

REPORT OF THE DEVELOPMENT MANAGEMENT TEAM LEADER ON APPEALS

The following appeals have been lodged with the Authority and the current position of each is as follows:-

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|--------------------------|--|
| <u>EC/18/0034</u> | Material change of use of land to Booking Office & overnight camping – Abereidly Beach, Abereidly |
| Type | Inquiry |
| Current Position | The appeal has been dismissed and the enforcement notice is upheld and a copy of the Inspectors decision is attached for your information. |



Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 15/10/19
Ymweliad â safle a wnaed ar 15/10/19

gan **Janine Townsley LLB(Hons)**
Cyfreithiwr (Nad yw'n ymarfer)

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 10.12.2019

Appeal Decision

Inquiry Held on 15/10/19
Site visit made on 15/10/19

by **Janine Townsley LLB(Hons) Solicitor**
(Non-practising)

an Inspector appointed by the Welsh Ministers

Date: 10.12.2019

Appeal Ref: APP/L9503/C/18/3211860

Site address: Abereddy Beach Car Park, Haverfordwest.

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Man-Up UK against an enforcement notice issued by Pembrokeshire Coast National Park Authority.
- The enforcement notice, numbered EC18/0034, was issued on 21 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of development by the making of a material change of use of the land from beach/common land to water activities booking office together with overnight camping area.
- The requirements of the notice are to (i) cease the use of the land as a water activities booking office; (ii) cease the use of the land as an overnight camping area.
- The period for compliance with the requirements is four weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is varied by:

In section 3 the insertion of "beach/common land and" immediately after the word "to".

Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Background and Procedural Matters

2. The appellant operates as an activity/events company providing coasteering and water sports at and around the appeal site. The appeal site is a beach car park, located immediately adjacent to Abereddy beach. The appellant operates the beach car park under a lease granted in 2018. A number of other activity providers providing coasteering services to the public also use the car park.
3. When I opened the inquiry, I indicated that I had received advance notification of a draft statement of common ground prepared by the National Park Authority (NPA) but this had not been agreed by the appellant. The appellant confirmed at the inquiry that

the statement of common ground was not agreed and therefore all elements of the appellants case fell to be considered at the inquiry. I proceeded on this basis.

4. The enforcement notice (EN) sets out the alleged change of use of the land from beach/common land to water activities booking office together with overnight camping area. At the inquiry I clarified the position of the NPA that the beach/ common land use had continued after the alleged change of use and they agreed that the EN should be corrected to reflect this. I am satisfied that this correction does not prejudice the appellant and I shall therefore amend the notice accordingly.

Reasons

The appeal on ground (b)

5. This ground of appeal is that the matters stated in the EN have not occurred.
6. This ground relates to circumstances where the development which the NPA is seeking to enforce against has not, in fact, happened.
7. The appellant does not state that the breach of control as set out in the notice has not occurred, rather, that at the date the EN was served, that the number of days on which payment had been taken at the appeal site was fewer than 28 in that year. Although not expressly stated, this is an argument that permitted development rights exist in relation to the temporary use of the land. These are arguments which fall to be considered under a ground (c) appeal and I have considered them under ground (c). In relation to the overnight camping element of the use, the appellant does not state that this has not occurred but rather states that attempts have been made to stop this element of the use.
8. Given the evidence put forward is not pertinent to a ground (b) appeal, this ground of appeal must fail.

The appeal on ground (c)

9. Evidence submitted in relation to the ground (b) appeal is that the appellant states on-site bookings had not been taken on more than 28 days at the time the EN was served.
10. The appellant's rationale for this position is that the NPA had informed them that payments should only be taken at the site on fewer than 28 days a year to avoid a change of use. The NPA confirmed at the inquiry that this advice has been given to the appellant and other activity operators at the site. The appellant states that it was not until 2019 that the NPA clarified that each day the appellant has been on site counts towards the 28 days.
11. Schedule 2, Part 4 Class B of the General Permitted Development Order 1995 provides for the use of land for any purpose for not more than 28 days in any calendar year and for the provision on the land of any moveable structure.
12. However, it is clear that use of the site by the appellant to take bookings and payments on the site is intrinsically related to the coastering/ water sports business which forms part of the mixed use of the site. This is a use of land which has been operating throughout the season; the appellant estimates that they are present on site for around six months each year.
13. The taking of payments on site forms part of an ongoing mixed use rather than each being a separate temporary use of land for a period of up to 28 days in each

consecutive calendar year. For this reason I find that the use of land for taking payment does not benefit from permitted development rights relating to the temporary use of land. The appeal on ground (c) in relation to this element of the appeal fails.

14. It is further stated by the appellant that their use of the site has not resulted in a change of use of the site. This, they state, is because it is not materially different to the previous use of the site which had been used by activity providers for approximately 30 years. The appellant states that the manner in which the site is operated by them has not resulted in a change in character of the site or the locality.
15. There is no dispute that the site has been used for a number of decades by activity providers transporting customers to and from the beach. This use has informed the character and appearance of the site. The issue therefore is whether the manner in which the appellant uses the site is materially different to how the site was previously used.
16. The NPA refers to the change of use to a "booking office". This is because the appellant operates from a mobile unit which is towed to the car park each morning and then towed away at the end of each day. The appellant has clarified that the booking office is not present on site every day, only during the season which is generally in the summer months and even then there are some days when they have no presence on the appeal site at all as events are undertaken elsewhere within the County. Nevertheless, the appellant confirmed in evidence that when on site, the booking office generally arrives by 9:30 in the morning and will remain on site all day.
17. The appellant has stated that the booking office can be compared to the vehicles used by other operators which are used to transport customers to the site and back. These remain on site during the booking session and some customers are changed into the necessary kit whilst on site. I have seen photographic evidence that some of these vehicles are sign-written with information to attract trade in a similar way to the appellant's booking office is.
18. There is no significant difference between the booking office and the other operator's vehicles in terms of size, however the appearance of the booking office differs insofar as it needs to be towed onto the site, it therefore has a more permanent appearance and, as the evidence makes clear, it is left on site for a larger proportion of each day. From the evidence it is also clear that other operator's vehicles are not left on site all day during summer season, rather they are present only when accompanying customers to the beach for booked activities. The nature of the booking office is also different, with stepped access, allowing potential customers to enter the booking office and make enquires on an ad-hoc basis.
19. The appellant's booking office has a telecommunications mast. This is used for a reliable wi-fi service which the appellant states is used for both safety reasons to allow communication in an emergency situation and for taking card payments on site. This again is a feature lacking on other operator's vehicles.
20. The appellant also provides equipment hire on site. Photographic evidence shows that other operators have equipment which is visible outside of vehicles but there is nothing in the evidence to suggest this is anything other than in association with the each individual booking. The appellant's is the only company which provides on-site equipment hire for the public which is not necessarily connected to pre-booked activities and is visible and available at any point, for example, for families with children who had not anticipated the depth of the water.

21. In terms of the way the site is operated, an advertisement flyer states that with effect from 2018 they will set up a "permanent base" at Abereddy increasing team members by two. The flyer states they are a 12 month a year operation. Kit hire is available from "our Abereddy base", "there daily between 9am and...". The appellant acknowledged in evidence at the inquiry that upon taking up the lease of the car park, in April 2018, the intention was to trade from there as the tourism draw of the location was suitable.
22. The appellant states that most activities are booked in advance with "last minute" bookings being taken from the booking office on site being more exceptional. They state they are the only provider to ensure that they always have a member of staff shoreside whilst customers have been taken out and this is for safety purposes, however, it was clarified that this member of staff would not be visibly waiting with nothing else to do. Nevertheless, the presence of the booking office on site, together with facilities for the taking of card payments due to the mast, means that the appellant can and does trade from the site both for last minute activity bookings and equipment hire. This contrasts the use of the site from previously.
23. The appellant stated that there have been occasions when other operators have taken bookings from the site, however, these occasions post-date the service of the EN and therefore should not be taken into account when assessing this appeal. Furthermore, there is no reason to suggest that once alerted to this practise, the NPA would not take enforcement action if appropriate.
24. Overall, therefore, I consider there are significant differences between the use of the site by the appellant and how it was used beforehand. These differences result in a more visible site presence such that a material change of use has taken place.
25. In terms of the effect of the change of use, the appellant points to the lack of housing in the area and the concentration of tourism accommodation, however, the occupants of the nearby houses are not the only receptors to the change in use. In this case, the impact of the change of use would be witnessed by the visitors to the appeal site and surrounding area. In this respect the effect of the change of use outlines above would impact upon both the site itself and the surrounding area.
26. Turning to the use of the car park area for overnight parking, the NPA states that the car park does not have the benefit of planning permission but has been used as such for a number of decades. The appellant as lessee of the car park charges for parking. The evidence submitted shows photographs of signs for overnight parking with a charge of £10.
27. The appellant maintains that it was not their objective to allow or encourage overnight parking or camping and that the levying of a charge was intended to dissuade this. Nonetheless, I understand the NPA's concern that charging for overnight parking gives the impression that it is permitted and thereby legitimises it.
28. The appellant's evidence in relation to the overnight parking is that taking payment for overnight parking does not amount to a change of use, however the EN seeks to enforce against a camping use. The appellant's written evidence acknowledges that campervans and vans have been present overnight at the appeal site both during and prior to their operation of the site. At the inquiry, the appellant was asked by me whether they considered there was any difference between over-night parking and camping. No difference was identified and the appellant appeared to acknowledge that when vehicles were parked overnight in the car park they were occupied. Therefore, there appears to be no dispute that vehicles have been parked overnight

for sleeping and the appellant has not set out why it is considered that the use of the site as overnight accommodation, whether this is described as parking or camping, does not amount to a breach of planning control.

29. Overall, therefore, I conclude that the appellant has failed to demonstrate that the use of the site as a booking office and for overnight camping does not amount to a breach of planning control and for this reason, the ground (c) appeal fails.

The appeal on ground (d)

30. This ground of appeal is that at the date the EN was issued, no enforcement action could be taken in respect of any breach of planning control. This ground of appeal assumes that at some stage there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four or ten year periods laid down by s171B of the Town and Country Planning Act 1990 (as amended).
31. The NPA does not dispute that the car park has been used by activity providers for a number of years, however, I have already found that there are material differences between the way the site has been operated by the appellant and how it was operated in the past. My findings in this regard are set out within my reasoning on the ground (c) appeal. My conclusion that the appellant's use of the site amounts to a material change of use impacts upon the ground (d) appeal since I have already found that a material difference between the appellant's use of the site and the use of the site in the past. In this respect, and since the change of use has not subsisted for a period of ten years prior to the service of the EN, the appellant cannot be successful under ground (d).
32. Furthermore, my attention has been drawn to the use which is set out in the EN being a mixed use. I heard representations from the NPA that the use enforced against included both the use of the car park as a booking office and the overnight parking/camping. The case for the NPA is that neither of those uses was incidental to the other and as such a mixed use of the site had been ensuing. Case law was referred to by the NPA¹ in general terms and the appellant did not offer any argument against the submission that immunity from enforcement action by passage of time cannot be claimed in respect of part only of a mixed use. Although the appellant has stated that the car park had been used in the past for overnight accommodation, no detail has been provided of this and no evidence has been given in support. Therefore, the appellant has failed to demonstrate on the balance of probability that the overnight parking or camping use of the site has taken place for in excess of ten years prior to the service of the EN. Therefore, also for this reason, the ground (d) appeal fails.

Conclusion

33. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the

¹ Robert Fidler v First Secretary of State, Reigate and Banstead Borough Council [2004] EWCA Civ 1295, Lynch v Secretary of State for the Environment and another [1999] JPL 354, D Beach v The Secretary of State for Transport and the Regions, Runnymede Borough Council [2001] EWHC Admin 381.

Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.

34. For the aforementioned reasons, and taking into account all matters raised, I conclude the appeal should be dismissed. Subject to the variations set out in my formal decision above, I dismiss the appeal and uphold the enforcement notice as varied.

Janine Townsley

Inspector