

Delegated Decision Report

Application No:	25/0230	Statutory Expires:	Period 19th May 2025
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Site:	<i>New Dairy Farm Lighthouse Road Newport South Wales NP10 8SF</i>		
Proposal:	<i>LAWFUL DEVELOPMENT CERTIFICATE FOR THE COMMENCEMENT OF DEVELOPMENT IN RELATION TO PLANNING PERMISSION 11/0883</i>		
Applicant:	<i>H Edwards</i>		
Type:	Lawful Existing	Development	Ward: Tredegar Park And Marshfield
Decision:	GRANTED		

1. BACKGROUND

- 1.1 Planning permission was granted for the '*Erection of Extensions to Agricultural Building*' on 9th November 2011. The current application seeks to formally establish that the permission was implemented prior to the expiry of the application, which was five years from the date of consent, that being 9th November 2016.

2. SITE LOCATION AND CONTEXT

- 2.1 The application site relates to New Dairy Farm, which is a large working agricultural complex situated on the Gwent Levels. The nearest residential property, not within the farm complex, is located approximately 400 metres south west of the site at Fair Orchard Farm.
- 2.2 The site is located outside of the defined urban boundary within the open countryside. The Proposals Map contained within the Newport Local Development Plan 2011 – 2026 (Adopted January 2015) identifies the site as being located within the Newport and Cardiff Green Wedge, the Wentlooge Levels Special Landscape Area (SLA), the Underdeveloped Coastal Zone and The Levels Archaeologically Sensitive Area. The Constraints Map identifies part of the site as being within the Gwent Levels – St Brides Site of Special Scientific Interest (SSSI) and the Gwent Levels Landscape of Outstanding Historic Interest.

3. DESCRIPTION OF DEVELOPMENT

- 3.1 The current application seeks to formally establish that the permission was implemented prior to the expiry of the application, which was five years from the date of consent, that being 9th November 2016.

4. RELEVANT SITE HISTORY

Application Number:	Proposal:	Decision:	Decision Date:
21/0752	ROOF COVER STRUCTURE OVER EXISTING EXTERNAL FEED YARD AREAS	Granted with Conditions	09.09.2021
11/0883	ERECTION OF EXTENSIONS TO AGRICULTURAL BUILDING	Granted with Conditions	09.11.2011
05/0376	ERECTION OF FARM BUILDING	Granted with Conditions	06.05.2005
04/1390	ERECTION OF AGRICULTURAL BUILDING (FARM STORE)	Granted with Conditions	25.10.2004
04/1277	ERECTION OF FARM BUILDINGS (AMENDMENT TO PLANNING PERMISSION 03/0884)	Granted with Conditions	07.10.2004
03/0884	ERECTION OF FARM BUILDINGS	Granted with Conditions	15.09.2003

5. PLANNING POLICY & LEGISLATION

- 5.3 The relevant statute is The Town & Country Planning Act 1990 (as amended) where Section 191 states:

191 Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

*(a) any existing use of buildings or other land is lawful; or
(b) any operations which have been carried out in, on, over or under land are lawful; or
(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.*

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

*(a) specify the land to which it relates;
(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
(c) give the reasons for determining the use, operations or other matter to be lawful; and
(d) specify the date of the application for the certificate.*

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Further advice is offered under Annex 8 of Welsh Office Circular 27/97: Enforcing Planning Control (December 1997). This clarifies that if development has planning permission and is not in breach of any condition or limitation of that permission then the development is lawful for planning purposes.

Further explanation confirms that an LDCE application must be specific and that the onus of proof is on the applicant. In terms of the evidential test the Circular advises:

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 Council is under no obligation to look beyond the evidence provided by the applicant.

6. CONSULTATION RESPONSES

- 6.1 None.

7. PUBLIC REPRESENTATIONS

- 7.1 None.

8. ASSESSMENT

- 8.1 This application seeks to establish the lawfulness of the commencement of works related to planning permission 11/0883 and whether they represent the implementation of the planning permission.
- 8.2 Planning permission was granted under application 11/0883 for the 'Erection of Extensions to Agricultural Building' on 9th November 2011. As such, should the permission not have been implemented, it would have expired on 9th November 2016. There were no pre-

commencement conditions attached to the original permission. The only conditions related to 11/0883 are as follows:

1. *The external surfaces of the extensions hereby permitted shall only be of materials to match those of the existing building.*
Reason: To ensure the development is completed in a manner compatible with its surroundings.
2. *There shall be no works, dumping, storage or spreading of materials or trafficking of vehicles within a 7 metre buffer zone (measured from the top of the bank) of the reën to the west of the site during construction of the development hereby approved.*
Reason: To safeguard the special interests of the SSSI and in the interest of reën maintenance

8.3 Under Section 56 of the Town and Country Planning Act 1990, in the case of the carrying out of operations, development of land shall be taken to be initiated at the time when those operations are begun which, for the purposes of the Act, is taken to be the earliest date on which any material operation comprised in the development begins to be carried out. The meaning of a 'material operation' is defined in Section 56 as:

- (a) any work of construction in the course of the erection of a building;
- (aa) any work of demolition of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development.

8.4 The current submission advises that part of the construction process for the erection of a steel framed building entails the excavation of post holes and the pouring of concrete into the holes in order to fix the upright steel legs (stanchions) in place. The Applicant asserts that seven holes were excavated and concrete poured to form 'pad' footings onto which the steel portal frame would be bolted, with this work completed on 16th October 2016. After this, the spoil in the surrounding area was levelled to enable farm work to continue in that area. In support of the application, a number of documents have been submitted with the current application, including:

- Covering Letter
- Application Form
- Approved Plans and Documents relating to 11/0883.
- Photographic evidence of concrete pads.
- A Statutory Declaration provided by the construction company whom carried out the works on 16th October 2016.
- An invoice from the construction company whom carried out the works on 16th October 2016. Part of the invoice includes '*Excavate and concrete foundation holes for new cattle feed building.*'
- A Statutory Declaration from one of the Farm Partners confirming that the works described above were completed on 16th October 2016.

8.5 Based on Section 56 of the Town and Country Planning Act 1990, it is considered that the excavation of the holes and the pouring of concrete as described above would amount to a material operation that would commence the implementation of the planning permission.

8.6 Exhibit 1 of each Statutory Declaration shows the position of the seven post holes, which correspond to the filled concrete pads that have been installed and which align with the location of the external wall of one of the approved extensions. As such, it is considered that the works carried out relate to the extensions approved and are in accordance with the approved plans.

8.7 It is considered that the Applicant's evidence is sufficiently precise and unambiguous to prove that the works described were carried prior to the lapsing of the planning permission and therefore the granting of a certificate on the balance of probability is justified. Advice has

been sought from the Council's legal department in relation to the application, who have advised that the Certificate can be issued based on the evidence submitted.

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.

7. CONCLUSION

7.1 The information submitted is considered sufficient evidence to demonstrate that works amounting to material operations were carried out prior to the expiry of permission 11/0883 and this permission is therefore extant. The Certificate can therefore be issued for the following reason.

8. DECISION

GRANTED

01 The information submitted confirms that material operations amounting to the commencement of planning permission 11/0883 within the lifetime of development had

begun and the development is considered lawful under Section 191(2) of The Town and Country Planning Act 1990.

NOTE TO APPLICANT

- 01 This decision relates to following: Covering Letter, Application Form, Approved Plans and Documents relating to 11/0883, photographic evidence of concrete pads, a Statutory Declaration signed by Richard Douglas Worman dated 13th March 2025, all received by the Local Planning Authority on 24th March 2025, and a Statutory Declaration signed by Brenda Kathleen Edwards dated 1st May 2025, received by the Local Planning Authority on 1st May 2025.
- 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 As consideration of this request did not raise significant additional environmental matters over and above those previously considered as part of the original application, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.