



Development Control
Neath Port Talbot Council
The Quays
Brunel Way
Baglan Energy Park
Neath
SA11 2GG

14th January 2021

Dear Sir/Madam,

Town and Country Planning Act 1990 (as amended) – Section 191
Application for a Certificate of Lawfulness for an Existing Use
6 May Drew Way, Neath, SA11 2HX

Introduction

Simply Planning Limited (SPL) is instructed by Mr A Nitu, to submit the enclosed application seeking a Lawful Development Certificate to establish that the provision of nail treatments within a residential dwelling is lawful by virtue of not forming development.

This is an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD). The planning application comprises the following information:

- Completed Planning Application Form;
- Site Location Plan;

The required application fee of £380 has also been paid to the Local Planning Authority, so we consider that all local and national checklist requirements have been made and the application can be validated accordingly.

Site and Surrounding Area

This Lawful Development Certificate application relates to No.6 May Drew Way a two-storey detached dwelling located within the development site of the former Neath hospital.

The site is approximately 300 square metres in size with the main dwelling facing towards the highway frontage and with a driveway and an area of cell-pave parking system, as shown in the below pictures.



Site Location



Photo of Garage and Parking Spaces

The application site benefits from three off-street parking spaces following the approval of planning application P2020/0785 which, as detailed below, approved a replacement parking scheme including the cell-pave system to widen the drive, in order to allow the conversion of the integral garage into residential use.

The applicant has converted the integral garage to provide an additional study at the front of the house. The applicant currently uses this room to provide nail treatments to paying customers during the business hours of the day. The room is then used as a study for the applicant to work in during the non-business hours of the stay.

The applicant's partner is the sole person who provides the nail treatments, with no staff working at the site. The appointments are only available on a pre-booked basis, with no more than one customer per hour at any time of the day. The appointments are also booked to ensure that no more than one customer is ever present at the site at any one time. The study is accessed from the main hallway in the house, through the main front entrance of the property.

Planning History

The application site forms part of the wider former Neath Hospital residential development and so has been subject to numerous planning applications. Provided below are the main material planning application of relevance to the current proposal.

Application Reference No.	Description of Development	Decision	Decision Date
P2003/0870	Residential development, of 177 dwellings and associated roads, sewers, parking and garages	Granted	12 th February 2004
P2020/0785	Replacement car parking scheme to facilitate garage conversion	Granted	8 th October 2020

The reserved matters approval for the wider former Neath Hospital residential development was approved on 12th February 2004 under application reference P/2003/0870. This reserved matter approval was subject to several conditions. Of note condition 4 related to the conversion of garages for residential use and states that:

“...no garage shall be converted into residential use unless a scheme for replacement car parking has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented prior to the commencement of any conversion works and shall provide for one additional car parking space for each space lost by any conversion works”

Accordingly, to meet the requirements of this condition, Householder planning application P2020/0785 was submitted on the 8th September 2020 which sought approval for a replacement car parking scheme at no.6 May Drew Way. This application sought to provide an additional car parking space to the front of the property to facilitate the conversion of the integral garage to residential use as part of the four-bedroom property. On the 8th October 2020, this application was approved and the requirements of condition 4 has now been met with the cell-pave parking system provided, ensuring three off-street parking spaces remain to serve the dwelling.

Legislative Context

Section 191 of the Town and Country Planning Act 1990 (as amended) (TCPA) relates to certificate of lawfulness of existing use or development. Paragraph 2 of Section 191 states the following:

“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.”***

This application has been submitted on the basis that the partial use of the room at the front of the building as a beauty treatment room does not involve development.

Section 57 of the TCPA confirms when planning permission is required for development and states:

- 1) “Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.”***

Section 55 of the TCPA relates to the definition of ‘development’ and states as follows:

- 1) “Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”***

Therefore, development which requires planning permission is only considered to have occurred if a material change of use of a building or land has occurred or in the event of building, engineering, mining or other operations in, on, over or under, takes place.

Material Considerations

As outlined above, we consider that no development has taken place from the provision of nail treatments to paying customers within the residential dwelling. The main considerations in reaching these conclusions are as follows:

1. Has a material change of use taken place from the operation of the nail treatment room?
2. Has any 'building' work been undertaken in relation to the creation of the nail treatment room?

1. **Material Change of Use**

Following the approval of householder application P2020/0785 the room at the front of the house is now permitted to be used for residential purposes.

The guidance provided on the Welsh Government website (<https://gov.wales/planning-permission-working-home>) confirms that the key test of whether working from home forms a change of use of a premises is '*is it still mainly a home or has it become business premises?*'.

The whole of the dwelling would remain in residential use and the room at the front of the house would be used for a home business during the working hours of the day and then revert back to a study outside of these hours. Therefore, the use of the room to provide nail treatments is considered to be an ancillary residential use, given that it would be utilised for residential purposes for large portions of the week. As shown the images below, the character of the room is residential, with a desk which is used for dual purposes for nail treatments and to work at as part of the study in the evenings.



The Welsh Government Guidance also provides a number of other questions which need to be considered. The first relates to whether the business would result in a marked increase in traffic or people calling. The key term in that

sentence is 'marked'. Clearly the vast majority of businesses which operate from home, such as childminders, hairdressing or music teaching (all of which are listed as potential home businesses in the guidance) will require visitors to the property and some increase in traffic.

The nail salon is operated only by the applicant and has no other members of staff. Therefore, the only visitors to the property are the customers. These come on an appointment only basis and only one customer is ever on the premises at any one time. This means that no more than two additional traffic movement would be associated with the business in any hour of the day. This cannot be considered as marked and would be the same as similar appointment based home businesses such as physiotherapists, hairdressers, music teachers amongst others, where customers are required to visit the property to receive the service offered.

The second question relates to whether the business would involve activities unusual in a residential area. The main operation of the business is providing nail treatments such as manicures, gel polish nails and nail extensions. These are often undertaken by people in their own homes, but can better be provided by a trained professional. Therefore, the business activities are routinely undertaken in private in residential dwellings and so would be typical of a residential area.

The final question is whether the business disturbs neighbours at unreasonable hours or create other forms of nuisance. The business operation will occur during business hours during the day, is not noise generating and would not disturb neighbouring residential properties beyond that of any other person visiting a residential property on the street. In addition, the business use is not odour generating and would not disturb neighbours in this regard also. The business would thereby operate at unreasonable hours or create other forms of nuisance.

In conclusion, the use of room at the front of the house is clearly considered to be an ancillary use to the residential property. The fact that the applicant is the sole person working within the business and that no more than one customer is ever present at the site, means that the business would operate in a similar manner to any other appointment only home-based business which are routinely considered to be an ancillary residential use. Furthermore, the proposal would pass the key test that the property is still a residential home and has not become a business premises or a mixed-use of the building.

2. Building Operations

The final consideration is whether the completed works involved any building operations. We can confirm that no external alterations to the building were included as part of the development. Therefore, no 'building', as defined by s55 of the TCPA, is considered to have been undertaken in the creation of the nail treatment room.

Summary and Conclusions

Section 191 of the TCPA confirms that a Lawful Development Certificate can be granted if no enforcement action can be taken, including whether no development has actually occurred. The meaning of development is defined by s55 of the TCPA as to include a material change of use of a building or land or building operations.

In the circumstances of the application site, we consider that no material change of use has occurred as the room at the front of the house will remain in residential use and would be used as ancillary to this to provide nail treatments during the business hours of the day. Outside of these times, it will be used as a study by the occupiers of the dwelling.



The applicant is the sole person who works from their own residential address and the business operates on an appointment basis, with only one customer within the site at a time. This is no different to thousands of other business who operate from home, whose number will have significantly increased during the ongoing coronavirus pandemic.

In conclusion, we consider that the provision of nail treatments within the dwelling forms an ancillary home business, whereby the applicant has chosen to work from home using a room which forms part of the dwellinghouse. On this basis we consider that no 'development' has taken place and a Lawful Development Certificate can be granted in accordance with s191 of the TCPA.

We trust that on the basis of the information submitted, the application can be duly registered and we look forward to discussing the application with your officers in more detail in due course. If for any reason, the application cannot be registered, please contact me immediately.

Once we receive confirmation that the application is registered, we will contact the appointed case officer. Given the requirements relating to social distancing, we will require that any site visit is pre-booked to ensure that no customers are present at the site during the site visit. If the site visit is not booked in advance, we cannot guarantee access on a speculative basis. As such, it would be much appreciated if you could contact me to arrange the site visit, if necessary.

In the meantime, should you require any further information or have any questions or queries, then please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Alex Smith', with a stylized 'A' and 'S'.

Alex Smith

Director

Encs.