

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE : **7 SEPTEMBER, 2022**

REPORT OF THE HEAD OF REGENERATION AND PLANNING

5. ENFORCEMENT ACTION

a) LAND TO THE SOUTH EAST OF CAERAU ELY FOOTBALL CLUB, CWRT YR ALA ROAD.

Executive Summary

This report seeks authorisation to issue an Enforcement Notice under section 172 of the Town and Country Planning Act 1990 (as amended) in respect of the change of use of agricultural/forestry land to leisure and the storage of miscellaneous materials and equipment. The principal issue is that using agricultural land in the countryside as a builder's yard or for domestic leisure purposes is considered contrary to policy, is an unacceptable encroachment on the countryside, has an unacceptable associated visual impact, and results in the loss of potentially high grade agricultural land.

The report recommends that an Enforcement Notice is issued requiring the removal of all materials, equipment, temporary structures (containers) and domestic items from the land and the cessation of the use of the site for storage and leisure purposes. Authorisation is also sought to pursue legal proceedings in the event that the Enforcement Notice is not complied with.

Background and Site Description

1. A complaint was received by the Local Planning Authority on 18 August 2020, regarding activities on the land, including the transfer of miscellaneous waste materials and the siting of buildings, including a static caravan. The initial complaint also referred to a 2m high fence along the site frontage with gates opening on to Cwrt-Yr-Ala Road.
2. The site to which this complaint relates is a parcel of land in the countryside adjoining the Caerau Ely Football Club, Cwrt-Yr-Ala Road. The site is not within any settlement boundary, the nearest built-up area being Caerau in Western Cardiff. Apart from the football club, the surrounding land is predominantly agricultural, and the site is located within the Cwrt-Yr-Ala Basin Special Landscape Area (SLA).
3. The site is identified on the map overleaf in addition to a photograph of the land taken on 2 March 2022 and a later photograph taken on 17 August 2022.

The Plan



1:1,250

Site as of March 2022



Site as of August 2022







4. There is no previous planning history for the site, apart from a refused application for a new dwelling and outbuildings in 1985. Google aerial photography suggests that prior to around 2016, the site was covered by vegetation.
5. The caravan on the land was removed following initial contact with the site owner in 2020. However, the following site visit in March 2022 revealed that the fence, gates, miscellaneous materials, equipment, and storage containers remained. The current palisade fence and gates replaced a former fence constructed in corrugated metal sheets, which ran along the site frontage in 2012.

Previous Corrugated Metal Fence



Replacement Palisade Fence



6. There is a gap in the Street View imagery between 2012 and 2021 and, therefore, it is difficult to determine definitively when the fence was replaced with the current palisade enclosure. While the new fence is well over 1m high and runs adjacent to the highway, it would be immune from enforcement action if it has been in situ for at least 4 years. Due to a lack of evidence over the past decade, there is insufficient evidence at this time to determine whether this is the case. However, the palisade fence and gates have arguably improved the visual appearance of the site frontage as the former corrugated metal enclosure had fallen into disrepair and made the site appear

untidy from the road. Therefore, it is not considered that it would be expedient to pursue enforcement action requiring the removal of the fence and gates.

Aerial photo from 2017:



7. Available aerial photography shows the hardstanding on the land as far back as June 2018. Therefore, given that this is an engineering operation and was laid more than 4 years ago, it may also be immune from enforcement action.
8. Notwithstanding that some of the storage containers have been sited on the land for 4 years, they are not deemed operational development in this case. As such, it is considered that the containers must be incidental to the lawful use of the land, in order to be considered permitted development. Given that the containers are ancillary to the unauthorised use of the site for storage and leisure purposes, they have also been sited on the land in breach of planning control.
9. Aside from the above-mentioned breaches, the most recent site visit revealed that whilst the majority of stockpiled materials had been removed, garden furniture, including a slide, trampoline, ornaments and a table and chairs, have been sited on the land. This indicates the introduction of a leisure use to the site, which would also be considered an unauthorised material change of use of the land.

Details of the Breach

10. Following two site inspections, it was noted that the land was littered with various miscellaneous construction and other materials, equipment as well as

several temporary buildings / containers. Planning permission has not been granted to use the site for storage or for any other purpose associated with the storage or transfer of materials. Moreover, having viewed aerial photographs, the use of the site for this purpose appears to have commenced at some point between 2016 and 2018, and therefore enforcement action can be pursued as the unauthorised use commenced less than 10 years ago.

11. The most recent site visit revealed that the land also appears to be in some for of domestic/personal leisure use, given the siting of garden furniture as well as the partial landscaping of part of the site. This use is also unauthorised and as it has only recently commenced, enforcement action could be pursued in relation to its use.
12. Notwithstanding that the majority of stockpiled materials stored on the land had been removed ahead of the most recent site visit in August 2022, the containers are still present and they continue to give the site a semi-industrial and harmful appearance, given the largely rural surrounding context. Therefore, the site is still being used as a storage facility and should the containers remain, then the land could eventually benefit from a lawful storage use after 10 years. At that point, no action could be taken to prevent the landowner from importing additional materials and aggregates for future storage at the site.

Action Pursued to Date

13. Following receipt of the initial complaint on 20 August 2020, the complainant was asked to clarify the location of the site. On 27 August 2020, a site visit revealed a static caravan on site as well as piles of tipped stone, storage containers, trailers, and a palisade fence with gates over 2m in height along the site frontage.
14. During a telephone call with the landowner on 2 September 2020, he stated that the land was cleared, and gravel was laid. A static caravan was then sited on the land to use sporadically when working at the site, however, the landowner confirmed that the caravan was not lived in. He also advised that he intended to use part of the site as an allotment and that he stored left over materials and storage containers on the land resulting from his employment as a construction worker.
15. Following the telephone call, a letter was sent to the owner which identified the breaches of planning control as being the laying of a hardstanding over the site, the siting of a static caravan, the storage of building materials and equipment, as well as the erection of a palisade fence of over 2m high. The letter requested that within 28 days, either an application was submitted to regularise the development, or the breaches removed.
16. No further response from the owner was received and when contact was made on 18 February 2022, it was confirmed that the caravan had been removed, however, the stockpiles of building materials, storage containers and the fence remained. This was confirmed following a site visit on 2 March 2022.

17. A final letter was sent to the owner on 6 May 2022 which referred to the previous communications from the department and advised that all outstanding breaches of planning control should be removed. The letter stated that failure to remove the breaches within 28 days was likely to result in formal enforcement action being taken. No reply has been received to date.
18. Prior to writing this report, a final site inspection was made on 17 August 2022 which found that a large portion of the site is now used for leisure purposes. The siting of a children's slide, trampoline, an outdoor table and chair set, as well as raised plant beds and garden ornaments indicates that the land is now also used for domestic leisure purposes, as if it formed part of the residential curtilage of a dwellinghouse. Wooden fence panels have also been fitted to part of the palisade fence and some additional temporary cabins / containers have been sited on the land without consent. Although attempts have been made to contact the owner, no response has been received.

Planning History

19. The site benefits from the following planning history:

1985/00428/OUT: Proposal: Proposed dwelling and outbuildings on site of former lodge, Decision: Refused, Decision Date: 10/05/1985.

Reasons for refusal at the time: -

- In order to preserve the countryside, the LPA considered that no additional development shall take place there other than is necessary for agriculture or forestry.
- There is no justification on agricultural grounds for a departure from the policy of the LPA as expressed in reason 1, above.
- It is not the intention of the LPA to permit the erection of new dwellings outside the confines of existing communities since this form of development leads to the despoliation of the countryside.
- The application site, by virtue of its location within the approved safeguarding zone around Wenvoe Quarry is unsuitable for the development proposed and would conflict with the minerals policies of the county structure plan and the local plan for the Wenvoe/St. Andrews.

There is no other planning history for this site.

Policy

Local Development Plan:

20. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026, which was formally adopted by the Council on 28 June 2017, and within which the following policies are of relevance:

Strategic Policies:

POLICY SP1 – DELIVERING THE STRATEGY

POLICY SP10 – BUILT AND NATURAL ENVIRONMENT

Managing Growth Policies:
POLICY MG17 – SPECIAL LANDSCAPE AREAS

Managing Development Policies:
POLICY MD1 - LOCATION OF NEW DEVELOPMENT
POLICY MD2 - DESIGN OF NEW DEVELOPMENT
POLICY MD7 - ENVIRONMENTAL PROTECTION
POLICY MD9 – PROMOTING BIODIVERSITY

Planning Policy Wales:

21. National planning policy in the form of Planning Policy Wales (Edition 11, 2021) (PPW) is of relevance to the matters considered in this report.

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales.

The following chapters and sections are of particular relevance in the assessment of this planning application:

Chapter 3 - Strategic and Spatial Choices

- Placemaking in Rural Areas
- 3.38. *“The countryside is a dynamic and multi-purpose resource. In line with sustainable development and the national planning principles and in contributing towards placemaking outcomes, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological, cultural, and agricultural value and for its landscape and natural resources.”*
- The Best and Most Versatile Agricultural Land
 - Development in the Countryside (including new housing)
- 3.60. *“Development in the countryside should be located within and adjoining those settlements where it can best be accommodated in terms of infrastructure, access, habitat, and landscape conservation. Infilling or minor extensions to existing settlements may be acceptable, in particular where they meet a local need for affordable housing, or it can be demonstrated that the proposal will increase local economic activity. However, new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled. All new development should be of a scale and design that respects the character of the surrounding area”*

Chapter 6 - Distinctive and Natural Places

- Recognising the Special Characteristics of Places (The Historic Environment, Green Infrastructure, Landscape, Biodiversity and Ecological Networks, Coastal Areas)

- Recognising the Environmental Qualities of Places (water and flood risk, air quality and soundscape, lighting, unlocking potential by taking a de-risking approach)

Technical Advice Notes:

22. The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:

- Technical Advice Note 5 – Nature Conservation and Planning (2009)

Supplementary Planning Guidance:

23. In addition to the adopted Local Development Plan, the Council has approved Supplementary Planning Guidance (SPG). The following SPG are of relevance:

- Biodiversity and Development
- Design in the Landscape

Other relevant evidence or policy guidance:

- Welsh Office Circular 24/97 - Enforcing Planning Control
- Welsh Government Development Management Manual – Section 14 Annex “Enforcement Tools”

Well Being of Future Generations (Wales) Act 2015:

24. The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council’s duty and the “sustainable development principle”, as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Reasons for Serving an Enforcement Notice

25. The principal issue to consider when identifying whether it is expedient or not to serve a planning enforcement notice in this case include the impact the use of the land for domestic leisure purposes and as a storage and transfer facility for construction or other miscellaneous materials is having on the countryside. This includes considering the principle of the use and visual impact on the site vicinity and wider Cwrt-Yr-Ala Basin Special Landscape Area (SLA). The impact on biodiversity will also be considered as well as the loss of versatile agricultural land and land contamination.

PRINCIPLE OF DEVELOPMENT & VISUAL IMPACT

26. Criterion 1 of Policy MD1 (Location of New Development) of the Vale of Glamorgan Adopted LDP 2011-2026 is paramount in assessing whether it would be expedient to take enforcement action. This relates to the location of new development, and states that *“new development on unallocated sites should have no unacceptable impact on the countryside.”* This policy seeks to emphasise the importance of protecting the countryside from unacceptable and unjustified new development.
27. Paragraph 3.38 of PPW (Edition 11) recognises that *“the countryside is a dynamic and multi-purpose resource. In line with sustainable development and the national planning principles and in contributing towards placemaking outcomes, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological, cultural, and agricultural value and for its landscape and natural resources.”* In addition, paragraph 3.60 highlights that *“new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled. All new development should be of a scale and design that respects the character of the surrounding area.”*
28. There is no justification provided in this case for using the parcel of land to the side of Caerau Ely Football Club as a yard for the storage of miscellaneous materials and equipment. Nor is there any evident justification to use this land for domestic leisure purposes. The land was formerly covered by grass and shrubbery and is located in the countryside, just within the Cwrt-Yr-Ala Basin SLA. The site is highly visible from Cwrt-Yr-Ala Road to the front and the presence of stockpiles of materials, various equipment and domestic garden furniture has materially and harmfully altered the character of the site from what was formerly a green and undeveloped site, to what is now industrial / domestic in character and at odds with the rural setting. It is accepted that the site lies adjacent to a football pitch and there are enclosures in the vicinity which are not typical of a rural location. Nevertheless, the site’s context remains substantially rural in character and the uses taking place are considered to be visually insensitive in that context.
29. In terms of storage, it is noted that the stockpiled aggregates and construction materials had mostly been removed ahead of the most recent site visit in August 2022. However, while the removal of these materials has partially improved the visual amenity of the site, the containers remain in situ. It is considered that unless these containers are removed from the land, then the site is likely to benefit from a lawful storage use in time, as the change of use becomes immune from any enforcement action after 10 consecutive years. Consequently, unless control is exerted over the use of the site at this point, then it would not be possible to take any action in future, to prevent the landowner from importing materials once again, which would ultimately re-introduce the harmful visual and uncontrolled environmental impacts. Given the ad hoc nature of storage that has taken place over the last few years, it is considered very likely that such a lawful use of the site is likely to lead to uncontrolled and random storage of items within and outside/around the containers, which would be increasingly harmful to its appearance and the character of the wider area.

30. Criterion 1 of Policy MD2 (Design of new Development) requires new development to positively contribute towards the context and character of the surrounding natural environment and protect existing features of landscape interest. While authorisation for action is not being sought against the palisade fence or hardstanding (as they have been present for more than 4 years) the stockpiles of materials, miscellaneous equipment, storage containers and domestic garden furniture on the site have a detrimental impact on the visual amenity and rural character of the countryside, especially considering the site is visible from the highway, which also serves as a public right of way.
31. The unauthorised use is also having a harmful impact on the landscape character, contrary to Policy MG17 – Special Landscape Areas. In the sub-text for Policy MG17 it states that “*special Landscape Areas (SLA) have been designated to protect areas of the Vale of Glamorgan that are considered to be important for their geological, natural, visual, historic, or cultural significance.*” Therefore, using a highly visible site, albeit on the edge of the SLA, to store and process materials and/or use for domestic leisure purposes is certainly not consistent with the policy aim to safeguard the visual and natural significance of the land.
32. The Council’s Design in the Landscape SPG highlights that in a sensitive location such as a special landscape area, planning applications for new developments will need to be supported by additional information used to assess the impact on the landscape. This may have included the submission of a Landscape Visual Impact Appraisal (LVIA) considering the use of the site and its location in the SLA. However, no such details have been considered in this case and while the site is located beside the football club, it remains that the use of the site as an open yard to store and process construction and various other materials contravenes the wider landscape character of the area, contrary to Policy MG17 of the LDP and the Design in the Landscape SPG. The same applies to domesticating the land by placing garden furniture across the site, which has materially altered the agrarian character of the land and the wider rural setting.

BEST & MOST VERSITILE AGRICULTURAL LAND

33. It is also worth noting that the site is indicated as being grade 3a agricultural land, which is good to moderate in terms of quality. Chapter 3.58 of Planning Policy Wales (PPW) Edition 11 highlights that grade 3a agricultural land is a finite resource and should be conserved. PPW states that such land should only be developed if there is an overriding need for the development, which is not the case in this instance.
34. While the hardstanding may be immune from any enforcement action, it is considered that if the unauthorised use of the land ceases, it could then either be removed or used for a purpose incidental to agriculture.

BIODIVERSITY

Policy MD9 (Promoting Biodiversity) of the LDP requires new development to conserve and, where appropriate, enhance biodiversity. This is supported by the Council's SPG on Biodiversity and Development and the recently updated PPW. It is not known whether the site has any identified biodiversity interest. However, it is not unreasonable to conclude that the removal of vegetation from the site and the laying of the hardstanding to enable the authorised use of the land will have failed to preserve or enhance any of the biodiversity present on the site. However, as this relates to an engineering operation that may now be immune from any enforcement action, this is not a fundamental consideration in the expediency assessment of whether to require the unauthorised use of the land to cease.

LAND CONTAMINATION

35. One of the criteria raised by Policy MD7 of the LDP states that development proposals should not have an unacceptable impact on the natural environment from land contamination and the pollution of land. This includes the importation of contaminated materials and hazardous substances, which could include construction or other unidentified materials. On the first and second site visits, there were stockpiles of materials stored on the land. While these have since been removed, the continued and future use of the site for the storage and processing of such materials may contaminate the land and pose a risk to health and biodiversity.
36. Planning applications for such uses are often approved subject to conditions that any imported aggregates are assessed for chemical or other potential contaminants, in accordance with a scheme of investigation submitted to and approved in writing by the Local Planning Authority in advance of its importation. The sampling of materials to verify it is free from contamination is also usually conditioned and, as such, there is no way of knowing in this case whether the imported materials have contained any harmful contaminants. Therefore, it is considered that in order to safeguard health and the natural environment, the uncontrolled use of the site for the storage and processing of building and other miscellaneous materials should cease.

Conclusions

37. The use of the site for leisure purposes and/or as a yard to store various building and miscellaneous materials is an unacceptable and unjustifiable encroachment on the countryside and is considered to contravene the aims of Policies MD1 and MD2 of the Vale of Glamorgan Local Development Plan. The use is also having an unacceptable impact on the landscape character of the wider SLA, contrary to Policy MG17 and the uncontrolled importation of aggregates and materials on the land is contrary to the aims of Policy MD7.
38. In view of the issues identified, it is considered expedient to pursue action to require the use of the site for domestic leisure purposes and as a yard to store and process building and other miscellaneous materials and equipment to cease. All temporary structures and items associated with the unauthorised uses must also be removed from the land as well as the wooden fence panels affixed to the palisade fence along the site frontage.

39. It is considered that the decision would comply with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well-being of Future Generations (Wales) Act 2015.

Resource Implications (Financial and Employment)

40. Any costs involved in drafting and issuing Notices, attending enquiries and undertaking monitoring work can be met within the departmental budget. There are no employment issues.

Legal Implications (to include Human Rights Implications)

41. If an Enforcement Notice is served, the recipient has a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended).
42. The Action is founded in law and would not be considered to breach any of the rights referred to in the Human Rights Act.

Equal Opportunities Implications (to include Welsh Language Issues)

43. None.

RECOMMENDATION

- (1) That the Head of Legal Services be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) to require:
- (i) The cessation of the use of the site for the depositing, storage and any processing of construction and miscellaneous materials.
 - (ii) The cessation of the use of the site for all domestic and leisure purposes.
 - (iii) The removal of all containers / buildings, equipment, materials and other miscellaneous items from the land that are used in association with the unauthorised uses identified above in steps (i) and (ii).
 - (iv) The removal of the wooden fence panels affixed to the palisade fencing.
- (2) In the event of non-compliance with the Notice, authorisation is also sought to take such legal proceedings as may be required.

Reason for Recommendation

- (1) It appears to the Council that the above breach of planning control constituting the material change of use of the land has occurred within the last 10 years.

- (2) The use of the agricultural/forestry land for domestic leisure purposes and as a storage and transfer facility for construction and/or miscellaneous other materials and equipment is an unacceptable and unjustifiable development that fails to respond appropriately to the countryside and special landscape area setting and the activities are considered to be incongruous in the rural setting. By virtue of the encroachment on the countryside and the unacceptable visual impact the use has on the countryside, the development is contrary to the aims of Policies SP1 – Delivering the Strategy, MG17 – Special Landscape Areas, MD1 – Location of New Development, MD2 – Design of New Development, and MD7 – Environmental Protection of the Vale of Glamorgan Adopted Local Development Plan 2011 – 2026 as well as the Council's Supplementary Planning Guidance on Design in the Landscape and Chapter 3 - Strategic and Spatial Choices, of Planning Policy Wales Edition 11 (2021).
- (3) It is considered that the decision complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well Being of Future Generations (Wales) Act 2015.

Background Papers

Enforcement File Ref: ENF/2020/0286/PC

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Officers Consulted:

All relevant Chief Officers have been consulted on the contents of this report.

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