

PLANNING & DEVELOPMENT COMMITTEE

20 July 2023

REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

APPLICATION NO: 23/0360/09 (JE)
APPLICANT: Mr M Tuchli
DEVELOPMENT: Continued use as a garden.
LOCATION: ST DAVIDS HOUSE, CASTELLAU ROAD, BEDDAU,
PONTYPRIDD, CF38 2RA
DATE REGISTERED: 31/03/2023
ELECTORAL DIVISION: Beddau and Tyn-y-nant

RECOMMENDATION: APPROVE

REASONS: On the basis of the supporting information submitted with the application, and on the balance of probabilities, it is considered that the area of land subject of this application has been used as domestic curtilage in association with the dwelling known as 'St David's House, Beddau' for a continuous period in excess of 10 years, which continued to the time of the application.

Consequently, the described use is lawful for planning purposes and a Certificate of Lawfulness can be issued.

REASON APPLICATION REPORTED TO COMMITTEE

A request has been received from Councillor Michael Powell so that Members can consider the suggested lawful use.

APPLICATION DETAILS

This is an application for a Certificate of Lawfulness for an existing use, under Section 191 of the Town and Country Planning Act 1990 and Section 24 of the Town and Country Planning (General Development Procedure) Order 1995, which seeks to establish whether the described use detailed in the submitted information is lawful for planning purposes.

A Certificate of Lawfulness can only be issued if the evidence provided indicates that on the 'balance of probability' the use has been ongoing for a minimum period of ten years. If such a Certificate were issued then the development described would be

immune from planning enforcement action, even though the use has not been granted specific planning permission.

This application seeks to establish that the area of land in question has been used as domestic curtilage in association with the property known as 'St David's House' for a continuous period of at least 10 years, rendering the use lawful in planning terms.

The applicant has provided a series of historic aerial photographs that date back to 2009 and a supporting statement.

Members are advised that this application follows the refusal of application ref. 22/1184/10 which came before Committee on the 21/02/23 and sought consent for the construction of 3no. dwellings at the site. Members resolved to refuse the application due to the location of the site outside of the settlement boundary for Beddau.

SITE APPRAISAL

The application site forms an area of land to the south of a large, detached dwelling known as St David's House. It is rectangular in shape, extends to approximately 0.8ha and is currently used as amenity space in association with the application property. The site is bounded by the existing dwelling to the north, the school yard of Ysgol Gynradd Castellau to the east and open countryside and woodland to the south and west. The site is located on the western periphery of the settlement of Beddau and is adjacent to, but outside of the settlement boundary here. It is subject to a gradual change in levels, decreasing from east to west.

There are a variety of property types and scales located within the immediate vicinity with 2no. recently constructed affordable housing developments to the north of Castellau Road and a mix of detached and semi-detached properties in the immediate vicinity.

PLANNING HISTORY

The most recent planning applications on record associated with the application site are:

22/1184/10: ST DAVIDS HOUSE, CASTELLAU ROAD, BEDDAU, PONTYPRIDD, CF38 2RA

3 no. near zero carbon bespoke self-build dwellings within the curtilage of existing dwelling (Ecological Assessment Report Received 18/11/22)

Decision: 21/02/2023, Refuse

22/5046/41: LAND TO THE REAR OF ST DAVIDS HOUSE, CASTELLAU ROAD, BEDDAU, PONTYPRIDD, CF38 2RA

Pre-application advice

Decision: 16/06/2022, Raise Objections

17/5111/41: LAND AT BEDDAU, PONTYPRIDD

Pre-application advice

Decision: 15/12/2017, Raise Objections

14/1217/10: HIGHADMIT PROJECTS LTD, ST DAVIDS HOUSE, BEDDAU, PONTYPRIDD, CF38 2RA

First floor extension to provide additional office space.

Decision: 25/11/2014, Refuse

13/0320/10: REAR OF ST DAVIDS HOUSE, CASTELLAU ROAD, BEDDAU, PONTYPRIDD, CF38 2RA

Extension to kitchen bay window over existing balcony and side balcony.

Decision: 12/06/2013, Grant

10/0036/10: ST DAVIDS HOUSE, CASTELLAU ROAD, BEDDAU, PONTYPRIDD, CF38 2RA

Detached garage and extension to residential curtilage.

Decision: 23/03/2010, Grant

09/0853/10: ST. DAVIDS HOUSE, CASTELLAU ROAD, BEDDAU, PONTYPRIDD, CF38 2RA

Detached garage and increase in residential curtilage. (Amended description 14/09/09).

Decision: 16/12/2009, Refuse

08/0580/10: R/O ST. DAVIDS HOUSE, CASTELLAU ROAD, BEDDAU, PONTYPRIDD. CF38 2RA

Change of use of land to residential curtilage and erection of a detached domestic garage.

Decision: 21/05/2008, Refuse

05/0119/10: LLWYNCRWN ISAF, HEOL STICIL-Y-BEDDAU, LLANTRISANT, PONTYCLUN, CF72 8LR

Proposed 18 hole golf course, conversion of dwelling to club house/pro shop and associated car-parking.

Decision: 24/10/2006, Refuse

PUBLICITY

The application seeks the determination of whether the proposal is lawful and no consultation with nearby properties is therefore required to be undertaken.

CONSULTATION

Legal Services: Having considered the evidence accompanying the application, the legal officer is of the view that the evidence submitted is sufficient to establish the lawfulness of the land as garden curtilage.

National Guidance

Welsh Office Circular 24/97: Enforcing Planning Control, Annex 8, deals with 'Lawfulness and the Lawful Development Certificate.'

Paragraph 8.16 advises that a LDC granted under Section 191 shall specify the land to which it relates, describe the use or operations in question (identifying the relevant 'use class' where appropriate), and give the reason why the proposal would be lawful.

Paragraph 8.26 states that if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, they shall issue a certificate to that effect and, in any other case, they shall refuse the application. The burden of proof is firmly on the applicant.

REASONS FOR REACHING THE RECOMMENDATION

The legal requirements for a CLEUD are set out in Section 191 of the Town and Country Planning Act 1990 and Section 24 Town and Country Planning (General Development Procedure) Order 1995.

In order for a Certificate to be issued the applicant must provide evidence that on the 'balance of probability' the use described in the application has been ongoing for a minimum period of ten years. If such a Certificate were issued then the development described would be immune from enforcement action, even though the use has not been granted planning permission.

Since the application is for a certificate of lawfulness the planning merits of the case are not tested. What is of relevance however is the supporting material submitted by the applicant to substantiate their claim that that the area of land has been used as garden curtilage in association with the dwelling known as St David's House for at least 10 years prior to this application.

The submitted evidence, through dated aerial photos and a supporting statement, identify that the site has been used for recreation and leisure since 2009 when it was purchased by the applicant, before being enclosed by boundary fencing in 2013.

The submitted evidence has been reviewed by the Council's Legal Services department who concluded that on the balance of probabilities, there is sufficient information to show that area has been used as garden curtilage in association with the application property for a continuous period in excess of 10 years.

The LPA can therefore be satisfied that at the time of the application the use of the land as garden curtilage is lawful and a certificate can be issued.

Community Infrastructure Levy (CIL) Liability

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31 December 2014.

The application is for development of a kind that is not CIL liable under the CIL Regulations 2010 (as amended).

Conclusion

On the basis of the supporting information submitted with the application, and on the balance of probabilities, it is considered that the area of land subject of this application (south of St David's House, Castellau Road, Beddau) has been used as domestic curtilage in association with the application property for a continuous period in excess of 10 years, which continued to the time of the application.

Consequently, the described use is lawful for planning purposes and a Certificate of Lawfulness can be issued.

RECOMMENDATION: GRANT