

Delegated Decision Report

Application No:	26/0128	Statutory Period Expires:	17th July 2026
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Site:	<i>Cae Pandy Cottage, Watery Lane, Langstone, Newport, South Wales</i>		
Proposal:	<i>LAWFUL DEVELOPMENT CERTIFICATE (EXISTING) FOR USE OF A FORMER HAY STORE AS RESIDENTIAL STORAGE IN ASSOCIATION WITH CAE PANDY COTTAGE</i>		
Applicant:	<i>S. J. Bushell</i>		
Type:	Lawful Development Existing	Ward:	Bishton & Langstone
Decision:	Issued (in part)		

1. BACKGROUND

- 1.1 The applicant is seeking to establish that a building and area of land has been in residential use in association with the occupation of Cae Pandy, which is a small rural conversion at the end of Watery Lane, Langstone. The house and a modest curtilage have planning permission under 96/0073 but the applicant claims the incidental residential use of an adjacent hay barn and an area of land to the north of the approved conversion and its curtilage for a period in excess of 10 years.

2. SITE LOCATION AND CONTEXT

- 2.1 The site is a rural conversion of a small pre-existing building at the end of Watery Lane in Langstone and associated land including a small building (hay barn) previously in agricultural use. The site is in the countryside and thoroughly rural in character.

3. DESCRIPTION OF DEVELOPMENT

- 3.1 See above.

4. RELEVANT SITE HISTORY

App Number	Proposal	Decision & Date
96/0073	CHANGE OF USE OF OUTBUILDING TO LIVING ACCOMMODATION	GC 03 May 1996
01/0919	ERECTION OF PORCH AND GAZEBO/SUMMER HOUSE	GC 28 September 2001
04/1822	ERECTION OF SUMMER HOUSE	G 28 January 2005
22/0824	PROPOSED ALTERATIONS AND CONVERSION OF EXISTING ATTACHED WORKSHOP AND STORAGE AREA INTO ADDITIONAL LIVING ACCOMMODATION	R 05 January 2023

E25/0205	Large mobile home being brought onto the land	On-going
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5. PLANNING POLICY & LEGISLATION

5.1 NEWPORT LOCAL DEVELOPMENT PLAN (2011-2026)

Since this is a matter of lawfulness in planning terms no policies are relevant.

5.2 The Town & County Planning Act 1990 (as amended)

Section 171B establishes time limits for planning enforcement action beyond which action may not be taken. Section 171B(3) establishes that the time period for a material change of use is 10 years from the date on which the breach commenced.

Section 191 allows applicants to establish the lawfulness of existing development by submission of an application for a lawful development certificate. That section states:

191 (2) For the purposes of this Act uses and operations are lawful at any time if:

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5.3 Welsh Office Circular 24/97: Enforcing Planning Control

Annex 8, page 65 onwards offers advice on lawfulness and the consideration of Lawful Development Certificate applications as follows:

8.11 It is important to keep in mind the purpose of the provisions. They enable owners and others to ascertain whether *specific* uses, operations or other activities are or would be lawful. But they do not enable anyone to ask the general question, "what is or would be lawful?" For this reason, the applicant must precisely describe what is being applied for - as required by section 191(1) or 192(1) of the 1990 Act and Article 24(1) of the GDPO.

8.12 The onus of proof in a LDC application is firmly on the applicant. While the LPA should always co-operate with an applicant seeking information they may hold about the planning status of land, by making records readily available, they need not go to great lengths to show that the use, operations, or failure to comply with a condition, specified in the application, is, or is not, lawful. While LPAs are statutorily required to maintain the planning register, this is not a complete record of the planning status of all land in their area. In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land, including a copy of any planning permission he may hold. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the applicant's knowledge. The fact that a LDC may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available. A refusal to issue a LDC is therefore not necessarily conclusive that something is not lawful: it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use, operation or activity is lawful. For this reason, it is pointless for third parties to pursue objections to activities by making LDC applications

The relevant test of the submitted evidence

8.15 In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see - **F W Gabbitts v Secretary of State for the Environment and Newham LBC** [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on

the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

6. CONSULTATION RESPONSES

6.1 None.

7. PUBLIC REPRESENTATIONS

None.

8. ASSESSMENT

- 8.1 The applicant is seeking to prove the following (form description) is lawful:

The application relates to the ongoing use (for a continuous period well exceeding 10 years) of a former hay store building as residential accommodation in association with Cae Pandy Cottage, Watery Lane, Langstone, NP18 2LA. As set out in the supporting information, the subject building is attached to the dwelling and used for residential storage. The application site boundary also incorporates residential curtilage serving the property.

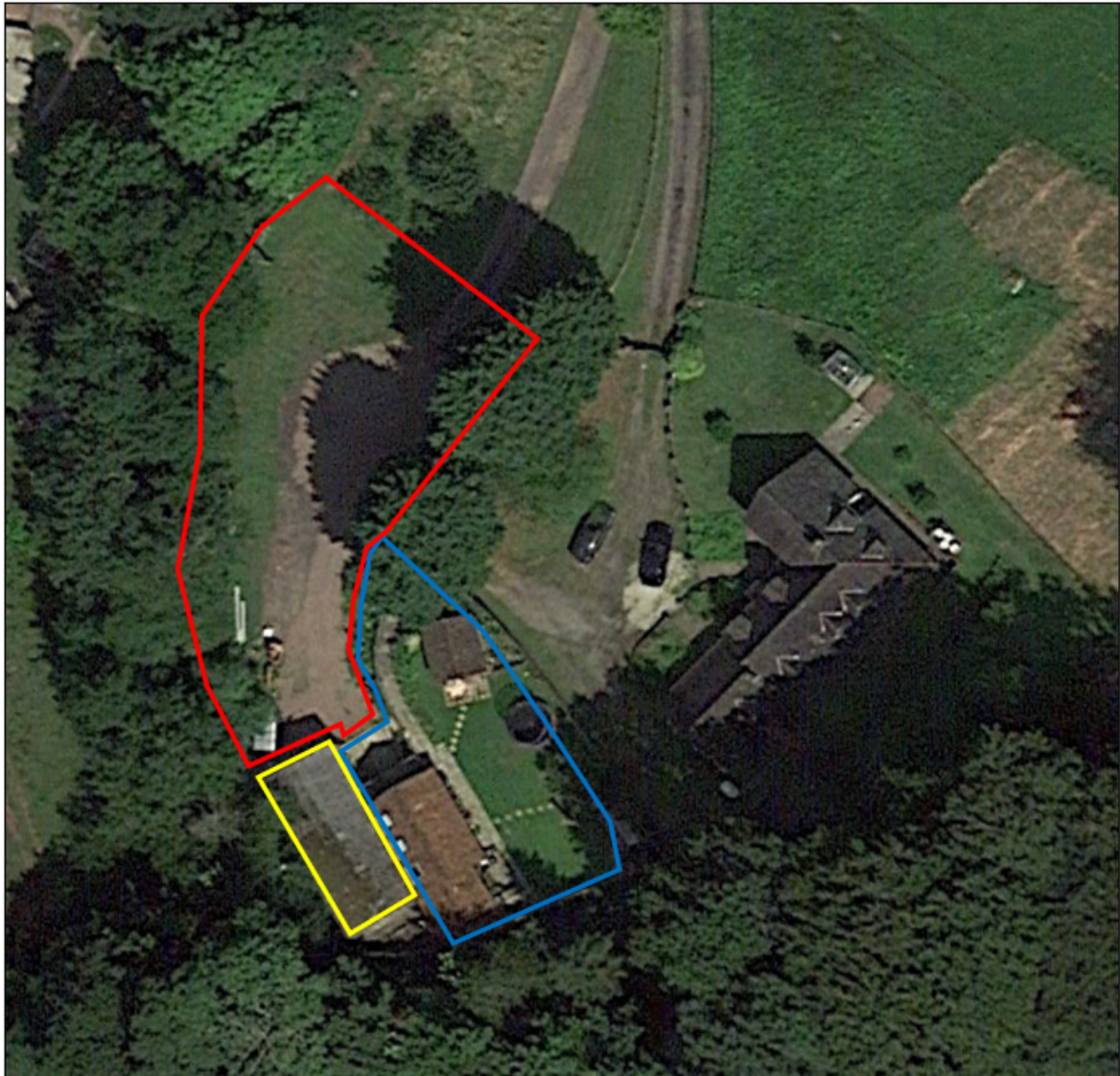
The applicant has also provided a redline plan to identify the land in question.

- 8.2 In essence the applicant is claiming that all of the land outlined red has a lawful use for residential purposes. For some of that land that is via planning permission 96/0073¹ which approved conversion of an agricultural building and associated land to a residential use and for the rest via consistent use of the land and of a building on that land for purposes incidental to the occupation of the approved house and curtilage for a continuous period of more than 10 years.

As such the residential use of the smaller portion of the site that contains the dwelling house and associated curtilage is incontestable given permission 96/0073 is either in place or it is not but the use is now long established and still extant and therefore no enforcement action can be taken. See the land outlined blue in the image below.

Therefore the key question falls to the other sections of land that are outlined yellow (building) and red (extended curtilage).

¹ The red line plan for this application is unavailable and the area with planning permission is deduced from subsequent applications, on-site observation and aerial images



- 8.3 The yellow building is steel framed and finished in asbestos panels and likely dates to the mid-20th century. It is clearly designed for agricultural use although would be small for modern practice. Historic files show this building as having been in the same ownership as the acknowledged lawful elements on the site since at least 2004 and likely longer than that (the 1997 permission).
- 8.4 However the common ownership would not be determinative since the key issue here is use. The building was certainly outside any lawful curtilage granted under the 1997 permission.
- 8.5 Of key interest here are the Statutory Declarations of Myrtle Roberts who has been resident in the lawful building since 2000 having been previously resident at the Old Mill which is an adjacent house since 1984. As such she has 42 years of continuous occupation either at Cae Pandy or nearby at the Old Mill (Llandeud Mill).
- 8.6 Records confirm that she and her late husband (Brian Roberts) converted Cae Pandy under permission 96/0073 with B. Roberts having been the applicant for that permission and confirming his residence at the Old Mill.

- 8.7 In her further Statutory Declaration Mrs Roberts confirms the yellow building was used as a hay shed until 1984 and then upon her occupation of the Old Mill in that year as a domestic store and that domestic use did not cease thereafter. Clearly in 1984 that use was in association with the Old Mill and not with Cae Pandy which at that time did not exist as a separate planning unit.
- 8.8 It appears that after planning permission was obtained for the conversion of Cae Pandy under the 1997 permission that the 'Old Mill' planning unit was split into two to create two new planning units, one containing the Old Mill and its curtilage and a new planning unit containing Cae Pandy and its associated land. The latter unit being created in 2000 when Mrs Roberts and her husband moved into the completed Cae Pandy conversion and sold off the Old Mill to new owners.
- 8.9 It appears from this point onwards (2000) the yellow building fell into a new planning unit (the Cae Pandy unit) and was maintained in the domestic use it already had but now as part of the Cae Pandy unit instead of the Old Mill unit.
- 8.10 The continuing uses claimed in effect from the Year 2000 until the time of this application (February 2026) are domestic storage for the following:
- Storage of Garden equipment
 - Storage of garden machinery (ride on lawnmower etc)
 - Storage of children's toys
 - Storage of Children's necessities (i.e. pushchair etc)
 - Storage of household items (i.e. Christmas Decorations)
 - Storage of a vintage tractor and Land Rover
 - Storage of Garden Furniture
 - Storage of BBQ
 - Storage of Camping Equipment
 - Storage of DIY tools
- 8.11 This list of items is reflective of the site visit of September 2022 in association with application 22/0824 where the yellow building was clearly not in agricultural use and contained examples of all of the above items.
- 8.12 The site visit of July 2026 was consistent with the findings of the 2022 visit in relation to the shed and its contents.
- 8.13 Mrs Roberts has unique knowledge of the site stemming from the creation of the Cae Pandy planning unit in 2000 to the current day. Her confirmation of a domestic storage use in the yellow building that was and is incidental to the residential occupation of Cae Pandy from the Year 2000 to the time of this application is compelling evidence that is not contradicted by any other evidence available.
- 8.14 The further declaration of Mr Bushell confirms his residence on the site since October 2019 and confirms the use described by Mrs Roberts in her statement from that period until the time of the application. He further attests that the claimed use has subsisted for 26 years, that is from the Year 2000 but given he was not resident for the time period before his occupation that testimony must be given little weight.
- 8.15 Likewise Mrs Bushell confirms residence since 2022 at Cae Pandy and confirms the claimed use for her time of occupation. Again she attests to a time period outside her occupation but that is given little weight also.

- 8.16 Mrs Takacs is Mrs Roberts' niece and in her declaration confirms that the yellow building has been used in association with the occupation of Cae Pandy since 2000. Her statement also confirms the previous larger Old Mill planning unit before 2000.
- 8.17 She confirms frequent family visits to the site and confirms the domestic storage use of the building. She also notes the building was used to undertake mechanical work to domestic vehicles and her uncle's (Brian Roberts) vintage tractor. There is no reason to think these repair works were anything other than incidental to the residential use at Cae Pandy although Mrs Roberts does not mention these uses at all.
- 8.18 Mrs Bartlett is a family friend of Mrs Roberts and of her deceased husband and confirms regular visits to the Old Mill when the Roberts were resident there and to Cae Pandy after 2000. She confirms the creation of the Cae Pandy planning unit from the larger Old Mill planning unit in the year 2000. She states the yellow building was used as a garage, residential workshop and residential store in association with Cae Pandy from 2000 onwards. She also notes it had been used for similar purposes prior to that in association with the historic Old Mill planning unit when the Roberts were resident there.
- 8.19 Mr Harper lived at the adjacent Llanbedr Farm (but no longer does so) and attests to the domestic use of the yellow building for domestic purposes as a garage, store and workshop from 2000 for a period of over 20 years. Given the separation (no intervisibility) of the units and the uncertain length of occupation of Mr Harper at that address and the lack of detail in his evidence then that evidence has limited weight. That said nothing in the evidence contradicts the evidence of others on the use of the yellow building.
- 8.20 Mrs Powell is a niece to Mrs Roberts and her late husband and has site knowledge from around 1984 to the current date. She also (as others have done) appears to conflate the pre 2000 Old Mill use with the post 2000 Cae Pandy use but describes a range of activities by Brian Roberts for the most part being domestic storage, garaging of vehicles and a ride on mower and domestic workshop activities including mechanical repairs and woodworking projects. Again nothing said contradicts the evidence of Myrtle Roberts.
- 8.21 A rounded review of the evidence suggests that the yellow building had some level of domestic use from 1984 onwards as part of the historic Old Mill planning unit which was then sub-divided in 2000 into two new planning units one of which was the Cae Pandy unit.
- 8.22 At that point it appears that the yellow building continued in a domestic use but now as part of the Cae Pandy planning unit which was established at that time. In essence Mr Brian Roberts continued his previous use of the building for the storage of domestic items, storage of vintage vehicles and as a domestic workshop for mechanical maintenance, repair and fabrication and some woodworking projects. Mrs Roberts testimony omits anything other than the storage use but the testimony of others alongside the Council's site visit of 2022 confirms the probability of the domestic workshop use. Mrs Roberts testimony also conflates the pre 2000 use with the post 2000 use however it is not unreasonable that the planning unit point would defeat a lay person but the key matter is her testimony to domestic storage use having taken place in the building from 2000 to 2026 in an incidental way to the occupation of Cae Pandy. Although Mr Roberts died in 2019 there is no reason to think the domestic workshop use did not take place continuously from 2000 to the date of his death or that that use has been abandoned since then.

- 8.23 In short the testimony of persons with knowledge of the site in the crucial period of 2000 when the Cae Pandy planning unit was established to 2026 (in reality to the 10 year period prior to the application being made) is that the yellow building was used for domestic storage, including of 2no vintage vehicles and other household items and as a domestic workshop for mechanical maintenance / repair & for woodworking projects incidental with the residential occupation of Cae Pandy for a continuous period of at least 10 years. As such the time for enforcement action has passed and a Certificate of Lawfulness can be issued for those uses in the hay store incidental to an established residential use at Cae Pandy.
- 8.24 In terms of the red land identified, the applicant's case is that this land has been used as curtilage for the Cae Pandy planning unit continuously from 2000 onwards to the date of the application.
- 8.25 The red land falls outside the red line for permission 96/0073 so was not granted permission for residential use at that time. However the 2022 site visit confirms that Cae Pandy itself and the lawful curtilage are elevated above the flood plain of the adjacent brook. In effect there is no vehicle access to the approved curtilage (only foot access) and it is clear that vehicles have parked and turned outside the lawful curtilage since the conversion was occupied.
- 8.26 This is confirmed by aerial images that show vehicles and a caravan parked in this area from the early 2000s onwards. These images also show a very clearly demarcated curtilage edge (fenceline) from 2006 onwards which has remained unchanged since and this was confirmed in the 2022 site visit.
- 8.27 This area currently consists of gravelled areas that are used for parking and manoeuvring and this area currently contains a large park home which came onto the site in 2024. The 2026 site visit confirmed significant change on this part of the site since the 2022 site visit that went beyond the siting of the mobile home. By 2026 two small containers, earth moving equipment, a liveried commercial vehicle, a skip containing various waste and a dog kennels had appeared on this part of the site significantly changing the character of this area since the 2022 visit when it had a distinctly more domestic feel and much clearer linkages to the lawful dwelling at Cae Pandy. Caselaw (*Panton & Farmer 1998*) established that a lawful use established by immunity could be lost if abandoned, changed or superseded by a subsequent use or material change in the planning unit.
- 8.28 There is significant concern that that is what has happened here with the planning unit that existed in 2022 have now been subdivided into two distinct areas one of which contains Cae Pandy, it's approved curtilage and the hay barn (which remained unchanged in use between 2022 & 2026), that is the blue and yellow land and another consisting of the mobile home and what appear to be commercial uses / activities which is to say the red land. As such it appears that there has been both a change in the planning unit and a change in the use and this is currently subject to an ongoing enforcement investigation. As it stands there is significant doubt that the area the applicant has redlined remains a single planning unit and that there has not been a material change of use within the red land since 2022. A planning enforcement investigation remains on-going and as it stands given the on-site observations there remains reasonable doubt that the red land remains within the claimed use in this application.
- 8.29 In conclusion the position viz a viz the hay barn remains unchanged for 2022 and given the evidence provided there is no reason to think that that building has not been used incidentally to the residential occupation of Cae Pandy for domestic storage and also

as a domestic workshop for vehicle maintenance and repair. As such a certificate can be issued for that building for those uses which have on the balance of probabilities been extant within the building for a period of 10 years continuously

- 8.30 No certificate can be issued on the red land since there is currently significant doubt that that land remains within the Cae Pandy planning unit established in 2000 or that it even remains in domestic use with there being a distinct possibility that the red land is now in a new mixed use of residential and commercial activity.

9. OTHER CONSIDERATIONS

9.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

9.2 *Equality Act 2010*

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

- 9.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

- 9.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

9.5 *Planning (Wales) Act 2015 (Welsh language)*

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

9.6 *Newport's Well-Being Plan 2018-23*

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would

be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

10. CONCLUSION

- 10.1 In essence, on the balance of probabilities the blue land & building, the yellow building (hay store) amount to a single planning unit in domestic use from 2000 to the date of this application. The blue land and building have planning permission for that use or are now immune from any action that might be taken and the yellow building has been used for domestic purposes incidental to the occupation of Cae Pandy (cottage) for a period of 10 years without material break in that use and are now outside of the 10 year enforcement window.

11. DECISION

Issued*

***Insofar as it relates to the following only.**

Reasons:

01 The Land & Buildings outlined blue in the appended drawing are currently in use as a dwelling and associated curtilage (Cae Pandy) and is lawful due to an extant planning permission or immunity under the passage of time.

02 The Building outlined in yellow on the appended drawing has been in incidental residential use to the occupation of Cae Pandy cottage for the following purposes without material break for a period of at least 10 years prior to the date of this application:

- Domestic storage, including of vintage vehicles.
- Domestic workshop use for mechanical repair & maintenance of vehicles and for wood working projects.

NOTE TO APPLICANT

01 This decision relates to the following plans & documents:

- Appendix to Further Statutory Declarations. Received 06.07.2026. (Plan)
- Letter from AJ Planning and Development Ltd dated 10.02.2026
- Drawing R805 02 A1 – Existing Upper Floor Plan
- Drawing R805 01 A1 – Existing Lower Floor Plan & Elevations
- Drawing CPC SB 01 – Location Plan
- Statutory Declarations
 - Myrtle Roberts (x2)
 - Stephen Bushell (x2)
 - Sophia Bushell
 - Janet Bartlett
 - David Harper
 - Tracey Powell
 - Hayley Takacs

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). No Policies were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.

LDCE Issued Plan

