

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2013-2014

**DEVELOPMENT CONTROL
COMMITTEE
15 MAY 2014**

**REPORT OF: SERVICE
DIRECTOR PLANNING**

	Agenda Item No. 6
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APPLICATION NO: 13/0867 - LAWFUL DEVELOPMENT CERTIFICATE FOR AN EXISTING USE PROVIDING A TOTAL OF 5 BEDROOMS OF EMERGENCY ACCOMMODATION FOR VULNERABLE YOUNG PEOPLE, YMCA, DUFFRYN ROAD, MOUNTAIN ASH
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1. PURPOSE OF THE REPORT

Members are asked to determine the above planning application.

2. RECOMMENDATION

That Members consider this report and determine the application having regard to the advice given.

3. BACKGROUND

This application was originally reported to the Development Control Committee on 5th December 2013 with a recommendation of approval. A copy of that report is attached at **APPENDIX A**. Members were minded to refuse the above-mentioned application contrary to the recommendation of the Services Director, Planning because they considered that as there was insufficient evidence to indicate that on the balance of probability the use has been ongoing for a minimum period of ten years, the matter be deferred to the next appropriate meeting of the Development Control Committee for a report from the Service Director, Planning, if necessary, in consultation with the Director, Legal & Democratic Services, upon the strengths and weaknesses of taking a decision contrary to recommendation, prior to determining the matter (Minute No. 142 (4) refers).

Since the Development Control Committee the Council's Social Services has submitted the following further details:

- A Rhondda Cynon Taf report 'Supporting People Operational Plan 2003-2004' and signed and dated grant application forms submitted by RCT Community Services to the Welsh Assembly Government. These detail the YMCA provided 5 bed spaces.

In addition further evidence has been submitted by the applicant. This includes:

- A sworn statement provided by the applicant Linda Phillips (Housing Manager) detailing she has been employed by Mountain Ash YMCA since October 2003 and that throughout this period the YMCA have continually housed 5 young people for short stays in excess of 10 years in all rooms on the first and second floor.
- A cross section of Tenancy/License Agreement and Housing Benefit awards for between 2002 to 2013 from Linda Phillips (Housing Manager) at the YMCA.

The Council's Legal Officer has seen the further information detailed above and having considered the sworn statement and the additional evidence received has advised, "I take the view that there is sufficient evidence for the Council to be satisfied that at the time of the application the use is lawful".

Taking this further advice into account, Members are therefore advised that the further information and legal advice received backs up the initial recommendation for approval. Furthermore, if the applicant was to appeal a refusal of the application with the Planning Inspectorate, it would be difficult to defend taking into account the further legal advice received and the lack of evidence to the contrary.

If Members are however minded to refuse the application; the refusal reason below is suggested.

REASON

1. On the basis of the information submitted the applicant has failed to satisfy the Local Planning Authority that on the balance of probability the claimed use has been carried out from the premise for more than ten years before the date of this application. Accordingly, the application is refused as not proven on present evidence.

APPENDIX A

APPLICATION NO: 13/0867/09 (GW)
APPLICANT: YMCA
DEVELOPMENT: Lawful Development Certificate for an existing use providing a total of 5 bedrooms of emergency accommodation for vulnerable young people.
LOCATION: YMCA, DUFFRYN ROAD, MOUNTAIN ASH, CF45 4DA.
DATE REGISTERED: 02/09/2013
ELECTORAL DIVISION: Mountain Ash East

RECOMMENDATION: That a Lawful Development Certificate for an existing use to provide a total of 5 bedrooms of emergency accommodation for vulnerable young people is granted.

REASONS:

Having regard to the information and evidence submitted it is considered that on the balance of probability the use of the premises described above has been carried out at the premise for a period of a minimum of 10 years.

APPLICATION DETAILS

This is an application for a Certificate of Lawfulness for an existing use, at the YMCA in Mountain Ash, providing a total of 5 bedroom units of emergency accommodation to vulnerable young people.

Members will be aware that a Certificate of Lawfulness could 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 enforcement action, even though the use has not been granted planning permission.

Temporary planning permission was originally granted for a 2 bedroom emergency accommodation unit for homeless children (94/271) and then extended to a permanent basis (96/4308). A subsequent planning permission for a loft conversion for staff accommodation detailed 3 bedrooms on the submitted plans (00/4536). This application is attempting to prove an additional two rooms (bedrooms 4 and 5 on the plans) and therefore a total of 5 bedrooms have been used as emergency accommodation for a period of over 10 years.

The application is supported by the following evidence:

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Letter from Linda Phillips (YMCA Housing Manager) – This details she has been employed since Oct 2003 as the Co-ordinator of the accommodation unit until March 2012. Throughout that period the unit has always been 5 bed accommodation.

Letter from Maureen Fisher (YMCA employee) – has been employed since 2004 as a sessional worker and still working. Throughout the whole time it has always been a 5 bed unit.

Letter from Miss T Fisher (Former Mountain Ash YMCA employee from 2004 to 2010). The emergency accommodation has always been 5 units.

Letter from Roy Blacker (Member of board of management at Mountain Ash YMCA 2001) – It was agreed in 2001 to convert part of the building into a 5-bed hostel for young people.

Letter from Mair Lewis (Board Member of Mountain Ash YMCA for past 15 years) – To the best of my knowledge the number of bedrooms in the emergency accommodation unit were increased from three to five during the first quarter of 2001.

Letter from J.A. Williams (Board Member of Mountain Ash YMCA for past 25 years) – To the best of my knowledge we sought to remove the 1 night only condition per resident and once this had been granted we offered 5 bed accommodation.

Letter from Mrs Alison Field (Manager of Age Concern Morgannwg) – We entered into a tenancy agreement at the Mountain Ash YMCA in 2002. I recall the emergency accommodation unit was for 5 youths. In 2006 I became a board member of Mountain Ash YMCA and as far as I was aware there was authorisation for 5 young tenants to dwell.

Letter from Alan M Evans (Meco Accountancy Services) – I was approached to act for Mountain Ash YMCA in June 2003. The information provided to me from previous auditors advised me that the accommodation was for a maximum of 5 people.

Email from Dennis Payne (E3 Co-ordinator Mountain Ash Comprehensive School) – During my employment at Mountain Ash YMCA from 2002-2008 the accommodations unit consisted of 5 separate single bedrooms.

Letter from Helen Shoukris (Children in Need Support Worker) – As a support worker at Mountain Ash YMCA from August 2009, I have been responsible for supporting 5 clients in the accommodation unit in 5 separate rooms over 2 floors.

Two funding contracts for the provision of support services from Rhondda Cynon Taf County Borough Council Community Services with the YMCA dated for two years from 2003 to 2007. These detail the provision was for 5 units of emergency accommodation.

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A further funding contract for the period 2009 to 2010 for 5 units of emergency accommodation is also included.

A floor plan of the attic detailing bedrooms 4 and 5.

SITE APPRAISAL

The application site is the YMCA building in Mountain Ash. It is located between Dyffryn Road and Campbell Terrace at the rear. The part of the building in question is located to the rear (i.e. closer to Campbell Terrace).

PLANNING HISTORY

07/1779	YMCA, Dyffryn Road, Mountain Ash	Install 3 Solar Panels to southerly facing roof	Granted 19/03/08
00/4536	YMCA Mountain Ash, Dyffryn Road, Mountain Ash	Loft conversion to provide additional staff accommodation	Granted 14/02/01
96/4308		Extension of permission 94/271 to continue the use of part of the building as emergency accommodation for homeless young people	Granted 16/01/97
94/376		Refurbishment of front elevation, external works	Conditions 02/11/94
94/271		Use of part of the building as emergency accommodation for homeless young people	Granted 02/11/94

PUBLICITY

The application has been advertised via direct neighbour notification and site notice.

Four emails from occupiers of neighbouring properties have been received. The comments are summarised below:

- What is the point of asking for views if the application is only to prove the use has been occurring for ten years?
- It is an ongoing problem and they should not be here let alone more residents, which will exacerbate the problem.
- I have noticed some building works recently.
- There has been an increase in residents in the last year or two.

- With the centres refusal to use the front door and residents using the back door this has resulted in an increase in anti-social behaviour. The residents invite friends over and there has been fighting, drinking on the streets and abuse to surrounding residents when asked to be quiet. The police have been called a number of times. It has resulted in misery for the surrounding residents in the last 10 years. They use swearing and we have had to restrict our children from playing near the site.
- This is not the right place for the unit.
- Drugs have been found in the vicinity.

CONSULTATION

Legal Services – it would appear from the various statements that there was an increase in the number of bedrooms from 3 to 5 some time in 2001. The application has very little evidence with regard specific use of the rooms over the 10 year period.

POLICY CONTEXT

Rhondda Cynon Taf Local Development Plan

As this is an application for a Certificate of Lawfulness Local Development Plan policies are not relevant to the determination of this kind of application.

National Guidance

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

Paragraph 8.15 deals with the relevant test of the submitted evidence and states where the burden of proof is on the appellant, the courts have held that the relevant test of the evidence on such matters is the 'balance of probability'.

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.

The planning history suggests a use as emergency accommodation has been in operation since 1994 with 2 bedrooms temporarily permitted in application 94/271. The evidence suggests this was made permanent in permission reference 96/4308. Permission for a loft conversion 00/4536 for additional

staff bedrooms in relation to the emergency accommodation unit was granted in early 2001 and the existing plans detailed 3 bedrooms in the emergency accommodation unit. This indicates the use was then operating with 3 bedrooms of emergency accommodation.

The main evidence submitted includes letters from current and former staff members and board members of the YMCA. These indicate all 5 bedrooms have been used as emergency accommodation over the period of the last ten years. In addition funding contracts from Rhondda Cynon Taf County Borough Council for 5 units of emergency accommodation have been provided covering the years 2003-2007 and 2009-2010. Taken together with the planning history this evidence suggests that 5 units of emergency accommodation have been in operation since 2001 to the current date and therefore over ten years ago.

Comments received from the public consultation exercise detail an accommodation use has been carried out for 10 years, however some comments point to the accommodation only recently increasing numbers in the last year or two. The Local Planning Authority however has little evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable.

Having regard to the information and evidence submitted it is considered that on the balance of probability the use of the premises described above was lawful for the purposes of planning:

Other issues

Members will be aware that a number of objections have been received to the use and the impact from anti-social behaviour (detailed above). It should however be noted that whilst the impact of these issues are unwelcome, they cannot be taken into account in determining this application. Therefore these issues should not be taken into account when assessing whether there is an existing lawful use.

RECOMMENDATION: Grant

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LOCAL GOVERNMENT ACT 1972

as amended by

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LIST OF BACKGROUND PAPERS

DEVELOPMENT CONTROL COMMITTEE

15 MAY 2014

REPORT OF: SERVICE DIRECTOR PLANNING

REPORT

**APPLICATION NO: 13/0867 -
LAWFUL DEVELOPMENT
CERTIFICATE FOR AN EXISTING
USE PROVIDING A TOTAL OF 5
BEDROOMS OF EMERGENCY
ACCOMMODATION FOR
VULNERABLE YOUNG PEOPLE,
YMCA, DUFFRYN ROAD,
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OFFICER TO CONTACT

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See Relevant Application File