constructed to support the farming activities being carried out on the land. The use of the land for residential purpose has resulted in an unauthorised material change of use of the land to a mixed use of residential and agriculture. The farm buildings have also been constructed in breach of planning control. As the necessary planning permissions have not been granted, the developments carried out are currently unauthorised and in breach of planning control.
- 1.3 Ordinarily, applications to regularise an isolated residential use in the countryside would be accompanied by a detailed agricultural appraisal to demonstrate the need for an agricultural worker's dwelling. In this instance, however, the owners have stated that the justification for the residential use of the land is sought in line with '*One Planet Development*', in accordance with the provisions of Technical Advice Note (Wales) 6 – Planning for Sustainable Rural Communities (2010). At the time of report preparation they had confirmed an intention to submit an application for planning permission in this format by the end of February (2013) and have already submitted pre application details for consideration.
- 1.4 The landowner and his family are passionate about this project and appear keen to resolve this matter through the submission of a retrospective application. Whilst the Council welcomes this approach, it has to be borne in mind that any such application may not be received favourably. Therefore, in order to prevent the developments referred to above from becoming lawful and immune from enforcement action, it is considered necessary to report these matters to Planning Committee with a view to considering the expediency of taking formal enforcement action. This course of action will secure and protect the Authority's position in the future.

2. POLICY

- 2.1 The site consists of a parcel of agricultural land of approximately 6.7 hectares. This is separated into various smaller sections used for different agricultural and residential activities.
- 2.2 Dealing firstly with the residential use of the land, the planning unit is located within an area of open countryside outside of any defined settlement boundary. The site is in a position where residential development is strictly controlled by both national and local planning policies.
- 2.3 With regards to policy SP5 of the Council's Adopted Local Development Plan (November, 2010) this defines the purpose of settlement boundaries, including the prevention of inappropriate development in the countryside. This policy is supplemented by Policy CW15, which provides general locational constraints on development, including what is acceptable development outside of the settlement boundaries. Supporting paragraph 2.34 states that, "*development proposals that do not present specific locally distinct issues will be assessed in accordance with the requirements of national planning policy.*" There can be no dispute that the development carried out conflicts with Policies within the Council's LDP relating to new residential development in the countryside. It follows, therefore, that the acceptability of the residential use at Nant Y Cwm Farm must be considered against the planning policies at the national level.
- 2.4 The relevant policies and guidance are set out in Chapter 9 of Planning Policy Wales (Edition 5, November 2012), and Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010).
- 2.5 Planning Policy Wales (PPW) defines at point 9.2.22 that new houses in the countryside, away from existing settlements recognised in development plans or from other areas allocated for development, must be strictly controlled. PPW does allow for new open market residential development in the countryside, and identifies sensitive infilling and minor extensions to groups as acceptable locations for new housing to be located. This development is, however, an isolated new building, and fails to qualify as infill or conversion under this policy. On this basis, the residential use of the land is considered contrary to the guidance contained within PPW.
- 2.6 Nant Y Cwm Farm lies within a Visually Important Local Landscape (VILL) as designated in the Council's LDP Policy NH2.4 – Rudry. In such locations development will only be permitted where it conserves and where appropriate enhance the distinctive visual and sensory landscape features or characteristics of the VILL.
- 2.7 Although the development is considered contrary to PPW, '*One Planet Development*' is referred to as one such exception in both PPW and TAN 6. One Planet Development is a new area of rural policy of which there has been relatively little experience to date. It is a justified exception to the strict control of development in the open countryside and is required to meet the minimum needs of residents in terms of food, income, energy and waste. This means that One Planet Development should be broadly self-sufficient, in ways, which have a low environmental impact. For this, special justification in the form of an evidence based planning application must be submitted, considered robustly and if found acceptable, conditions should be imposed by the Local Planning Authority to control any grant of planning permission. As this cannot properly be achieved through the enforcement process, the acceptability of the residential use of the land has not been considered against '*One Planet Development*' criteria. It follows, therefore, that the residential use of land is contrary to local and national policies, which also means that the associated residential buildings/chattels are also unacceptable.
- 2.8 With regards to the construction of the agricultural buildings, local and national planning policies allow for development associated with agriculture to be located in the countryside. Details of what is considered acceptable development are outlined in the Council Adopted Supplementary Planning Guidance SPG10: Buildings in the Countryside (January 2012), whereby the development should be appropriate in terms of setting, scale, location, materials,

design and necessary for their purpose. Policy CW19 (Rural Development) of the Council's LDP is also of relevance as it seeks to protect the countryside from inappropriate development.

- 2.9 Dealing firstly with the Dutch barn, the principle of an agricultural storage shelter in this location is acceptable given the farming activities that are carried out on the land. Notwithstanding this, concerns are raised over the general design and appearance of the steel framed building, which has been clad in timber and corrugated sheeting. Whilst these materials are consistent with agricultural buildings in the countryside, the portable container, which has been incorporated into the fabric of the building and forms part of the lean-to extension, is visually harmful and out of character in this countryside location. The development as a whole, therefore, is contrary to the standard development control criteria contained in Policy CW19 (Rural Development) of the Council's LDP and the guidance in SPG10: Buildings in the Countryside.
- 2.10 With regards to the farm workshop, this is reportedly used for the carrying out of general repairs, as a forge and secure storage. As with the Dutch barn, the principle of an agricultural workshop in this location is considered acceptable as it serves the agricultural activities being carried out on the land. However, Officers have concerns with the choice of materials used in the construction of the building and its overall general appearance. The building is constructed in concrete block and timber and a portable container has been incorporated into the fabric of the building. The low quality materials combined with the unsightly portable container results in a development, which is considered unacceptable in terms of its design and appearance. As it stands, the building fails to accord with the standard development control criteria listed in Policy CW19 and the guidance in SPG10: Buildings in the Countryside.
- 2.11 With regards to the building the occupants refer to as the roundhouse, it is of a timber construction with glazed panels, roofed with green fabric sheeting and is located in close proximity to the unauthorised main dwellinghouse. At the time of the visit by the Enforcement Officer, it was being used for hay storage and housing a few chickens and goats. This building is considered incidental to the farming activities being carried out on the land and due to its acceptable general appearance and relatively small scale, is considered to accord with the standard development control listed in Policy CW19 and SPG10: Buildings in the Countryside. For similar reasons, the polytunnel, which is being used mainly for growing of vegetables, chicken accommodation and solar pv panels are also considered acceptable.

3. ADVICE

- 3.1 In view of the observations above and the lack of a justification for a separate residence at the site, it is considered expedient to serve an Enforcement Notice to require the cessation of the use of the land for residential purposes and the demolition of the main dwellinghouse. As this course of action will remove the family's domestic residence, this matter must, therefore be considered in the light of the Human Right Act 1998.
- 3.2 Article 1, Part II of Schedule 1 of the Human Rights Act 1998 deals with the protection of property and states that *'every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law'*.
- 3.3 With reference to this case, this article may well lend itself to the argument that the occupiers are entitled to their residence at Nant Y Cwm Farm. However, this residence has been achieved in contravention of the Town and Country Planning Act 1990. The Article 1 also states that *'the preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest'*. The paragraphs under the title 'Policy' demonstrate the unacceptable harm caused by the dwellinghouse. The occupier's need for this domestic residence in this

location is far outweighed by the Council's duty to protect the countryside of Caerphilly from unacceptable and harmful development, such as that at Nant Y Cwm Farm. In this instance, the entitlement to property must not impair the right of the Council to enforce this unauthorised development. It is recommended that the usual compliance period of 12 months also be applied.

4. RECOMMENDATION

- 4.1 That authorisation is granted to serve an Enforcement Notice under section 172 of the Town and Country Planning Act 1990 to require the demolition of the dwellinghouse and cessation of the use of the land for residential purposes and the removal of all residential outbuildings / chattels from the land.
- 4.2 That authorisation is also granted to serve an Enforcement Notice under section 172 of the Town and Country Planning Act 1990, to require the demolition of the Dutch barn and farm workshop.
- 4.3 That no further action be pursued in respect of the roundhouse, polytunnel, chicken accommodation and solar pvs.
- 4.4 In the event of non-compliance with any Enforcement Notices, authorisation is also sought to take such legal proceedings as may be necessary to achieve compliance with the Notices.