

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**MUNICIPAL YEAR 2013-2014**

**DEVELOPMENT CONTROL  
COMMITTEE**

**20 FEBRUARY 2014**

**REPORT OF: SERVICE  
DIRECTOR PLANNING**

	<b>Agenda Item No. 5</b>
<b>APPLICATIONS RECOMMENDED FOR REFUSAL</b>	

**1. PURPOSE OF THE REPORT**

Members are asked to determine the planning applications outlined in Appendix 1.

**2. RECOMMENDATION**

To refuse the applications subject to the reasons outlined in Appendix 1.

1. Application No: 13/0658 - Installation of 500kW wind turbine (39m rotor, 50m tower) at Penrhiwfer Farm, land associated with Penrhiwfer Farm, Tonypany
2. Application No: 13/1240 - Application for a Lawful Development Certificate for the proposed use as a house in multiple occupation (up to 6 residents), 1 Tudor Place, Aberaman, Aberdare.

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## **APPLICATIONS RECOMMENDED FOR REFUSAL**

**APPLICATION NO:** 13/0658/10 (DB)  
**APPLICANT:** Distributed Generation Ltd  
**DEVELOPMENT:** Installation of 500kW wind turbine (39m rotor, 50m tower) at Penrhiwfer Farm  
**LOCATION:** LAND ASSOCIATED WITH PENRHIWFER FARM, TONYPANDY, CF40 1SE  
**DATE REGISTERED:** 26/06/2013  
**ELECTORAL DIVISION:** Gilfach Goch

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**RECOMMENDATION:** If the Authority were to determine the application it is considered that it would have been recommended for Refusal.

### **REASONS:**

Whilst the principle of the development is considered acceptable, it is considered that it would not comply with the relevant policies of the Local Development Plan in respect of its impact on the existing landscape character of the area and visual amenity.

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## **BACKGROUND AND APPLICATION DETAILS**

This application is subject to an appeal to The Planning Inspectorate for the failure of the Council to give notice of its decision within the appropriate period. Accordingly, the Welsh Government is the Determining Authority. As part of the appeal process the Council need to determine what decision it would have come to were it the determining Authority.

Full planning permission is sought for a single wind turbine on land at Penrhiwfer Farm, Tonypany. It would have a maximum height of 69.5m above ground level, comprising of a hub height of 50m and a rotor diameter of 39m standing on a concrete foundation 0.5m above the existing ground level. The exact model of the wind turbine proposed is a Vestas V39 EWT Direct Wind 54, with a maximum output of 500 kW. The tower is steel, and painted white and the three blades are reinforced polyester.

The application also includes the construction of a concrete hard standing measuring approximately 10m x 10m x 1.5m at a depth of 1m below the existing ground level. A hardcore crane standing would be required to construct the turbine and would measure approx 15m x 10m and remain for the life of the project.

A switch gear building comprising a transformer and switch fuse measuring approximately 3m x 3m would be located adjacent to the wind turbine and would house the switch fuse and transformer. It would be finished externally in a green or brown colour.

The turbine would be connected to the national grid by an underground cable, within a route along field and track edge boundaries to an existing 11kv overhead line which is situated to the west of the site.

The construction period for the whole development would be likely to occur over a period of 2 – 3 months and involve heavy good vehicles and abnormal loads to transport the rotor blades. Maintenance and servicing would amount to less than 5 visits per calendar year.

The existing access to Penrhiwfer Farm would be used to access the site for maintenance purposes. From the public highway the access measures a distance of approximately 680m and would be reinforced as required with locally sourced stone. A short new section of track would be required to reach the turbine. For construction purposes it is proposed that an existing entrance off the B4278 Penrhiwfer Road would be used to join the farm's existing access off Pleasant View.

Permission is sought for 25 years, after which all remnants of the turbine and foundations to a depth of 1m would be removed and the site restored to its former condition.

The maximum energy generation capacity of the wind turbine would be under 5MW, would be fed directly into the National Grid.

The applicant proposes to operate a Community Co-ownership Initiative to provide revenue to the Tonyrefail Community Council, which is estimated to amount to £16,000 to £20,000 per year per megawatt.

The application is accompanied by supporting information including a design and access statement, (DAS) noise report, ecological assessment, and a Landscape and Visual Assessment.

## **SITE APPRAISAL**

The site of the wind turbine and associated infrastructure is centered on grid reference ST 299839 190085. It is located in the open countryside outside the settlement boundary and is presently in use for agricultural sheep grazing. The site lies at a height of approximately 300m AOD, near a local highpoint of 305m AOD, known as Disgwyfla. It is located approximately 400m to the west of the land owners property and approximately 400m to the south west of the nearest parts of the main settlement of Penrhiwfer.

The natural landform is a minor spur forming part of the ridge sides of Mynydd PenyGraig which reaches 416m AOD to the north west. The settlement of Penrhiwfer and Williamstown lie on the lower valley slopes at around 200m AOD. The slopes tend to rise steeply from the valley floor up to around 300m AOD and then rise more steeply to the ridge top.

The application site covers an area of 0.11ha, to cover the swept area of the rotor blades of the wind turbine and associated infrastructure.

The site lies outside the Rhondda Landscape of Special Historic Interest. It also lies outside of the TAN 8 Annex D Strategic Search Area (SSA) F and further outside the SSA refinement study. It lies near to Zone 35, Mynydd y Gilfach which was considered as unacceptable for strategic scale wind farm development (above 25MW).

A Public Right of Way (PROW) known as ANT/65 runs along the proposed access track, and additional PROW's connect to this PROW.

## **RELEVANT PLANNING HISTORY ON FARM HOLDING**

12/0088	Micro generation wind turbine at Penrhiwfer Farm	Approved with Conditions 11.05.12.
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## **PUBLICITY**

The application has been advertised by means of site notices and neighbourhood notification. No comments have been received as a result of this publicity.

## **CONSULTATION**

Glamorgan Gwent Archaeological Trust Ltd (GGAT) – raises no objection to the positive determination of the application.

Land Reclamation and Engineering – raises no objections and recommends drainage conditions.

Countryside Section – raises no objections subject to a S106 Agreement to secure the proposed bird monitoring and mitigation scheme. Advises that there are no SEWBREC records of statutory protected species from the immediate vicinity. PROW officer advises that health and safety precautions should be provided as the access track, which will undergo some re-reinforcement, follows part of PROW Llantrisant 65.

Public Health and Protection Division – raises no objections to the proposed development subject to the imposition of conditions which include noise limits at

nearby residential properties, hours of construction, dust suppression and the disposal of waste.

Transportation Section – no highway objections are raised subject to conditions in respect of before and after surveys and an assessment of compensation for extraordinary use and a traffic management plan.

Vodafone – raises no objections.

Cardiff Airport - comments awaited at the time of writing the report.

## **POLICY CONTEXT**

The application site is situated in the open countryside, outside Strategic Search Area F (SSA F) and within the Sandstone Resource Area (Policy AW14.2) as defined in the Rhondda Cynon Taf Local Development Plan (LDP). It also lies more than 250m north of the Site of Importance for Nature Conservation, (SINC 168 known as Mynydd Y Gilfach) (Policy AW8.168) as defined in the LDP.

The site is also located outside the Rhondda Historic Landscape, as registered by Cadw.

**Policies AW5 and 6** give general criteria for new development

**Policy AW7** seeks to protect sites of historic merit.

**Policy AW8** seeks to protect SINC's, and features of the natural environment from inappropriate development.

**Policy AW10** seeks to prevent risk of harm to health and amenity from a range of causes, including noise.

**Policy AW12** supports development proposals which promote the provision of renewable energy where it can be demonstrated there is no unacceptable effects.

**Policy AW14.2** safeguards resources of sandstone from development which would unnecessarily sterilise them or hinder their extraction.

## **National Guidance**

In the determination of planning applications regard should also be given to the requirements of National Planning Policy which are not duplicated in the Local Development Plan, particularly where National Planning Policy provides a more up to date and comprehensive policy on certain topics.

Planning Policy Wales Chapter 3 (Making and Enforcing Decisions), Chapter 4 (Planning for Sustainability), Chapter 5 (Conserving and Improving Natural Heritage and the Coast), and Chapter 12 (Infrastructure and Services) set out the Welsh Government's policy on planning issues relevant to the determination of the application.

## **Other relevant policy guidance consulted**

PPW Technical Advice Note's (TAN) 5 (Nature Conservation and Planning) and 8 (Planning for Renewable Energy). The site is located outside of TAN 8 Strategic Search Area F, but any wind farm development of up to 25 MW is not required to lie within the SSA F boundary but needs to ensure that it would not constrain the generating capacity of the refined strategic search area. TAN 11: Noise provides advice on the assessment and management of noise impacts for different types of proposals. It refers to advice in TAN 8 regarding the assessment of noise impacts of wind turbines.

## **REASONS FOR REACHING THE RECOMMENDATION**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Furthermore, applications that are not in accordance with relevant policies in the plan should not be allowed, unless material considerations justify the grant of planning permission.

### **Main Issues:**

**Principle of the proposed development, impact on the landscape character of the area and the impact on visual amenity.**

### **Principle of the proposed development**

At UK and Welsh Government level there is strong support for renewable and low carbon energy, with specific targets set for the reduction in green house gases and energy generation from on-shore wind development. The exploitation of wind power is promoted at all policy levels.

TAN8 states in Para 8.4 of Annex D that within (and immediately adjacent to) the SSA's, the implicit objective is to accept landscape change i.e. significant change in the landscape character from wind turbine development. The proposal lies over 1km from the boundary of SSAF. Para 8.6 of Annex D states that at the local level more detailed assessment can be established. In this context the site is further distant from the refined SSA boundary as identified in the Arup Annex D. It is therefore considered that the site does not lie immediately adjacent to the SSA. In any event, the proposed development is a small scale turbine as defined by Tan 8.

The application involves a wind turbine of 0.5MW and is therefore classed as a small scale turbine in policy terms, being a "sub local authority" scale of development, at under 5MW within PPW. This scale of development is not required, within PPW, nor

TAN 8 to be sited within the boundary of SSA F and is considered applicable in all parts of Wales and should be encouraged subject to local criteria.

Policy AW12 of the LDP permits such small scale wind turbines subject to a number of criteria against which such proposals will be evaluated.

There is therefore no objection in principle to the proposed wind turbine.

**Impact on the landscape character of the area and the impact on visual amenity.**

It is the landscape and visual effects of the proposed turbine which are considered to be the main factors that need closest scrutiny. It was for this reason that a chartered landscape architect, Simon White (White Consultants) was commissioned to review the Landscape and Visual Assessment (LVIA) submitted to accompany the proposed scheme.

The landscape and visual material submitted to accompany the application includes a Zone of Visual Influence (ZVI), mapping, photomontages, a LANDMAP assessment and 14 representative viewpoints are shown but not assessed. There is no cumulative impact assessment. Section 4 of the Design and Access Statement comments on the landscape and visual material and states that the visibility would be limited to a maximum 10km radius and within a 2.5km radius the wind turbine would be a dominant feature restricted mainly to parts of Williamstown and Edmondstown. The five LANDMAP aspect areas in which the proposal lies with their associated classification, overall value, description, key features and management recommendations are set out together with likely impacts which are discussed in general terms. Page 11 of the DAS comments that the “presence of significant levels of large wind farm development nearby suggest that the addition of this single modest wind turbine would not cause significant additional visual impact to the surrounding landscape “.

However, the information submitted is not put together as a landscape and visual assessment in line with the principles of the Guidelines for Landscape and Visual Impact Assessment (GLVIA) and does not appear to have been carried out by a chartered landscape architect. Therefore, an assessment of the sensitivity of individual landscape and visual receptors, the magnitude of the effect on those receptors and the resulting significance of effect has not been carried out. The ZVI and the visual impact method has been created according to the 2002 Scottish Natural Heritage (SNH) Guidance, which has been superseded in technical performance terms by Visual representation of wind farms good practice guidance SNH 2006.

Nevertheless, the ZVI covers 15km and 2.5km radii which are considered to be reasonable distances to explore effects, although 5km would have been a preferable lower end distance. The final photomontages do not meet with the principles or

standards set out in SNH 2006. In particular the hard copy photomontages are not submitted at a size which gives a precise viewing distance, some were taken from viewpoints which include vertical elements which tend to detract from an uncluttered view. An assessment of effects from these viewpoints is more difficult and potentially misleading, if it is only viewed as part of a desk study. The reference to Thomas and Sinclair–Thomas Matrices should be treated with caution as they have not been used by landscape professionals in LVIA's for many years, if ever.

The viewpoints are almost all from roads or adjacent settlements with one from a nearby farm track, none are from upland access land or PROW's. There are no visual impact assessments from the viewpoints or individual receptors.

There is no method set out for an assessment of landscape effects using LANDMAP. The Table set out in Appendix II mixes up sensitivity with management recommendations which is incorrect. The likely impacts are discussed in general planning policy or other terms rather than addressing the specific impact on an area, which is not an appropriate method.

There is no cumulative impact assessment considering the relationship of the proposed turbine with existing wind farms such as the Fforch Nest and Pant Y Wal Wind Farms, which are also not mapped.

In consideration of the landscape effects, it is considered that the wind turbine would be sited on a spur of a ridge on the edge of the coalfield plateau which is open to view from surrounding valleys which are wide in parts. The turbine would appear as a large structure, very prominent on the side of the ridge, on a localised highpoint (Viewpoint L14), dwarfing its scale and appearing as close to a sharp change in level (Viewpoints L5 and L10). It would also dwarf the nearby existing wind turbine which is closer to and better associated with the nearby farm complex. (Viewpoint L11). This juxtaposition is considered awkward and unsightly. The proposed turbine would appear mainly on the skyline except from viewpoints on a similar level such as Viewpoint L11 where it would be seen against conifer plantation. Overall the effects on local landscape character are considered to be adverse and significant. Cumulatively, the wind turbine would be isolated from other wind turbine development, although in some views (Viewpoints L8, L11 and L12) it might appear as an isolated outlier of the Fforch Nest Wind farm. In this respect it would extend the effects on the coalfield plateau to the south and east and would appear incongruous with adverse effects.

In consideration of the visual effects it is considered that the most affected residents would lie within the nearby settlements of Penrhiwfer, Williamstown and Edmondstown and at greater distances in Penygraig, Trealaw, Trebanog, Tonypandy and Tonyrefail. The turbine would be a dominant feature rising above the skyline in Penrhiwfer (Viewpoint L4), and highly prominent when viewed from Williamstown (Viewpoint L10) and Edmondstown. From other settlements, the turbine would appear prominent (Viewpoint L5) reducing to a noticeable feature

further away, such as from Penrhys (Viewpoint L13). Pedestrians, users of the nearby public footpaths and road users would experience similar effects to the above with closer views being significant adverse.

In conclusion it is considered that due to its siting, being located on a localised highpoint close to the steep valley sides, and size, the wind turbine would appear prominent and incongruous with significant adverse effects on the character and appearance on the local landscape and cause significant adverse visual effects on local residents, pedestrians, road users and users of local public footpaths. Cumulatively, it would appear as an incongruous, prominent, isolated feature which would extend the overall field of view in which other turbines to the east at Fforch Nest and Pant Y Wal are visible, extending the effects on the coalfield plateau to the south and east with adverse effects.

It is accepted that the works associated with the turbine – including the hard standing and improvements to the existing access track would have a direct effect on the site and surrounding fields, but these small scale works would not be widely visible, due to the existing surrounding landform.

It is therefore concluded that in terms of landscape and residential visual amenity, the proposed wind turbine would be contrary to the provisions of Policies AW5, AW6 and AW12 of the LDP and Para 12.10.1 of Planning Policy Wales.

## **OTHER ISSUES**

The following other material considerations have been taken into account in considering the application, though were not the key determining factors in reaching the recommendation:

### **Highway Safety and PROW matters**

The application shows that access would be gained from the A4119 and Penrhiwfer Road and then on to the site using the existing farm tracks. However, no swept path analysis accompanies the application.

The DAS outlines that construction of the wind turbine would require the use of hgv's, abnormal loads and police escort to transport the wind turbine components, plant and construction materials over a 2 to 3 month period.

The Council's Transportation Section has assessed the transport implications of the proposed development. There is the potential for adverse impact of the abnormal deliveries which could result in excessive maintenance liability to the Highway Authority. However, in view of the short duration, limited use of vehicles required during the delivery periods and limited construction period, no highway objections are raised subject to a number of conditions. The recommended conditions would

secure a Traffic Management Plan, (including a trial run) and a condition survey of the B4278 Penrhiwfer Road 50m either side of the entrance leading to the site.

It is therefore considered that subject to a legal agreement in respect of before and after surveys and an assessment of compensation for extraordinary use and the imposition of appropriate conditions, as recommended by the Council's Transportation Section, the proposed development of the wind turbine is not anticipated to have an adverse impact on the local highway network and highway safety.

The use of the existing private access track would correspond with a length of Public Right of Way known as PROW ANT/65, which also joins PROW ANT/64 and ANT/63. There is therefore potential for the proposed development to have an impact on public safety and the ability of the public to continue to enjoy using these public footpaths, during the development but especially during the construction period. Further information concerning the health and safety precautions which will be carried out for each stage of the development, would be required to be submitted means of a condition. Should there be any risk to users of any PROW, then the applicant would need to apply to the Council for a temporary closure order. It is therefore considered that any impact on the PROW's can be dealt with by means of a condition or temporary closure order.

### **Impact on residential amenity**

The impacts on adjacent residential uses as a result of noise and visual disturbance, and due to shadow flicker/reflected light also needs to be considered. The applicant has submitted a noise assessment which has assessed the potential noise impact of the proposed turbine, based on the noise emission data produced by the manufacturer of the proposed wind turbine. This includes a prediction of the noise level at the nearest residential properties to the site, based on a wind speed of between 5 and 10m/s and is a worst case scenario as no account is taken of any acoustic screening that may exist by intervening structures or topography. The nearest residential properties are located at Glamorgan Terrace and Pleasant View and the applicant's properties of Whitehill House and The Stables, Penrhiwfer Farm. The predicted noise levels demonstrate that the combined effects of the wind turbine should not exceed 29 - 31 dB LA90, 10 min at Pleasant View and Glamorgan Terrace and 33-34 dB LA90, 10 min at Whitehill House and The Stables, Penrhiwfer Farm.

The Assessment and Rating of Noise from Wind Farms (The ETSU Report 1997) referred to in TAN8 provides indicative noise levels which would provide a reasonable degree of protection to wind farm neighbours. The ETSU Report recommends that predicted noise levels should not exceed 35 dB LA90, 10 min for non-stakeholder dwellings and 45 dB LA90, 10 min for stakeholder dwellings.

The Noise Assessment concludes therefore that the nearest residential properties would be adequately protected in terms of residential amenity.

A Shadow Light Flicker report has also been undertaken for the proposed wind turbine. The report states that only properties within 130 degrees either side of north in the UK would be affected at the proposed latitude of the site, and that shadow flicker assessment should be carried out if there are any residential properties within 10 rotor diameter distance of the proposed wind turbine. The report states that the rotor diameter of the wind turbine is 39m indicating that shadow flicker could potentially be an issue for any residential property within 390m. As there are no unconnected properties within the potential zone of influence shadow flicker should not be pose a problem for sensitive receptors.

The construction phase of the development also has the potential to have an impact on the amenities of local residents. However the construction activities are of short term duration and conditions could be imposed in order to control the hours of operation.

The Council's Public Health and Protection Division has considered the impact on local residents and has raised no objection to the proposed turbine as the assessment work demonstrates that it is capable of complying with the relevant guidance. A number of conditions are recommended to cover noise limits at the nearest residential properties and a monitoring system. Further, in respect of construction activities, conditions are recommended to cover hours of operation and the minimisation of dust. It is therefore considered that, subject to the imposition of appropriate conditions, the turbine is not likely to cause undue noise and disturbance to the nearest residential properties and would comply with policies AW5 and AW12 of the LDP.

#### Ecology/agricultural land quality

An ecological assessment accompanies the application. The assessment shows that the area of the turbine location is an area of improved grassland of low ecological value, is likely to have limited significance for protected species and is likely to have low and insignificant impact on birds.

The Council's Ecologist has reviewed the assessment. He advises that the general conclusions are likely to be correct in that it would have no significant impacts on local biodiversity. No specific bird survey work has been undertaken. However, he has advised that the erection of the single turbine is not likely to have a significant impact on the local bird population, subject to a condition to secure mitigation and monitoring in respect of possible red kite impacts as these birds are regularly reported in the local area.

In terms of agricultural land quality, the wind turbine and associated works and assess would involve a small piece of land within the applicants land holding on land

which appears to be within Grade 4 or 5 of the agricultural classification maps, and used for sheep grazing.

It is therefore considered that there would be no ecological or agricultural constraint to the development, subject to the clarification of the foregoing measures and the imposition of appropriate conditions.

### **Impact on the water environment**

In terms of the water environment the site is not in an area at risk of flooding and there are no open water courses within the application site, although there are a number of drains and small streams within the vicinity of the site. It is not anticipated that the construction of the access track and crane hard standing would result in a significant increase in surface water run off.

The Council's Drainage Officer has raised no objections to the proposed development subject to the imposition of a number of drainage conditions including the need for a hydrological impact assessment to secure details of measures to prevent flood risk and surface water drainage matters. It is therefore considered the proposal would not conflict with the purpose of LDP Policy AW8.

### **Archaeological Resource**

The heritage section of the DAS indicates that there are no previously recorded sites within the proposed development area, and GGAT have concurred with this view and advised that the site is located outside the boundary of the Registered Rhondda Landscape of Special Historic Interest. GGAT have therefore raised no objection to the positive determination of this application. It is therefore considered that the proposed development would be unlikely to cause an adverse impact to the historic environment and would not conflict with the purpose of LDP Policy AW7.

### **Sandstone Resource**

The site is located within a Sandstone Resource area, which is safeguarded from development which would unnecessarily sterilise or hinder its extraction by Policy AW14.2 of the LDP. However, given the abundance of the Sandstone resource in Rhondda Cynon Taf, the very limited footprint of the turbine, and its temporary nature, it is considered the proposal would not conflict with the purpose of the LDP Policy. In addition, the poor access to the site and the nearness of residential properties would be likely to prevent any such future extraction, in any event.

### **Economic and Environmental Benefits**

PPW and the LDP require the economic considerations of the proposed wind turbine to be considered. As the proposal involves a small scale renewable energy development, the application is required by Policy AW12 of the LDP to demonstrate that the proposal would not constrain the generating capacity of the refined strategic

search area for large scale wind farm developments. As the development involves a single small wind turbine it is considered that it would not affect any future development of a large scale wind turbine within SSAF.

All energy generation would be directly connected to the National Grid and would therefore help in the delivery of renewable energy targets.

The applicant has advised there would be no grid connection problems as the connection would take place in an underground cable to an existing 11kv overhead line.

The applicant has offered a community benefit fund but this is not quantified at present. However, it is considered that such a community benefit would not be justified as mitigation of the impacts of the development, as it is considered that the proposal is unacceptable in planning terms.

### **Conclusion**

It is considered that having regard to all the matters raised above, it is recommended that the application be refused for the reasons recommended below. It is considered that the effects on the landscape and visual amenity of the single wind turbine outweigh the benefits of this small renewable energy development.

### **RECOMMENDATION: Refuse**

1. The proposed single turbine would be contrary to the provisions of policies AW5, AW6 and AW12 of the Rhondda Cynon Taf County Borough Council Local Development Plan and Paragraph 12.10.1 of Planning Policy Wales in that being an isolated, prominent and incongruous feature on a localised highpoint, it would have an unacceptable detrimental effect upon the existing character and appearance of the area. It is also considered that the Landscape and Visual Assessment accompanying the application cannot be relied on to provide a reliable landscape and visual assessment of the proposed wind turbine in that it has not been carried out in accordance with accepted Guidance, and there is no methodology of landscape effects, no cumulative impact assessment and no visual impact assessment.
2. The proposed single turbine would be contrary to the provisions of policies AW5, AW6 and AW12 of the Rhondda Cynon Taf County Borough Council Local Development Plan and Paragraph 12.10.1 of Planning Policy Wales in that it is considered that the siting and height of the wind turbine would appear as a prominent, isolated and incongruous feature which would adversely affect the local skyline and extend the influence of turbines within the area, and therefore would unacceptably harm the visual amenities of the local residents especially those within the nearby settlements of

Penrhiwfer, Williamstown and Edmondstown.

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<b>APPLICATION NO:</b>	<b>13/1240/09</b>	<b>(GW)</b>
<b>APPLICANT:</b>	<b>Cynon Taf Community Housing Group</b>	
<b>DEVELOPMENT:</b>	Application for a Lawful Development Certificate for the proposed use as a house in multiple occupation (up to 6 residents).	
<b>LOCATION:</b>	<b>1 TUDOR PLACE, ABERAMAN, ABERDARE, CF44 6UE</b>	
<b>DATE REGISTERED:</b>	<b>26/11/2013</b>	
<b>ELECTORAL DIVISION:</b>	<b>Aberaman North</b>	

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**RECOMMENDATION:** Refuse

**REASONS:**

**On the basis of the information submitted to accompany the application, and on the balance of probabilities, the proposed use of 1 Tudor Place as a house in multiple-occupation by up to 6 residents living together, would be materially different from the existing use of the property as a single dwelling house because the occupants would not, as a matter of fact and degree, live together as a single household. The proposal is a change of use from a single dwelling house (Class C3) to a house in multiple- occupation (sui generis), which is development requiring planning permission and therefore would not be lawful for the purposes of planning.**

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**APPLICATION DETAILS**

The application seeks to ascertain whether the proposed use to accommodate 6 people living together requires planning permission or not.

The application is supported by the following evidence:

Correspondence from the applicant detailing the following information:

- The accommodation will provide temporary 'step up' accommodation for individuals prior to their re-housing to more permanent accommodation. The proposed occupiers will be individuals from differing backgrounds, nominated to Cynon Taf for temporary accommodation whilst more permanent accommodation is found.

- The responsibility will be on Cynon Taf Housing Group to fill rooms. Individual license agreements will be with Cynon Taf Housing Group for up to 12 weeks. This may be less or more depending on the availability of permanent housing. There would be no element of care provided.
- The bathroom, shower and W/C, dining room, lounge, kitchen, garden and hallway will all be shared by the householders. The whole house would have shared responsibility for these areas. Only bedrooms will have restricted access. Each occupant will have a key to the main door and individual locks to their bedrooms only.

Plans including a floor plan detailing four bedrooms and six beds. It also details shared living space including kitchen, dining room, lounge and bathroom/shower rooms.

## **SITE APPRAISAL**

The application site is a detached red brick dwelling located on a cul-de-sac (Tudor Place) of dwellings. The other dwellings on the cul-de-sac are bungalows. The cul-de-sac is accessed from Gwalia Terrace, which is also a cul-de-sac. This has a terrace of traditional residential dwellings on the opposite side to the access to Tudor Place.

## **PLANNING HISTORY**

00/4303	Land adj to Ynysllwyd Lodge, Aberaman, Aberdare.	Erection of 4 dwellings	Granted 03/10/00
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## **PUBLICITY**

The application has been advertised via direct neighbour notification. One letter of objection has been received from a resident of Gwalia Terrace. A petition against the proposal and signed by 29 people from Gwalia Terrace and other nearby streets has also been submitted. The comments are summarised below:

- The proposal would cause a nuisance and would have a detrimental effect on our properties.
- It would result in extra traffic.
- There is a lack of parking.
- It could result in public disorder complaints.

## **CONSULTATION**

Legal Services – has advised on case law in relation to applications for a certificate of lawfulness in these kinds of case.

## **POLICY CONTEXT**

### **Rhondda Cynon Taf Local Development Plan**

As this is an application for a Certificate of Lawfulness there are no Local Development Plan policies relevant to 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 8.27 states that Local Planning Authority will ask themselves the hypothetical question - "If this proposed use had occurred on the application date, would it have been lawful for planning purposes. They will need to consider whether the proposal would involve "development" requiring an application for planning permission and would it involve any breach of any existing condition or limitation imposed on the grant of planning permission.

Circular 03/2005 - Changes of use of Buildings and Land  
The Town & Country Planning (Use Classes) Order 1987.

## **REASONS FOR REACHING THE RECOMMENDATION**

This application seeks a Certificate of Lawfulness for the use of the existing dwelling at 1 Tudor Place as house in multiple-occupation by up to 6 persons living together as a single household. In other words, the applicant is seeking a determination from the Council as to whether or not the proposed use of the property amounts to a material change of use requiring planning permission to be sought. It has to be stressed this is not a planning application, therefore the planning merits of the proposed use are not material to the consideration of this case which rests solely on matters of fact and law.

The current use of the house at 1 Tudor Place is as a single residential dwelling, which falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987. The property was granted permission in 2000 (application reference 00/4303) and there are no conditions attached to that permission which would be breached by the submitted proposal. Therefore this is taken as being the current lawful use of the property for the purposes of planning.

The applicant seeks a Certificate of Lawfulness on the basis that, in his opinion, the proposed use of the existing property as a house in multiple-occupation by up to 6 persons living together as a single household falls within Use Class C3 and is not

materially different from the current use, therefore is lawful and does not require planning permission to be sought.

The wording of Use Class C3 relating to dwelling houses is as follows and advice in Circular 03/2005 advice is relevant:

*"Use as a dwelling house whether or not as a sole or main residence;  
a) by a single person or persons living together as a family;  
b) by not more than 6 residents living together as a single household (including a household where care is provided for residents)."*

The information submitted by the applicant in support of the application, explains that there will be no more than 6 people living together as a single household. The dwelling is intended to be used to provide temporary 'step-up' accommodation for individuals prior to them being re-housed in more permanent accommodation. The future occupiers will therefore enter a license agreement with applicant (Cynon Taf Community Housing Group) on an individual basis rather than a tenancy agreement. The individual occupiers will be from differing backgrounds, nominated by the applicant (landlord), and the license agreements will be for up to 12 weeks, though individuals may either leave earlier if permanent accommodation becomes or a further 12 week license may be required if difficulties arise in finding permanent accommodation. All facilities such as the kitchen, bathroom and living room will be shared and the residents will be responsible for these areas, though each bedroom will be lockable and the responsibility of its occupant.

Having regard to the internal layout of the property and the supporting information outlined above, the proposal will involve the residents in the household living communally with no element of care. This means that the proposal does not fall within Use Class C2, which covers residential institutions such as hospitals, nursing homes and residential schools. Also, the proposed use does not fall with Class C1 which covers hotels, boarding houses and guest houses.

Most proposals for conversion of dwelling houses to hostels and homes offering rehabilitation and shelter in the community for groups such as the recovering mentally handicapped, ex-alcoholics, drug addicts and battered wives require planning permission. However, certain types of hostel use established in existing houses, particularly of the 'half-way house' type may not require planning permission at all, falling within Use Class C3 where the use is by not more than 6 residents living together as a single household. The consideration and decision on this application essentially turns on whether proposed use of 1 Tudor Place as a dwelling in multiple-occupation by up to 6 individuals either involves the occupants living together as a single household and therefore within Class C3, or independently of each other which would amount to a material change of use involving the need for planning permission to be sought.

In the first instance it is important to understand that the prospective occupants of the dwelling are unlikely to have any relationship with each other and might well come to the house simply because of a need for accommodation, support and resettlement. Planning case law has established that people coming to a house neither as a preformed group nor for a predetermined period with merely a need for accommodation, support and resettlement are capable of being regarded as living in a single household. Therefore, the personal and social characteristics of the intended occupants of 1 Tudor Place and the lack of a relationship between them are not factors that automatically mean they fail to be regarded as a living in a single household. There are several other factors that are widely held to provide a better test whether a house is being occupied as a single household or not, and these are:

- The origin of the tenancy, whether the residents arrive in a single group or are independently recruited by the landlord;
- The extent to which facilities in the house are shared;
- Whether the occupants are responsible for the whole house or just their particular rooms;
- The extent to which the residents can and do lock their doors
- The responsibility for filling vacancies: whether that of the existing occupants or the landlord;
- The allocation of rooms: whether by the landlord or the occupants;
- The size of the establishment;
- The stability of the group;
- The mode of living: to what extent communal and to what extent independent.

Having regard to the information submitted with the application and the above factors the following comments are offered.

#### Tenancy, size of establishment and stability of the group

The occupants of the dwelling will be independently recruited by the applicant (Cynon Taf Community Housing Group); there is no evidence to suggest they will arrive in a single group. Each occupant will enter into licence agreements with the landlord permitting the individual to live at the dwelling for up to 12 weeks, though the agreement may be extended if permanent occupation elsewhere is not available. It is not unreasonable to assume that at occupants are likely to reside at the dwelling for differing lengths of time largely depending on the availability of the alternative permanent accommodation. At any one point of time none of the occupants will have a license agreement beyond three months ahead. Although the small size of the 'household' is could help the occupants form a cohesive group, the short-term individual tenancy arrangement is more likely to mitigate against this because it will give rise to a highly transient occupation of the dwelling, and unlikely to foster development of stable relationships between occupants and a pattern of shared responsibility and living within the house consistent with its occupation by a single household. This contrasts with the situation where, for example, a small group of students at the same university join together to occupy a house for the period of an

academic year – they will usually form a single household, notwithstanding that they may not all have known each other beforehand and they may pay rent individually for their occupation.

#### Extent to which facilities in the house are shared

The bathroom, shower and W/C, dining room, lounge, kitchen, garden and hallway will all be shared by all of the occupants, who will have shared responsibility for these areas. Bedrooms will have restricted access. Each occupant will have a key to the main door and individual locks to their bedrooms. Whilst this arrangement shares the physical characteristics of a dwelling in multiple occupation as a single household, such as for example a student house, there is no evidence of the nature and extent of the responsibility of the occupants for the shared facilities and their individual rooms. For instance, what routine maintenance and cleaning duties would be undertaken by the landlord and what would be left to the occupants? A copy of the occupancy license or management agreement might have helped clarify where any division of responsibilities would lie. In any event, the short term individual tenancy arrangement is considered unlikely to foster shared responsibility for the dwelling amongst the occupants.

#### Filling vacancies and allocation of rooms

Responsibility for the filling of vacancies and allocating rooms would be the landlord's. There is no evidence the occupant's will be able to exercise any choice in who comes to live with them. Again, this is unlikely to foster an environment where occupants will come together to form a single homogenous group and could be readily identified as such.

#### The mode of living: to what extent communal and to what extent independent

Taking the above facts and judgement into account it is considered, whilst the proposed use of 1 Tudor Place will involve a degree of shared living, the greater probability is that the mode of living will involve up to six individuals at a time living largely as separate, independent households under the same roof. Therefore, on balance of probabilities, the proposed use as described in this application will involve use of the dwelling as a house in multiple occupation, which is materially different from its current lawful use as a single dwelling house within Class C3. Accordingly, it is concluded that the proposal is one for which planning permission will be required and a Certificate of Lawfulness should be withheld.

#### **Other issues**

Members will be aware that a number of objections have been received regarding increased traffic and potential anti social behaviour. The potential impact of these issues is acknowledged, however and whilst not seeking to diminish them, Members are respectfully advised they are not matters material to the consideration of this

application which has to be determined on the basis of fact and law. Instead they would be matters material to the consideration for any subsequent planning application for this proposal in the event of one being made.

**RECOMMENDATION: Refuse**

1. On the basis of the information submitted to accompany the application, and on the balance of probabilities, the Council considers that the proposed use as a house in multiple-occupation by up to 6 residents living together would be a material change of use from a single dwelling house (Class C3) to a house in multiple occupation (sui generis), therefore would amount to development requiring planning permission and would not be lawful for the purposes of planning.

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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**

**20 FEBRUARY 2014**

**REPORT OF: SERVICE DIRECTOR PLANNING**

**REPORT**

**APPLICATIONS RECOMMENDED  
FOR REFUSAL**

**OFFICER TO CONTACT**

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(Tel: 01443 425004)**

**See Relevant Application File**