VALE of GLAMORGAN
BRO MORGANNWG

APPENDICES

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VALE of GLAMORGAN
BRO MORGANNWG

APPENDIX 1

APPENDIX 1

Vale of Glamorgan
Bro Morgannwg

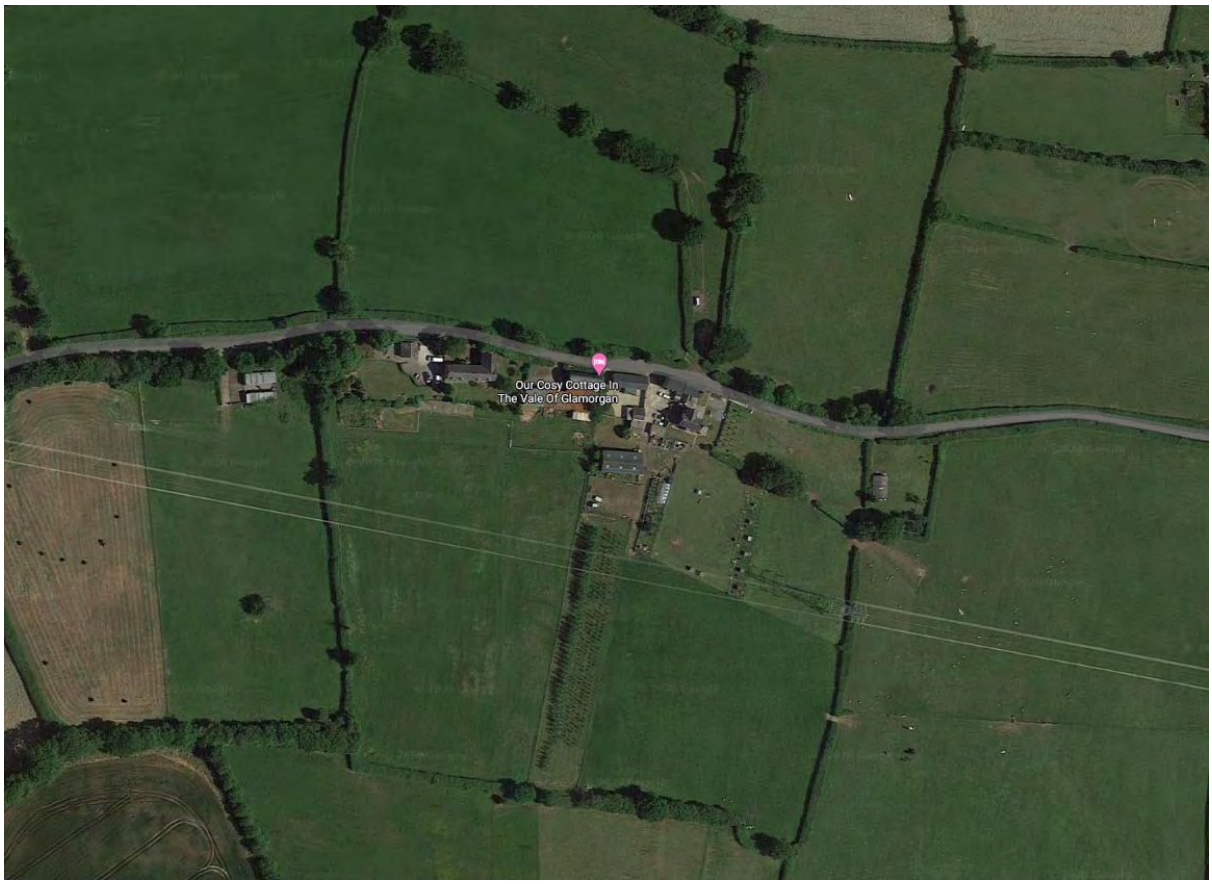
Promap®

Heol Las Farm, Llangan, Vale of Glamorgan
Anderson & Associates

VALE of GLAMORGAN
BRO MORGANNWG

APPENDIX 2

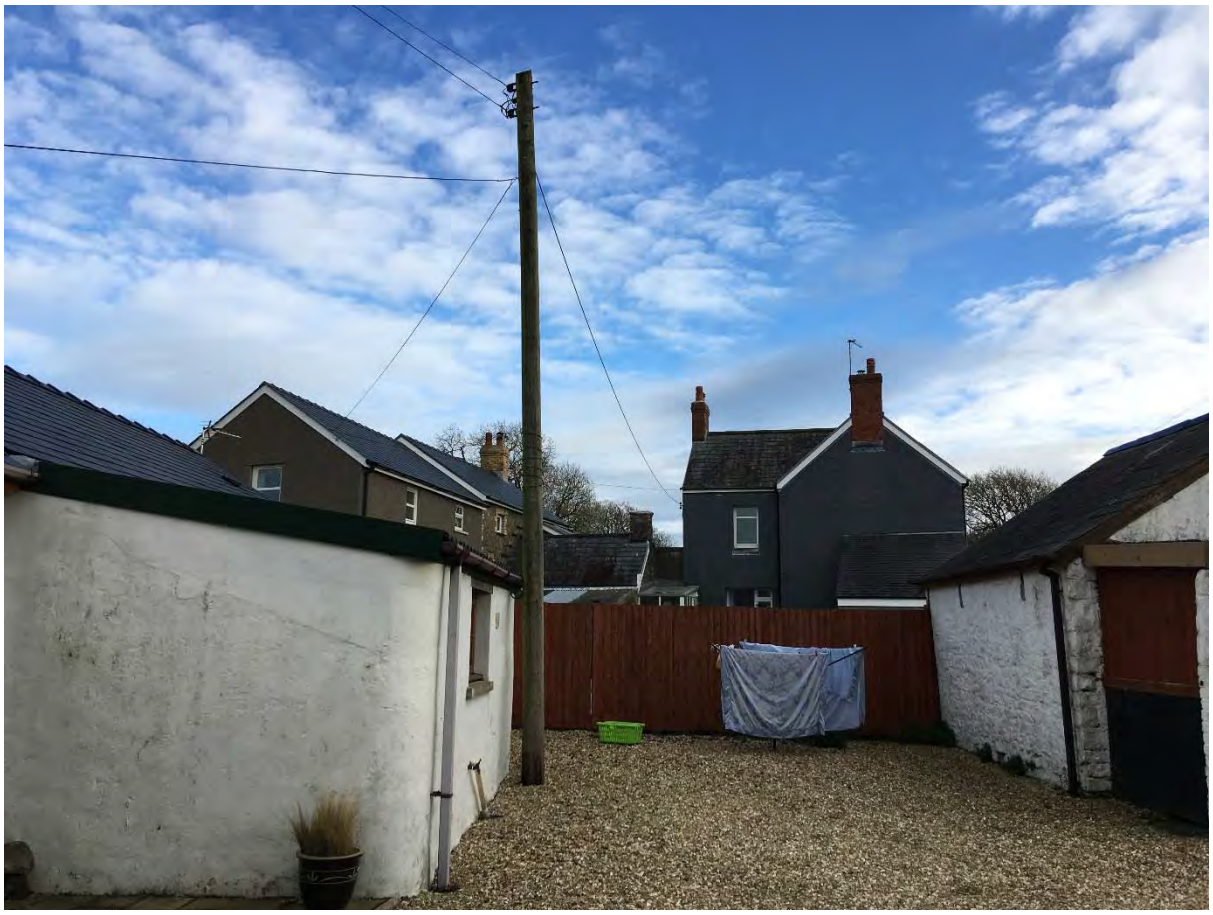
APPENDIX 2


Our Cosy Cottage In
The Vale Of Glamorgan

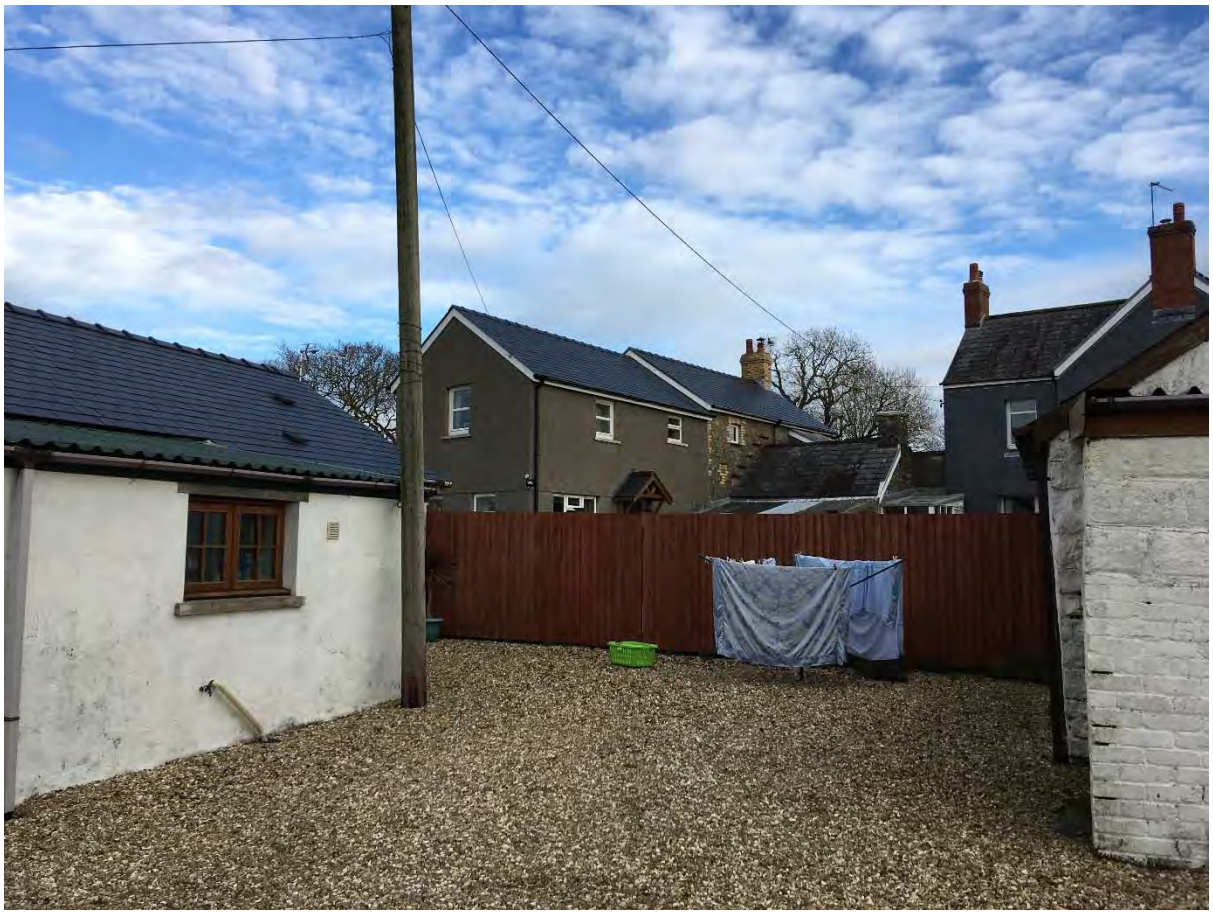
VALE of GLAMORGAN
BRO MORGANNWG

APPENDIX 3

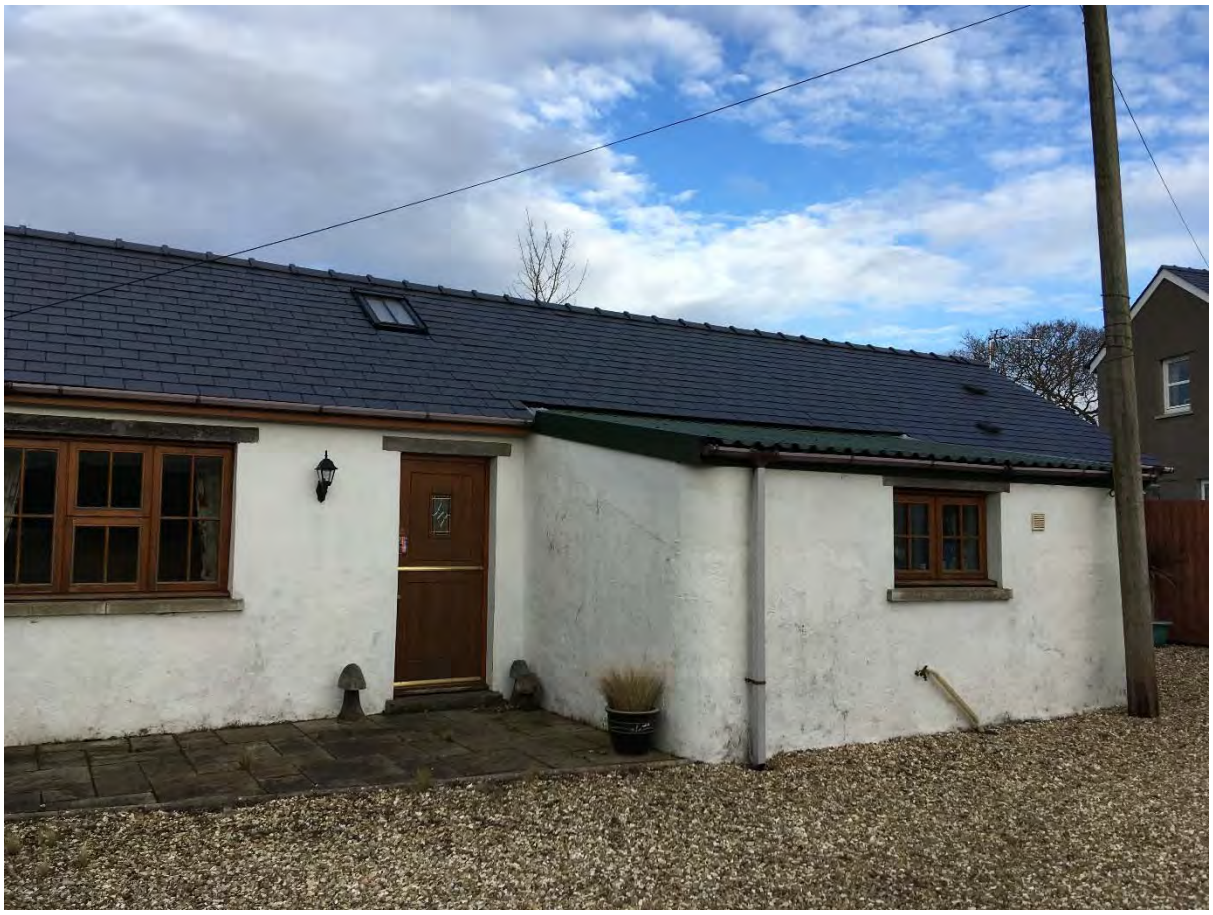
APPENDIX 3



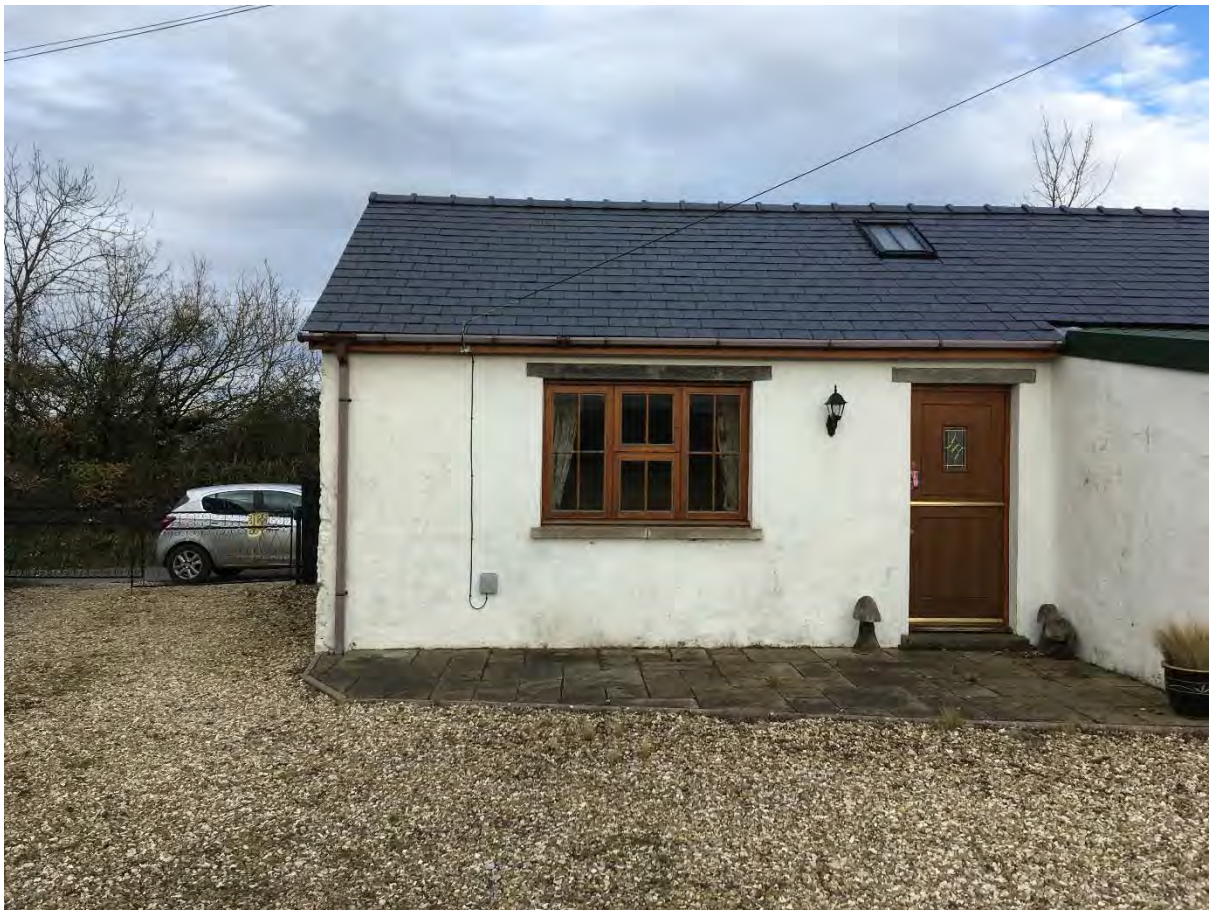
VIEW TOWARDS HEOL LAS FARMHOUSE FROM GARDEN OF HOLIDAY LET (FENCE SEPARATING SITES)



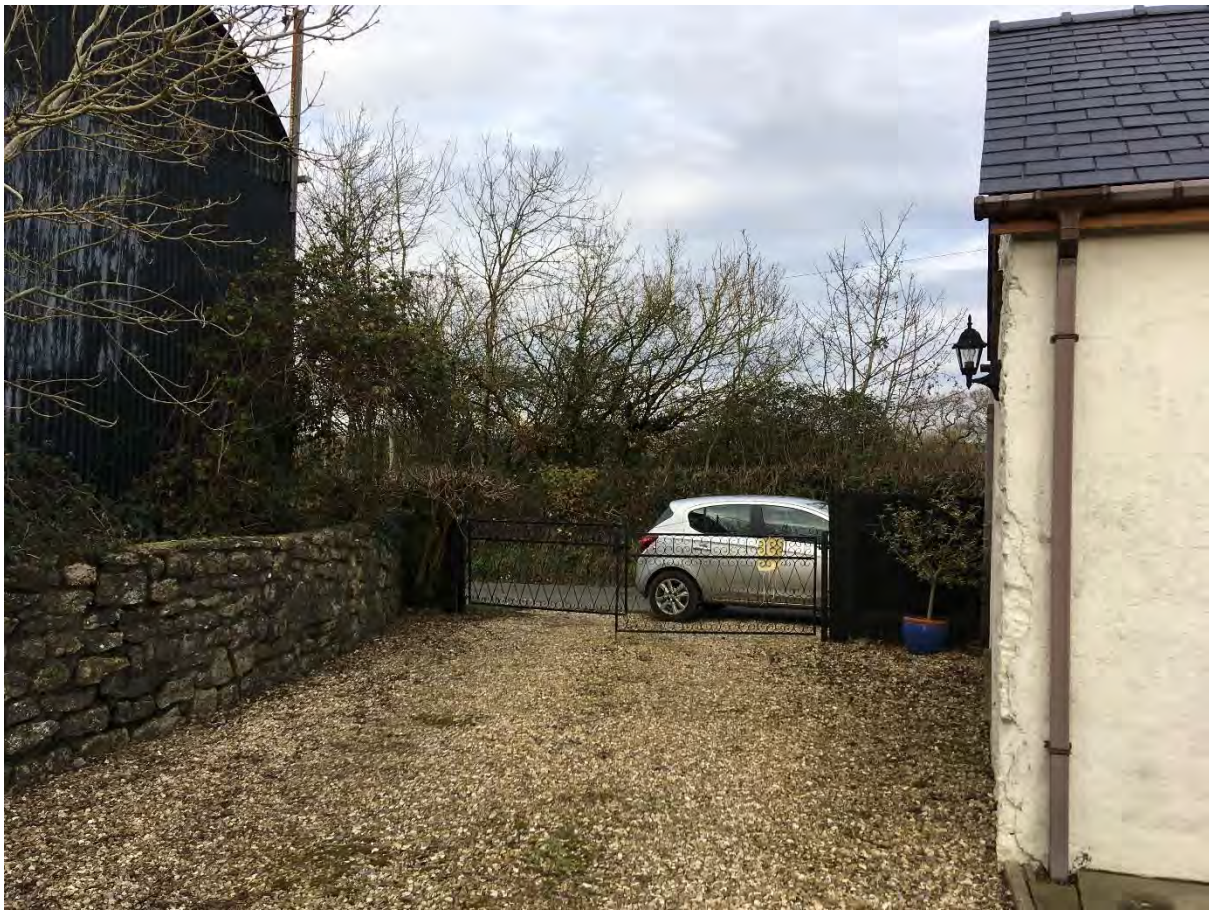
VIEW OF AMENITY SPACE OF HOLIDAY LET (FENCE SEPARATING SITES)



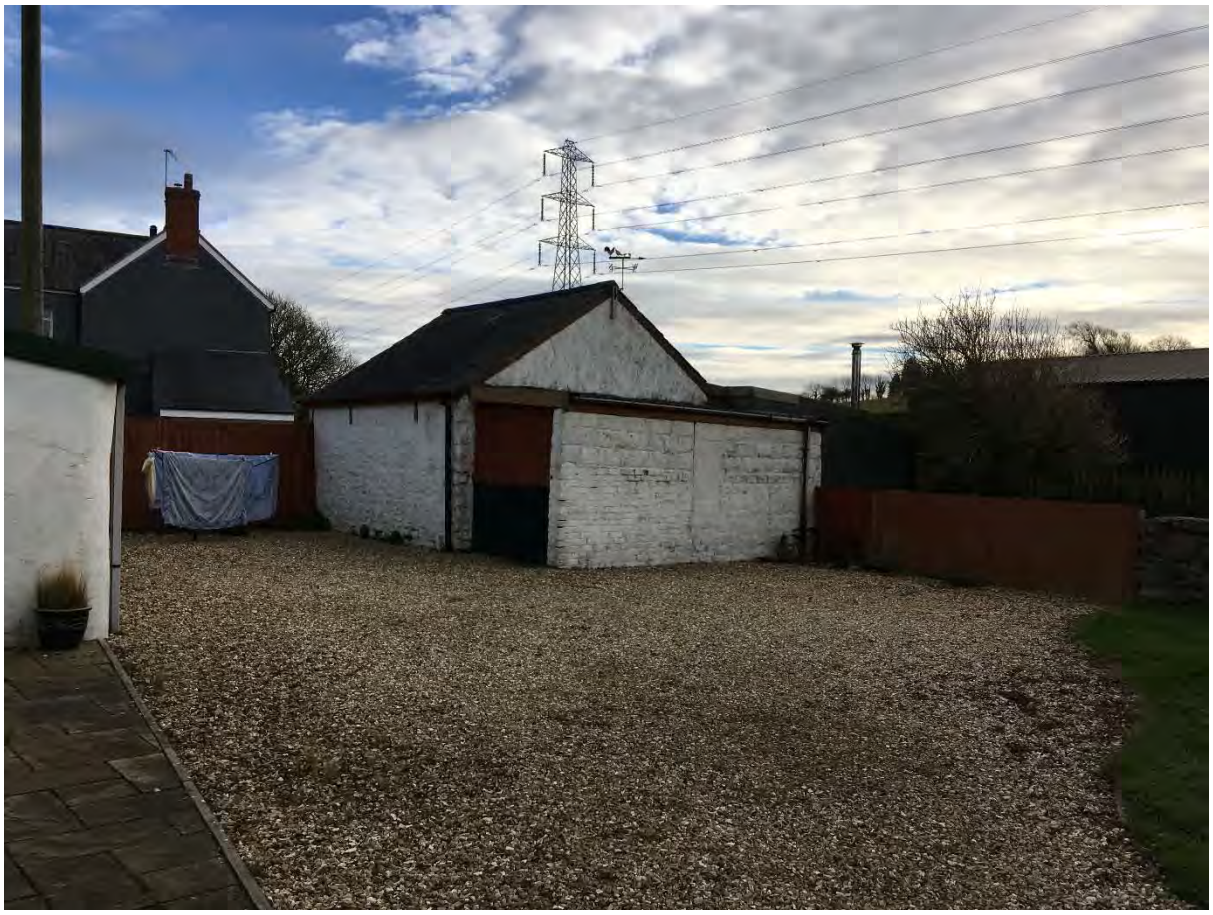
VIEW OF REAR ELEVATION OF APPLICATION SITE



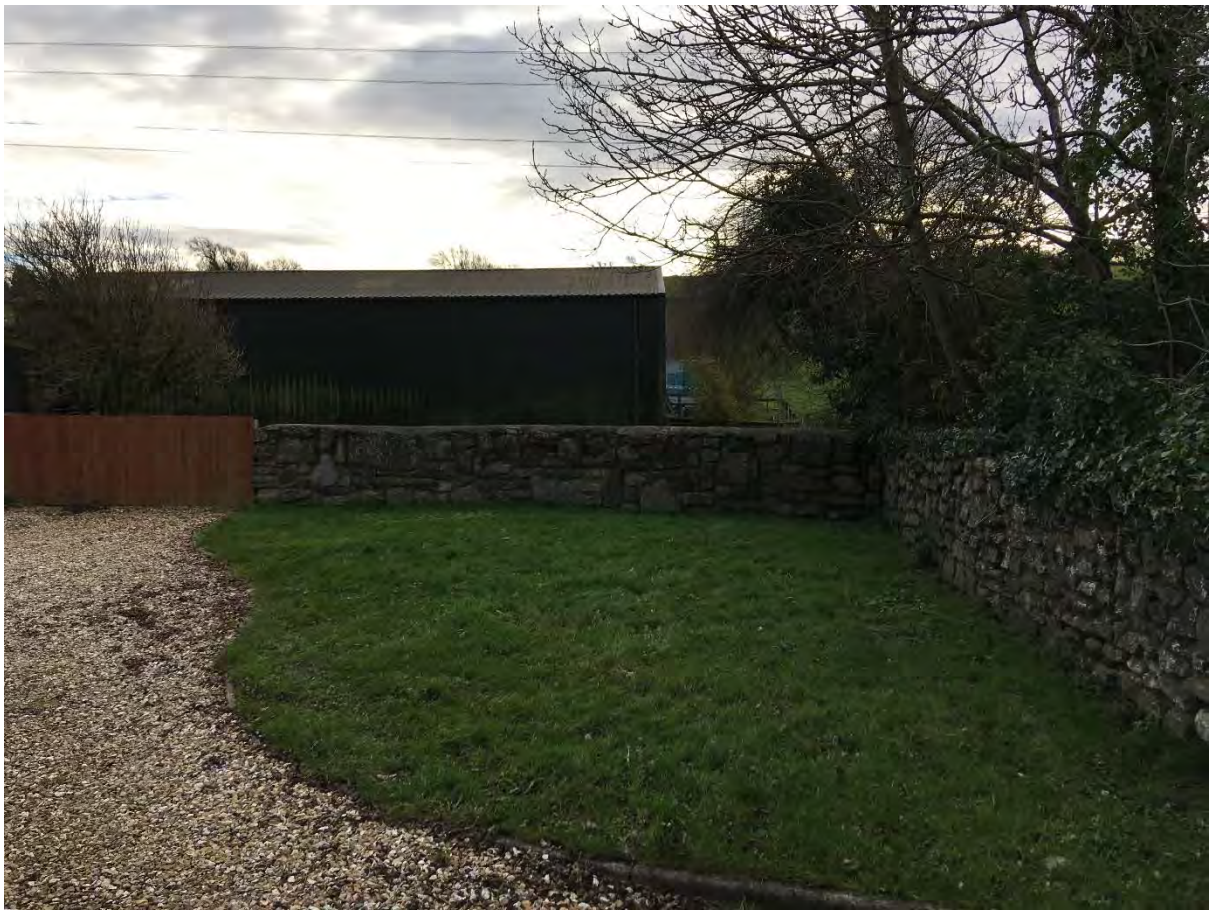
VIEW OF REAR ELEVATION AND VIEW OF ACCESS/PARKING AREA TO LEFT OF PHOTO



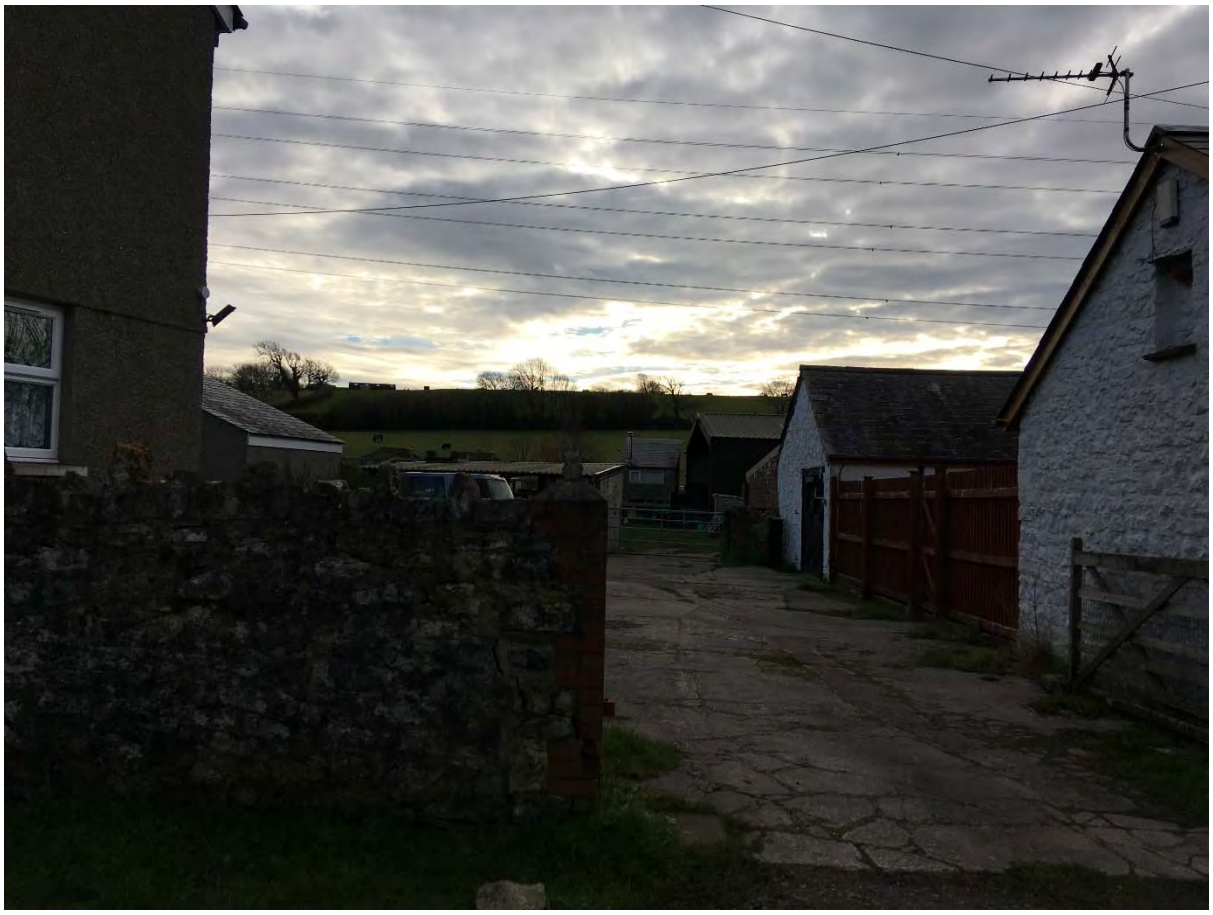
VIEW OF ACCESS AND PARKING AREA SERVING HOLIDAY LET



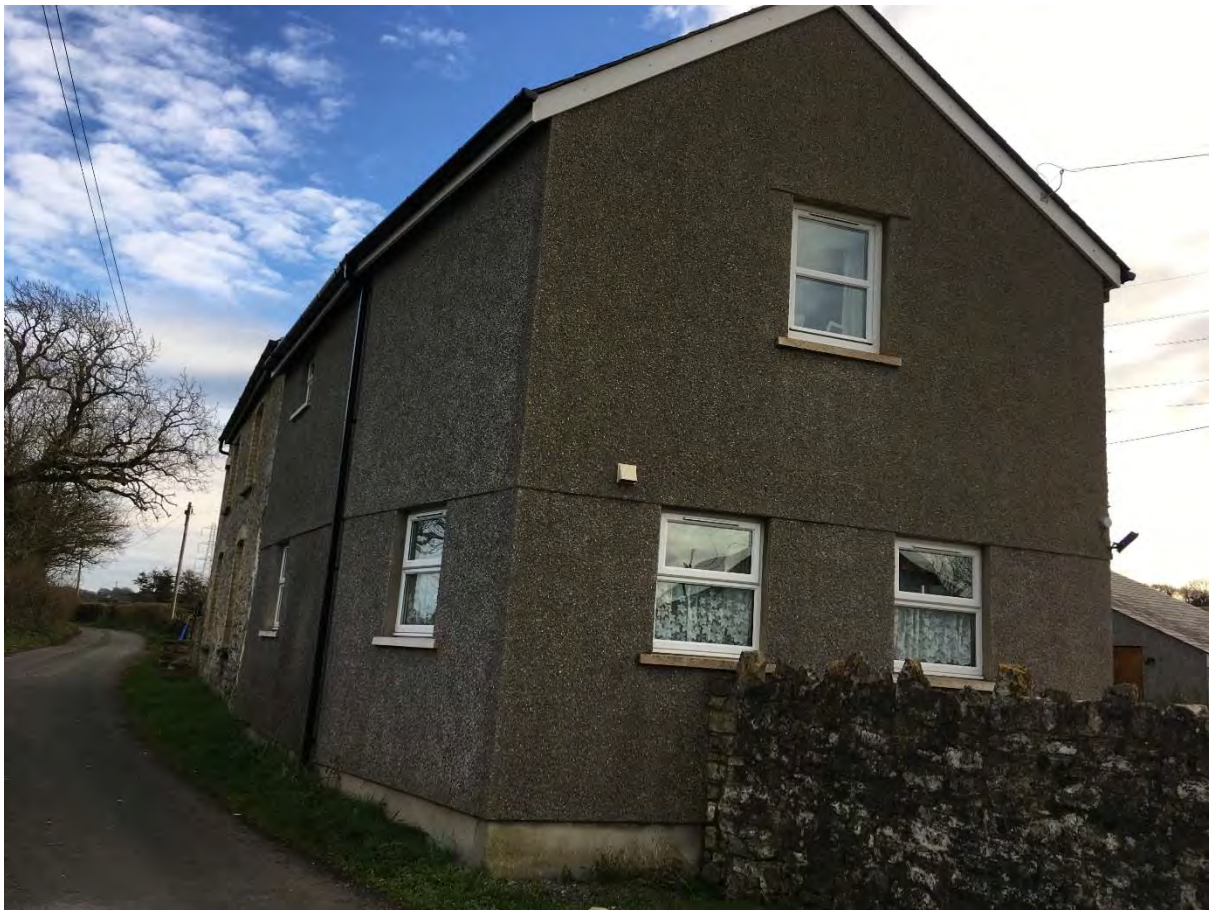
AMENITY AREA SERVING HOLIDAY LET



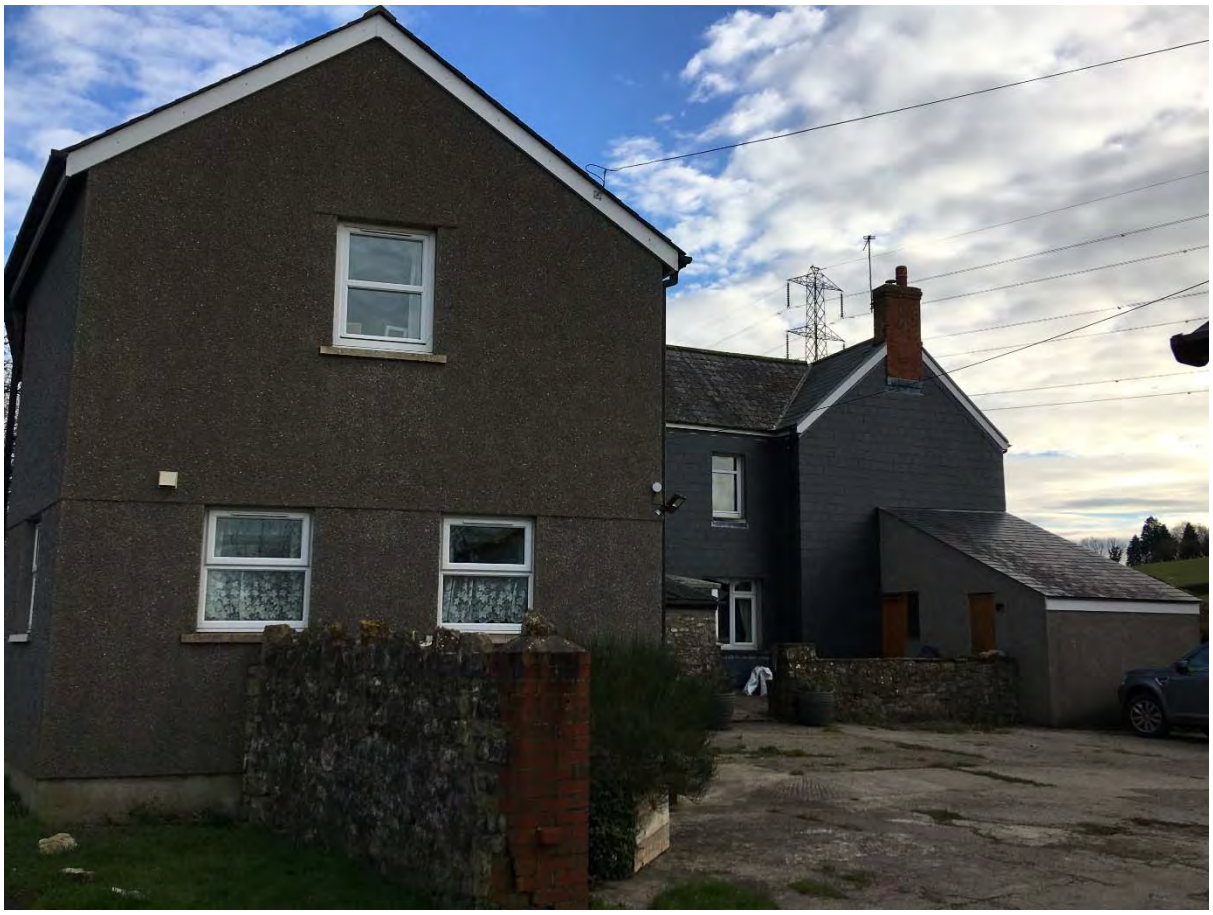
AMENITY AREA SERVING HOLIDAY LET



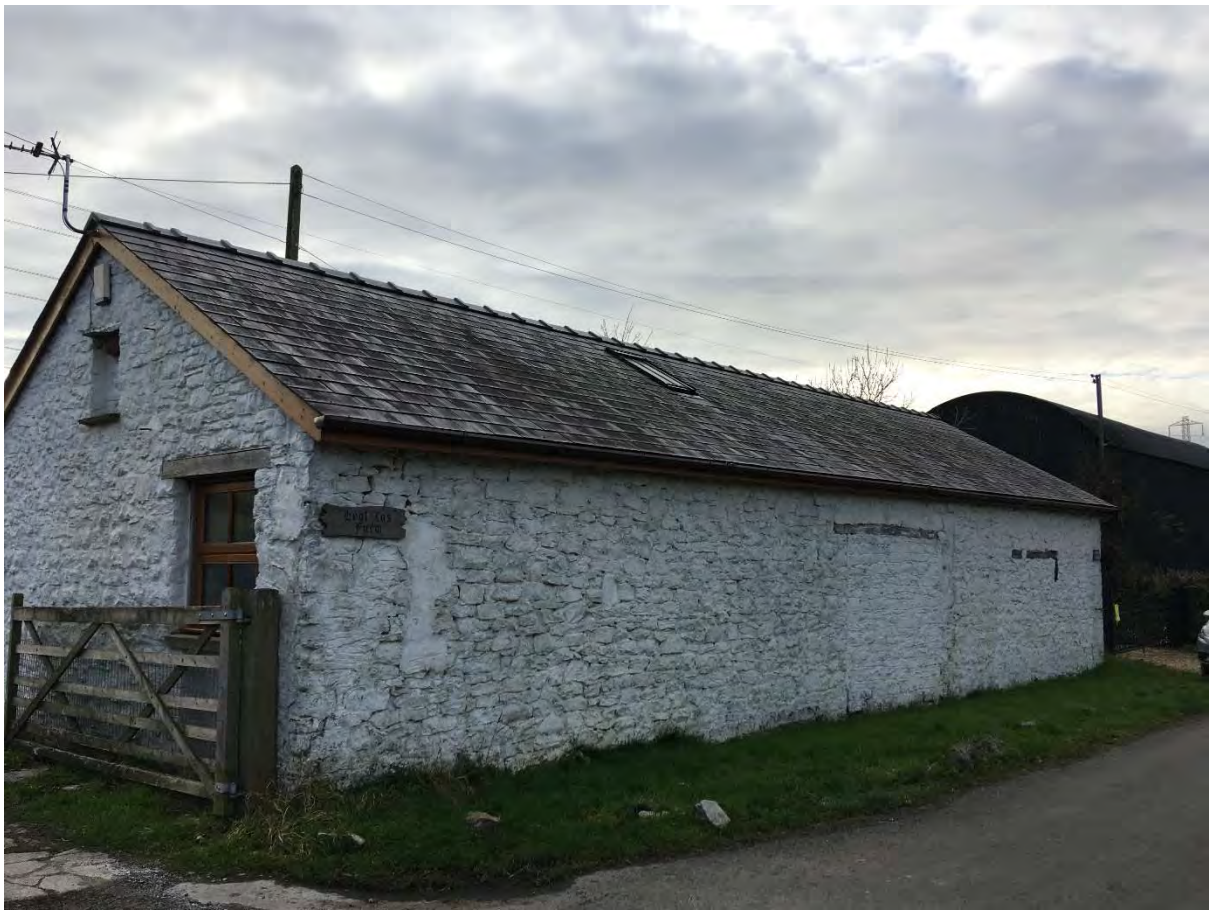
FARMHOUSE ACCESS WITH HOLIDAY LET TO THE RIGHT WITH FENCE SEPARATING BEYOND TAKEN FROM ADOPTED HIGHWAY



VIEW OF HEOL LAS FARMHOUSE FROM ADOPTED HIGHWAY



VIEW OF HEOL LAS FARMHOUSE – EXTENSIONS TO THE REAR VIEWED FROM ADOPTED HIGHWAY



VIEW OF APPLICATION SITE FROM THE ADOPTED HIGHWAY- GATES/ACCESS TO THE RIGHT OF PHOTO WITH YELLOW MARK ON PHOTO

VALE of GLAMORGAN
BRO MORGANNWG

APPENDIX 4

APPENDIX 4

*399 Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council

Positive/Neutral Judicial Consideration

Court
Court of Appeal (Civil Division)

Judgment Date
30 July 1982

Report Citation
(1983) 46 P. & C.R. 399

Court of Appeal

Stephenson and Ackner L.JJ. and Sir Sebag Shaw

July 30, 1982

Town and Country Planning—Listed building—Adjoining structure—Mill and terrace of cottages in different ownerships but physically linked—Mill listed—Whether cottages forming part of listed building— Town and Country Planning Act 1971 (c.78), s.54(9) .

1

In 1973, a county council which owned a terrace of cottages, a mill and a "bridge" linking those two structures, conveyed the terrace to a district council (the defendants' predecessors) but retained the mill and bridge. In 1971, the mill was listed, under section 54 of the Town and Country Planning Act 1971 , as a building of special architectural or historic interest. The plaintiff claimed that the terrace, which was not expressly listed, could not be demolished without the consent of the Secretary of State. Giving judgment in favour of the plaintiff, Skinner J. held that the terrace was not fixed to the mill but formed part of the land and was comprised within the curtilage of the mill for the purposes of section 54(9) of the Act.

On appeal by the defendants:

Held, dismissing the appeal, that the terrace was fixed to the mill, and remained so closely related physically or geographically to the mill as to constitute with it a single unit and be comprised within its curtilage, within the meaning of section 54(9) , and that, accordingly, the terrace was a listed building under both limbs of the subsection and could not be demolished without the consent of the Secretary of State.

Per Sir Sebag Shaw. Whatever be the proper construction of the Act of 1971, the ultimate fate of the terrace will be decided by the Secretary of State, whose decision would in no way be subject to considerations of whether the terrace is fixed to the mill and/or is within the same curtilage. The Act provides a code of procedure in this regard which is intended to be resorted to and applied.

Decision of Skinner J. affirmed on different grounds.

APPEAL from Skinner J.

The facts are stated by Stephenson L.J.

Representation

Nigel MacLeod, Q.C. and Charles Cross for the defendants.
Alexander Irvine, Q.C. and John Howell for the plaintiff.

Cur. adv. vult.

Stephenson L.J.

Three local residents want to preserve a terrace of 15 four-storey cottages known as Nos. 3 to 31 Nutclough, Hebden Bridge, from demolition by the defendant council. In a relator action at the suit of Her Majesty's Attorney-General the council have given ***400** on March 20, 1981, an undertaking, in lieu of an injunction, not to demolish. On August 12, 1981, at the end of a hearing treated by agreement as the trial of the action, Skinner J. refused to discharge the undertaking. The council appeal against his refusal.

The relators claim that the consent of the Secretary of State to the demolition of this terrace is required by two statutory provisions: 1. The terrace, or each cottage comprised in it, is listed as a building of special architectural or historic interest under section 54 of the Town and Country Planning Act 1971 , and therefore the Secretary of State's consent to the demolition is required by section 55(2) . 2. If not a listed building, the terrace lies within a conservation area as defined by section 277 of the same Act, and therefore his consent is required by section 277A(2) .

No consent has been given under either section. The council claim that none is necessary because (1) the terrace is not a listed building, though Nutclough Mill which adjoins it is a listed building; and (2) though the mill and the terrace are admittedly within a conservation area, the combined effect of a direction by the Secretary of State contained in a circular, no. 23/77 , and a resolution by the council declaring the area a clearance area under section 42(1) of the Housing Act 1957 is to exempt the terrace from needing his consent.

The relators contend that the council's resolution has not had that effect because it did not comply with the council's standing orders and was made on grounds so inadequate as to entitle the court to set it aside on the principle of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* . [2] The judge decided this second point in favour of the council and held that consent under section 277A(2) was not required for the demolition of the terrace.

On the view I take of the first point it is unnecessary to decide this second point. I agree with the judge, though not for the reason which I understand him to have given, that the terrace is a listed building under what has been called the deeming provision contained in section 54(9) of the Act of 1971, and that accordingly the consent of the Secretary of State under

section 55(2) is required before the council can demolish the terrace.

The provisions of the Act of 1971 which are relevant to this first point are these. Section 54 reads:

> (1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings, or approve, with or without modifications, such lists compiled by other persons or bodies of persons, and may amend any list so compiled or approved. (2) In considering whether to include a building in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also—(*a*) any respect in which its exterior ***401** contributes to the architectural or historic interest of any group of buildings of which it forms part; and (*b*) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building. (3) Before compiling or approving, with or without modifications, any list under this section, or amending any list thereunder the Secretary of State shall consult with such persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

I then go to subsection (9) , which is the "deeming" provision:

> In this Act "listed building" means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and, for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, any object or structure fixed to a building, or forming part of the land and comprised within the curtilage of a building, shall be treated as part of the building.

Section 55 provides:

> (1) Subject to this Part of this Act, if a person executes or causes to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, and the works are not authorised under this Part of this Act, he shall be guilty of an offence. (2) Works for the demolition of a listed building, or for its alteration or extension, are authorised under this Part of this Act only if—(*a*) the local planning authority or the Secretary of State have granted written consent (in this Act referred to as "listed building consent") for the execution of the works and the works are executed in accordance with the terms of the consent and of any conditions attached to the consent under section 56 of this Act; and (*b*) in the case of demolition, notice of the proposal to execute the works has been given to the Royal Commission …

Section 56 provides:

> (3) In considering whether to grant planning permission for development which consists in or includes works for the alteration or extension of a listed building, and in considering whether to grant listed building consent for any works, the local planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or any features of special architectural or historic interest which it possesses. (4) Without prejudice to subsection (1) of section 29 of this Act, the conditions which may under that subsection be attached to a grant of planning permission shall, in the case of such development as is referred to in subsection (2) of this section, include conditions with respect to—(*a*) the preservation of particular features of the building, either as part of it or after ***402*** severance therefrom; (*b*) the making good, after the works are completed, of any damage caused to the building by the works; (*c*) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions. (4A) Without prejudice to the generality of subsection (4) of this section, the conditions subject to which listed building consent may be granted include conditions with respect to—(*a*) the preservation of particular features of the building, either as part of it or after severance therefrom….

On September 6, 1974, the Secretary of State listed "Nutclough Mill" with the side note:

> Probably circa 1820 with extensions. Vast mill building of plain ashlar. Five storeys with bands between. Twenty windows on one side: twenty three on another. Interior supported on iron pillar; one floor with brick vaulting. Used by Hebden Bridge Fustian Manufacturing Co-operative Society from 1870 onwards.

He has never been asked to clarify that listing by stating whether he intended to include the terrace. When he was asked to list the terrace, he refused by letter of February 19, 1981, on the ground that it was of "insufficient merit to warrant inclusion in the statutory list."

The question to be decided is therefore whether the terrace is—I quote from qubsection (9) of section 54 —a "structure fixed to a building" or a structure "forming part of the land and comprised within the curtilage of a building." The terrace, and each cottage in it, is admittedly a structure and forms part of the land. The mill is a listed building. Is the terrace fixed to the mill? Is it comprised within the curtilage of the mill?

The undisputed facts as found by the judge, and illustrated by plans and photographs, are these. I quote them from his judgment:

> Geographically, Hebden Bridge nestles under the east side of the Pennines and the part of the town I am concerned with was developed in terraces in the first half of the last century. The land rises from the river in the west up to some low industrial buildings and then to the imposing structure of the five-storey mill. Proceeding eastwards, there is a terrace, at present waste land but formerly containing workshops attached to the mill, and then a higher terrace … which formerly contained a tall chimney. This chimney was connected by underground flues to the main mill building. Then proceeding eastwards, and southwards, one encounters the terrace of cottages concerned in this case. It forms a crescent with its four-storey rear looking on to the mill and its two-storey front facing east on to Foster Lane. The terrace is physically attached to the main mill building at its southernmost point. There is a bridge linking the mill to No. 1 Nutclough. This gives direct access to the basements of Nos. 1, 3 and 5 and to the ground and first floor of No. 1. The attic of No. 1 can only be reached from the attic of No. 3. These ***403** features apart, each cottage is self-contained and is described in detail in the affidavit of Mr. Rook. The impression given by the plans and photographs that the terrace and mill form a single unit geographically is heightened by the fact that they lie within well-defined boundaries and is confirmed by their history. At all material times until 1973, the land on which the terrace and the mill stand was in common ownership. The main mill building was erected in about 1820 and is described in the list of buildings of architectural and historical interest compiled under section 54 of the Town and Country Planning Act 1971 … The surrounding factory buildings were added later and the terrace was erected in about 1870. At this time, the whole complex passed into the hands of the Hebden Bridge Fustian Manufacturers Co-operative Society which owned it until it was wound up in 1919. The terrace was erected to accommodate workers at the mill, though it is clear that part was occupied by the co-operative as part of the mill and not for residential purposes. The basements of Nos. 1, 3 and 5 were almost certainly used for industrial purposes and the ground and first floor of No. 1 as offices. On September 22, 1972, the West Riding County Council acquired the whole site, mill and terrace. On May 25, 1973, it conveyed Nos. 3–31 Nutclough to the Hebden Bridge Urban District Council, which was then the housing authority, for the purposes of Part V of the Housing Act 1957 . In July 1973 the whole site was included in a conservation area and, on local government re-organisation, the terrace passed to the defendants.

The judge went on to say that "the separation of ownership, in the first instance, was for administrative convenience only," adding that it was an "historical accident:" a statement which, I agree with Mr. Macleod's submission for the council, underestimates the reason for the separation, which was that the county council could thereafter use the mill, No. 1 Nutclough and the building linking the two which is described as the bridge, as offices for the purpose of land reclamation, and the district council (later the borough council) could use the rest of the terrace, Nos 3–31, for the purpose of housing accommodation.

Neither the mill nor the bridge nor the terrace is now in use. All are unoccupied. The terrace cottages were constructed as millworkers' dwellings. The mill long ago ceased to function and the cottages were occupied by weekly tenants until some time before the end of July 1980.

The so-called "bridge" or "linkage structure" is a stone and brick block built some years after the terrace, lacks any architectural or historic interest and on an application by the council the Secretary of State on May 21, 1981, gave listed building consent to its demolition, subject to conditions, *inter alia* , that no demolition should take place until substantial demolition of the adjoining terrace houses had taken place.

No. 1 cottage appears, except for its attic, to have been designed to form an office annexed to the mill; there is no access to it from the ***404*** road, access to its attic is only from No. 3 and access to the rest of it only from the mill by way of the bridge. Beneath Nos. 1 to 3 are connected cellars which may have been used for storage purposes connected with the mill.

Before the addition of the bridge the terrace could not have been regarded as fixed to the mill. Since the addition the bridge is attached to the mill, No. 1 is attached to the bridge and each of the rest of the cottages in the terrace is attached to its neighbour. Does that fix the terrace beginning at No. 3 to the mill?

I have no doubt that the linking bridge is fixed to the mill, although Mr. Macleod withdrew a concession that it was. It was attached to the mill, and it was also attached (on the other side) to No. 1 and so to the terrace. Indeed, the council regarded it as "part of the mill" when they considered, in March 1981, applying to the Secretary of State for consent to its demolition, and the basis of the council's application to the Secretary of State to give listing consent to the demolition of the terrace cottages was that they "are attached to the mill and should be deemed to lie within the curtilage of a listed building." The judge held that this attachment of the bridge, and also of each cottage to its neighbour by sharing a party wall, was "fixed" in the sense that "somebody did 'fix' one to the other and they are now fixed one to the other, *i.e.* joined by some device intended to prevent or restrict their separation."

The judge went on to hold that the words "structure fixed to a building" were not ambiguous but:

> though by strict definition the terrace is "a structure" and "fixed to a building," the succeeding words of the subsection lead me to the conclusion that *these* words were *not* intended to include it. The phrase "or forming part of the land and comprised within the curtilage of the building" does not include "a structure forming part of the land." The latter structure lies within the definition only if it is "comprised within the curtilage of a building."

The judge thus rejected the relators' contention that the terrace (Nos. 3 to 31) was a structure fixed to the mill, apparently on the ground that it could not be both fixed to the mill and comprised in the curtilage of the mill because the alternatives were mutually exclusive and it was within the curtilage; and he proceeded to give his reasons for holding that it was within the curtilage.

This ground was, we are told, not argued by counsel before the judge or put to them by the judge. Like both Mr. Macleod for the council and Mr. Irvine for the relators, I have some difficulty in appreciating it, and though Mr. Macleod was unwilling to jettison it, I have no difficulty in rejecting it. I cannot see any reason, or find any in the subsection itself or in the judge's judgment, why a structure is only to be treated as part of a listed building if it forms part of the land and is comprised within the curtilage of the building, or why a structure cannot be both fixed to a listed building and ***405*** comprised within its curtilage, as indeed was common ground before the judge. Mr. Macleod was wise, in my judgment, to relegate the judge's ground to a place well behind his primary contentions. It is his main contention that the terrace falls within neither limb of section 54(9) , and Mr. Irvine's that it falls within each, though one is enough to support the judge's decision.

I would approach section 54(9) , its construction and application, and both its limbs with the obvious reflection that the preservation of a building of architectural or historic interest cannot be considered or decided, either by the Secretary of State or by those specialists he is required by section 54(3) to consult, in isolation. The building has to be considered in its setting, as is made clear by the amendment to section 56(3) , and by paragraph 25 of circular no. 23/77 , as well as with any features of special architectural or historic interest which it possesses. The setting of a building may consist of much more than man-made objects or structures, but there may be objects or structures which would not naturally or certainly be regarded as part of a building or features of it, but which nevertheless are so closely related to it that they. enhance it aesthetically and their removal would adversely affect it. Such objects or structures may or may not be intrinsically of architectural or historic interest, or worth preserving but for their effect on a building which is of such interest. But if the building itself is to be preserved unless the Secretary of State consents to its demolition, so also should those objects and structures be. That object is achieved by section 54(9) requiring them to be treated as part of the listed building. They do not thereby become absolutely immune from demolition, but the power is there to give or withhold consent to the demolition of all or some of them.

If that is the right approach, it indicates a broad approach to the subsection as a whole and a construction of it which will enable the Secretary of State to exercise his discretion to grant or withhold listed building consent over a wide rather than a narrow field. Without straining the language of the subsection it will bring within its ambit many objects, or more particularly structures, which it might be thought incongruous to include in a listed building. A multiple store adjacent to the birthplace of a statesman might have to be treated as part of the birthplace because it was a structure fixed to it. A block of flats replacing the stables of a mansion house might have to be treated as part of the mansion because within the curtilage of the mansion.

In my judgment the argument from incongruity in the application of both limbs of the subsection is fairly met, as the judge met it in relation to the first limb, by the fact that the code of listed building control “does not prevent demolition or alteration; it merely requires consent to it.”

The first argument for the council was that the terrace, viewed as one or as a collection of cottages, was not fixed to the mill by the bridge or at all. The bridge merely linked the first cottage, or the ***406** terrace, to the mill for the purpose of communication, not to prevent or restrain separation as the judge held. If the bridge was fixed to the mill, the terrace was not, because it was not directly fixed, any more than the east wing of a large house could be said to be fixed to the west wing by the central block. Any form of “accretion” argument would lead logically to the absurdity of a structure being fixed to a building a quarter of a mile away.

Such a theoretical absurdity is, I think, met by the nature of the control imposed on listed buildings and all their parts, actual and deemed, to which I have referred. Although at first sight it seems unlikely that No. 31 of this terrace could be regarded as fixed to the mill, I think the judge was right in concluding that this terrace was a structure fixed to the mill in the ordinary sense of those words.

Mr. Macleod had a subsidiary argument, not taken before the judge but raised in his notice of appeal, that to be a structure fixed to the mill within the first limb of the subsection this terrace had also to be a feature of the mill within the meaning of section 54(2)(b) . That argument extended to the second limb: a structure which was not a feature of the mill could not be treated as part of the mill even if it formed part of the land and was comprised within the curtilage of the mill. So I will return to that new point when I have considered his main submission that the judge was wrong in holding that the terrace cottages were within the curtilage of the mill.

The judge, after referring to some authorities, stated his conclusion on the second limb of the subsection in this way:

> In my judgment, the word curtilage has to be construed having regard to the fact that the 1971 Act as a whole deals with town and country planning and that the part of the Act we are concerned with deals with buildings of architectural or historical interest. I have to ask myself, from a planning rather than a strict conveyancing viewpoint, whether the buildings within the alleged curtilage form a single residential or industrial unit and, in this instance, whether the mill and the terrace form part of an integral whole. I reject the strict conveyancing viewpoint because, if it were adopted, evasion of the Act would be easy to achieve. On this test I am quite satisfied that the terrace lies within the curtilage of the mill. It was built in 1870 within the boundaries of the mill and as an adjunct to it. Had it not been for the historical accident of the division of ownership in 1973, solely for administrative convenience, they would still be in common ownership and no-one could then have argued that they were not within the same curtilage. I am reinforced in my conclusion by the words of section 56, subsection (3), as amended, and the references therein to "the listed building and its setting."

I have already indicated that I agree with Mr. Macleod's criticism of the penultimate sentence. There was, I think, at the end of the argument before us agreement that three factors have to be taken into account in deciding whether a structure (or object) is within the ***407** curtilage of a listed building within the meaning of section 54(9) , whatever may be the strict conveyancing interpretation of the ancient and somewhat obscure word "curtilage." They are (1) the physical "layout" of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present. Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage. So when the terrace was built, and the mill was worked by those who occupied the cottages, and the millowner owned the cottages, it would have been hard, if not impossible, to decide that the cottages were outside the curtilage of the mill.

But Mr. Macleod's main complaint is that the judge took the wrong date. What was true in 1870 was no longer true in 1973 after the severance of ownership by the conveyance of Nos. 3 to 31 to the council's predecessors. There had already been a severance of use or function when the working connection of the cottages with the mill came to an end. There have also been changes in the lay-out, such as the demolition of the mill chimney and other buildings on what is now waste land at the back of the terrace; and Mr. Macleod sought to find in one photograph evidence of a new boundary in the shape of a posts-and-wire fence at the back of the terrace dividing it from the waste land and the mill site. There was no other evidence to support such a new boundary, but the other changes are beyond dispute.

In *Methuen-Campbell v. Walters* [3] this court had to consider whether a paddock separated from a garden by a fence was within the meaning of the word "premises" or the word "appurtenances" in section 2(3) of the Leasehold Reform Act 1967 . But in so doing all three judges found it necessary to decide whether it was within the curtilage and they decided the paddock was not. Goff L.J. stated that what is within the curtilage is a question of fact in every case, but Buckley L.J. gave a fuller answer to the question, "What is meant by the curtilage of a property?" He said: [4]

> What then is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or

> demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the ***408** parcel. On the other hand, it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one message or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole.

Buckley L.J. does not refer to Skinner J.'s "single unit," but he does refer to his "integral whole." And he is of course dealing with a house and premises in common ownership.

How different facts may lead to different conclusions, and the same facts may lead to different judicial opinions, is well illustrated by the cases in this court of *Vestry of St. Martin-in-the-Fields v. Bird* [5] and *Pilbrow v. Vestry of the Parish of St. Leonard, Shoreditch* . [6] I agree with the judge that these and other cases provide a useful guide to the meaning of "curtilage" within particular contexts.

Mr. Macleod concedes that buildings in different ownerships may be within the same curtilage; but he contends, rightly in my opinion, that they fall less easily within the same curtilage if they are in different ownerships, and he submits that this terrace is not, or at any rate is no longer, so intimately associated with the mill as to form part and parcel of it, at least without exaggerating the importance of their history and ignoring the differences in ownership and user which now exist. It is a long time since there was any common bond or any connection except topographical proximity between the terrace and the mill. Separately owned, separately occupied and separately rated, there is no link between them but history. And the introduction of the setting does not help the relators because the setting is distinguished from the listed building as extended by section 54(9) .

Mr. Irvine submits that less attention should be paid to title and division of ownership, otherwise listed building control could easily ***409** be evaded by colourable transfers of title; and more weight should be given to historical association and physical proximity. The curtilage of a listed building is an area of land which includes any related objects or structures which naturally form, or formed, with the listed building an integral whole. The boundaries of the area are to be determined by such factors as may be relevant to the circumstances of the particular case and by the manner in which the listed building, any related objects or structures and the land have been, or are being, used. In this case the substantially unchanged layout of the area which includes the mill and the terrace is the strongest indication that the terrace is within the curtilage of the mill.

I have found this question difficult to answer, but I have ultimately come to the conclusion, not without doubt, that the terrace has not been taken out of the curtilage by the changes which have taken place, and remains so closely related physically or geographically to the mill as to constitute with it a single unit and to be comprised within its curtilage in the sense that those words are used il this subsection.

There remains Mr. Macleod's new point that an object or structure to come within subsection (9) must be a man-made object or structure which is a feature of the building within subsection (2)(b) . I cannot read the words in subsection (9) as mere shorthand for the words in subsection (2)(b) or see why the words of subsection (2)(b) should not have been repeated in subsection (9) if it had been intended to import them into subsection (9) . The features referred to in subsection (2)(b) are matters which may or may not have been taken into account by the Secretary of State in listing. They do not, in my judgment, affect the construction of subsection (9) .

For these reasons I conclude that the terrace comes within both limbs of section 54(9) and I would dismiss the appeal.

Ackner L.J.

I agree, for the reasons that have been given by Stephenson L.J., that this appeal should be dismissed. There is nothing that I would wish to add.

Sir Sebag Shaw.

I agree also, and would respectfully adopt the reasons given in his judgment by Stephenson L.J. I share his doubts as to the terrace remaining within the curtilage of the mill, but do not feel justified, in that state of uncertainty, in differing from the judge who expressed a confident view.

I would wish also to repeat what was indicated by every member of this court during the argument, namely, that the real subject-matter of these proceedings is not litigious but administrative. Whatever be the proper construction of the different subsections of section 54 of the Act of 1971, the ultimate fate of the terrace will be decided by the Secretary of State. His decision will in no way be subject to considerations of whether the terrace is fixed to the mill and/or is within the same curtilage. The Act provides a code of ***410** procedure in this regard which is intended to be resorted to and applied. For some obscure reason the local authority has thought fit to embark upon a course which is in reality immaterial to their immediate objective. There has already been a plain hint from the Secretary of State that he is likely to view with sympathy an application for consent to demolish the terrace. Instead of reacting to this hint, the local authority have caused the expenditure of time and money in pursuing what, in relation to the facts of the present case, is an immaterial issue of statutory construction.

I too would dismiss this appeal.

Representation

Solicitors— Sharpe, Pritchard & Co. , for Michael Scott, Halifax; Clarksons , Hebden Bridge.

Order

[*Reported by B. O. Agyeman, Barrister* .]

Appeal dismissed with costs. Leave to appeal refused. ***411***

Footnotes

1 See *post* , p.2.

2 *[1948] 1 K.B. 223* ; *[1947] 2 All E.R. 680* ; *45 L.G.R. 635, C.A.*

3 *[1979] Q.B. 525* ; *[1979] 2 W.L.R. 113* ; *[1979] 1 All E.R. 606, C.A.* ; *38 P. & C.R. 693* .

4 *Ibid.* at p.543.

5 *[1895] 1 Q.B. 428* .

6 *[1895] 1 Q.B. 433* .

VALE of GLAMORGAN
BRO MORGANNWG

APPENDIX 5

APPENDIX 5

THE VALE OF GLAMORGAN COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPROVED

SUBJECT TO COMPLIANCE WITH CONDITIONS (IF ANY)

HEAD OF PLANNING AND TRANSPORTATION

2010/00973/FUL

VALE OF GLAMORGAN COUNCIL
(PLANNING DIVISION)

- 9 SEP 2010

DATE OF REGISTRATION

Vale of Glamorgan
Bro Morgannwg

VALE of GLAMORGAN
BRO MORGANNWG

Heol Las Farm, Llangan, Vale of Glamorgan
Anderson & Associates

Promap®

RECEIVED

24 AUG 2010

VALE of GLAMORGAN
BRO MORGANNWG

APPENDIX 6

APPENDIX 6

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 23/10/19

gan Hywel Wyn Jones BA(Hons) BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06.11.2019

Appeal Decision

Site visit made on 23/10/19

by Hywel Wyn Jones BA(Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 06.11.2019

Appeal Ref: APP/Z6950/A/19/3235726

Site address: Pontsarn Farm, Pontsarn Lane, Peterston-super-Ely, CF5 6NE

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Caroline Harries against the decision of The Vale of Glamorgan Council.
- The application (ref: 2019/00618/FUL), dated 4 June 2019, was refused by notice dated 1 August 2019.
- The development proposed is the conversion of B1 business building to residential (C3), to include extension, and stables.

Decision

1. For the reasons set out below the appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Caroline Harries against The Vale of Glamorgan Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:

   (i) whether the appeal site is suitable for the proposed dwelling, having regard to local planning policy, particularly in relation to rural restraint and sustainable transportation, and in the light of the lawful use of the site; and

   (ii) the effect of the proposal on the character and appearance of the surrounding area.

Reasons

Transportation sustainability

4. The appeal site lies within a rural area characterised by fields and small pockets of woodland with sporadic buildings, some arranged in small groups, mainly agricultural or residential in use. The subject building is single storey in height, of rendered walls and a tiled roof with solar panels. My internal inspection revealed the building, which

has been vacant for some 3 years, to be in a good state of repair. An agricultural shed lies within the rear of the site and on either side of the property there are dwellings with outbuildings.

5. Permission was granted in 2000 to change the use of the building from a milking parlour to a research and development unit and the permitted use was widened to Class B1 by a permission granted in 2009.

6. For the purposes of planning policy, the site falls within the countryside where local and national policies seek to strictly control development and generally direct it to within or adjoining settlements. Criterion 4 of Strategic Policy SP1 of the Vale of Glamorgan Local Development Plan (LDP) 2011 – 2026 seeks to promote sustainable transport. The explanatory text refers to the aims of reducing dependence on the car. Criterion 5 of Policy MD1, Location of New Development[1], seeks new development to have access to or promote the use of sustainable modes of transport. Criterion 4 of policy MD11, Conversion and Renovation of Rural Buildings, which applies only to residential conversion proposals, seeks that the location of the building is sustainable in terms of access to local services, public transport and community facilities. The aim of these policies to promote a reduction in car reliance accords with the latest iteration of Planning Policy Wales, particularly paragraphs 3.35 and 3.36.

7. The nearest settlement to the site is Peterson-super-Ely which is some 1.4km distant and is connected via a narrow, single lane highway, mostly bounded by high hedges. It provides public transport connections and several of the services and facilities[2] that prospective residents are likely to access on a frequent basis. Nonetheless as the provision is modest residents are likely to undertake journeys to larger centres on a frequent basis. The distance separating the appeal site from the settlement, combined with the narrow, unlit road and absence of pedestrian footways, means that walking would not be a viable option for most prospective residents. Whilst it is close enough to cycle the narrowness of the lane, and the lack of light during winter months, would limit the use of this option for most. This means that it is very likely that occupiers of the proposed dwelling would be heavily reliant on a car, albeit that the car journeys to the nearest settlement would be a short one. Accordingly, the scheme conflicts with the aforementioned LDP policies and the advice in the Council's Supplementary Planning Guidance (SPG): Conversion and Renovation of Rural Buildings (particularly paragraphs 8.2.1 and 8.2.2).

8. In considering this first main issue the appellant considers that it is also necessary to take into account the potential car borne journeys associated with the lawful use of the building to establish the practical, net impact of the scheme on car use.

9. Reference has been made to the respective car parking standards for the lawful and the proposed uses. However, such standards seek to predict demand for spaces at any one time rather than the number of traffic movements that are undertaken over time. For that reason, I prefer the TRICS[3] data that has been provided as predictor of car usage. This estimates that a 3-bedroom dwelling as proposed would generate some 7-8 2-way daily movements which is less than the corresponding range of 10-16 for a commercial use, inclusive of visitors.

[1] The appellant opines that as policy MD1 is concerned with '<u>new</u> development' it is not clear whether a change of use proposal falls within its scope, but accepts that given the clear provision of criterion 4 of policy MD11 nothing turns on this point

[2] The appellant lists the range of services available in Peterson as including a primary school, shop, garage, church, village hall and two public houses providing dining facilities

[3] Trip Rate Information Computer System – TRICS Consortium Ltd

10. On the basis of the available evidence I concur with the appellant that the proposed use would be likely to lead to a reduction in car borne journeys compared to the lawful use. However, the appellant's own evidence indicates that the lawful use is not viable which suggests that it is unlikely to recommence, at least in the short term.

11. Paragraph 7.3 of the SPG refers to the preference for uses other than residential use in the countryside on the basis of the boost that such uses can provide to the rural economy. This is consistent with both local and national planning policies. As the Council explains in its officer's report, the benefits to the local economy of an employment use of a building in the countryside is considered to outweigh its poor performance in terms of the sustainability of its location. To allow buildings converted to employment uses to be subsequently changed to residential solely on the basis that the latter is likely to generate fewer car movements, would effectively undermine the restriction that criterion 4 of MD11 applies exclusively to residential uses. The explanatory text to the policy supports a range of economically beneficial uses, including tourist accommodation, but not unrestricted residential accommodation in 'more isolated rural locations', that is, locations such as the appeal site where occupiers would be overly reliant on 'the private motor vehicle'.

12. The appellant points out that the site performs as well, in terms of its distance from services that are not available in Peterston, as sites within the settlement which the LDP identifies as suitable for new housing. That point does not however assist the appellant's case given the patently better access of sites within the settlement to the range of services that it provides. Moreover, the LDP's approach to new housing in rural areas has been subject to independent examination prior to its adoption; its merits are outside the scope of my consideration of this appeal.

13. On the first main issue I find that prospective occupiers of the proposed dwelling would be likely to be heavily dependent on a car to access most services and facilities, contrary to policies SP1, MD1 and MD11. For the foregoing reasons, the potential traffic generation associated with the lawful use of the building does not justify breaching these policies that seek to control development in rural areas in a manner that promotes the local economy.

Character and appearance

14. The appeal building is flanked by a pair of two-storey, semi-detached houses on one side and on the other, separated by a small paddock, lies a dwelling set in extensive grounds. These dwellings are sited markedly closer than the appeal building to the road. The low height of the building, particularly compared to the neighbouring houses to one side, its set back from the road and the screening effect of roadside vegetation means that it is not an obtrusive feature from the closest public vantage points. To the rear of the building, lies a taller barn that is in an unsightly state of disrepair which would be demolished. Compared with this structure and the neighbouring dwellings and their outbuildings, the appeal building as proposed to be extended, would be a modest feature in a landscape, designated for its quality as the Ely Valley & Ridge Slopes Special Landscape Area (SLA).

15. The Council is concerned that the creation of the very large garden proposed, and the length and width of the proposed access track, would be harmful to the character and appearance of the landscape. Whilst a period of vacancy of the site means that grass and other vegetation has been allowed to grow, the re-use of the site for any other purpose is likely to require widening of the existing track and the provision of a vehicle parking area. The proposed garden would be viewed in the context of the nearby garden areas of neighbouring dwellings. In this context and given the scope to

impose conditions as suggested by both main parties, I am satisfied that the effect of the proposal, suitably controlled by conditions, would not harm the character or appearance of the surrounding area. Therefore, there would be no conflict with policy MG17 which seeks to protect the landscape of the SLA, or policies SP1, SP10, MD1 and MD2 insofar as they seek to protect the visual amenity of an area.

Other Matters

16. The appellant has submitted evidence of the unsuccessful marketing of the appeal site and some 5 ha of adjoining land that has been carried out in an attempt to dispose of the property for business use. The Council accepts that for the purposes of criterion 3 of policy MD11 that alternative uses to residential are not viable. Whilst I note that local residents dispute this conclusion, in the absence of detailed evidence to support this objection, I find the scheme in compliance with this criterion. I have also noted the other concerns raised by local residents in objection to the scheme. I am satisfied that the physical state of the building is suitable for conversion under the terms of the LDP and that the scheme would not harm the living conditions of neighbouring residents or highway safety. Other concerns raised are not directly relevant to my consideration of the appeal scheme.

Conclusion

17. Although I have found the scheme acceptable in relation to the second main issue, the harm that I have identified in terms of the first main issue is unacceptable. For the above reasons, and having regard to all matters raised, I shall dismiss the appeal.

18. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

Hywel Wyn Jones

INSPECTOR