

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:-

NP/20/0614/FUL 6 affordable houses in association with 6 woodworking workshops, a community facility and a timber processing and drying facility – Pantmaenog Forest, Rosebush
Type Hearing
Current Position A Hearing was held on 21st June 2022 and the Inspectors decision is awaited.

NP/22/0003/PNA Polytunnel with metal frame to house 370 laying hens throughout winter months – Field north side of Jason Road, Freshwater East
Type Written Representations
Current Position The appeal has been allowed and a copy of the Inspectors decision is attached for your information.



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 01/11/22

gan **J P Tudor BA (Hons), Cyfreithiwr**
(ddim yn ymarfer)

Arolygydd a benodir gan Weinidogion
Cymru

Dyddiad: 11/11/2022

Appeal Decision

Site visit made on 01/11/22

by **J P Tudor BA (Hons), Solicitor (non-**
practising)

an Inspector appointed by the Welsh
Ministers

Date: 11/11/2022

Appeal Ref: CAS-01742-Z5T0Q5

Site address: Land on north side of Jason Road, Freshwater East, Pembroke,
Pembrokeshire SA71 5LE

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 approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
 - The appeal is made by Mr Jacob Whitson against the decision of Pembrokeshire Coast National Park Authority (PCNPA).
 - The development proposed is a polytunnel, single span, 9.14m wide, 25.6m long, metal frame.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) for a polytunnel, single span, 9.14m wide, 25.6m long, metal frame at Land on north side of Jason Road, Freshwater East, Pembroke, Pembrokeshire SA71 5LE in accordance with application ref: NP/22/0003/PNA, dated 30 December 2021.

Application for Costs

2. An application for costs was made by Mr Jacob Whitson against PCNPA. That application is the subject of a separate Decision.

Procedural Matters

3. The description of the development proposed in the appeal form and the decision notice differ from each other and from that contained within the application form. I cannot see that any agreement was reached to change the description. Therefore, I have taken the description of development used in the banner heading and decision above from the application form, as it sufficiently describes the proposal. However, I have omitted the

words *'of conventional appearance'* as they are vague, superfluous and not acts of development.

4. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 6, Class A, Part A2 (2)(a) and (i), require the local planning authority to consider whether or not to grant prior approval in respect of the siting, design and external appearance of the building. In addition, paragraph A7 of Annex A to Welsh Government's Technical Advice Note 6: Planning for Sustainable Rural Communities (2010) (TAN 6) advises, in relation to determinations under Schedule 2, Parts 6 and 7 of the GPDO: *'When details are submitted for approval under the terms of the GPDO, the objective should be to consider the effect of the development upon the landscape in terms of visual amenity....In operating these controls, planning authorities should always have full regard to the operational needs of the agricultural and forestry industries and to the need to avoid imposing any unnecessary or excessively costly requirements. Long term conservation objectives will often be served best by ensuring that the rural economy, including farming and forestry which are prominent in the rural landscape, is able to function successfully.'* My determination of this appeal has been made on the above basis
5. A prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied, as the principle of development is established through the grant of permission by the GPDO. However, development plan policies may have relevance to the prior approval matters but only as evidence to support, rather than being the basis of, the planning judgement to be made.
6. PCNPA indicates that the proposed structure benefits from permitted development rights, as it satisfies the criteria set out in the GPDO, Schedule 2, Part 6, A1 (a)-(i). It also accepts, on the basis of the information provided with the application, that the polytunnel is reasonably necessary for the purposes of agriculture at the site, as required by part A. I see no reason to take a different view on those aspects.
7. However, PCNPA determined that prior approval was required to give further consideration to the siting and design of the structure and effects on the landscape. Subsequently, it decided to refuse prior approval because it considered that the proposed polytunnel would, because of its materials and position, have an adverse visual impact on the surrounding landscape.

Main Issue

8. The main issue is the effect of the proposed development, with regard to siting, design and external appearance, on the visual amenity of the surrounding landscape and the special qualities of the Pembrokeshire Coast National Park (PCNP).

Reasons

9. The appeal site comprises an agricultural field located to the north of an adjacent unclassified road, east of the small coastal village of Freshwater East. It is set within a rolling rural landscape of agricultural fields and scattered farms and dwellings. The site lies within PCNP which is valued for, among other things, its natural beauty.
10. PCNPA has expressed concern about the visual impact of the proposed translucent polytunnel, sited within an open field, upon the surrounding landscape. A range of development plan policies are referred to in its decision notice, including Policy 14 of the PCNP Local Development Plan 2 (September 2020) (LDP). It seeks to protect the qualities and special landscape of the PCNP from, among other things, visually intrusive development.

11. Although, as set out above, development plan policies typically have more limited relevance to prior approval applications and appeals, I note that the supporting text to Policy 14 indicates, at paragraph 4.86, that where there is a possibility that development may cause significant visual intrusion, as alleged by PCNPA, impacts should be assessed from various places including: public access points; the Coast Path (a National Trail); Public Rights of Way (as well as the public highway); and, views on entering and leaving settlements. The supporting text also cautions, at paragraph 4.85, that even seemingly minor changes in the landscape can have an adverse effect. I consider that to be a sensible approach to assessing visual impacts.
12. Applying that approach to the proposed development, the polytunnel would be a single span structure of relatively limited size, at about 25.6m long, 9.14m wide and just 3.6m in height. Furthermore, it would be sited close to a tall, well-established hedge at the field boundary which would, as I observed onsite, largely screen it from the adjacent road. Given that single-track unclassified country road out of the settlement of Freshwater East has no footways and limited verges, most traffic using it is likely to be vehicular, particularly given that the Wales/Pembrokeshire Coast Path (the Coast Path), accessible from the village, would probably prove a more attractive option for walkers. Therefore, views of the proposed development obtainable from vehicles travelling along the road past the gated field entrance would be glimpsed, partial and transient. Screened by the hedge and given the intervening fields, the polytunnel would not be visible from the Coast Path which is quite some distance away to the south.
13. With regard to the public right of way, which crosses fields further to the east, views back towards the appeal site would be screened by field boundary hedges. The undulating nature of the surrounding countryside would offer some views of the site from the north but most would be distant. Notwithstanding the use of translucent materials, the limited scale of the structure and its position, set against the backdrop of the existing hedge, would mean that it would be unlikely to particularly draw the eye in the context of the wider landscape. Consequently, I do not consider that the proposed development would have a significant detrimental visual effect on the area. .
14. I am also conscious that National Parks are working landscapes often encompassing agricultural holdings, as is the case here. The appellant advises that the polytunnel would be dual purpose, used to house hens during the winter (while facilitating compliance with animal welfare and biosecurity advice) and to grow horticultural crops in the summer months. As referred to in paragraph 4 above, TAN 6 recognises that in addition to considering visual effects on the landscape, full regard should also be given to the operational needs of agriculture in operating these GPDO prior approval controls.
15. I note that PCNPA made alternative suggestions to the appellant, such as that the material for the structure could be forest green non-translucent sheeting or natural timber Yorkshire boarding. However, as the appellant points out, opaque materials of that kind would not be suitable for the proposed summer horticultural use and would restrict light reaching poultry, which could negatively affect their welfare, particularly when they may have to be kept indoors for sustained periods due to avian flu restrictions. It was also suggested by PCNPA that it would be more appropriate to site the polytunnel alongside existing built form serving the holding, but the appellant advises that there are no such existing buildings, which has not been disputed. In any event, my role is to consider the proposal before me.
16. Overall, I conclude that the proposed development, taking account of its siting, design and external appearance, would not have a significant or unacceptable adverse impact on the visual amenity of the surrounding landscape or on the special qualities of the PCNP.

Conditions

17. The appellant should note that approvals under Schedule 2, Part 6, Class A of the GPDO are subject to the conditions detailed within section A2 of Class A. They include, A2(2)(v)(aa), that the development shall be carried out in accordance with the details approved, except to the extent otherwise agreed in writing by the local planning authority; (vi) that the development shall be carried out within a period of 5 years from the date of this approval; and, (7) that within 7 days of the date on which the development is substantially completed, the developer shall notify the local planning authority in writing of that fact. The permission is also subject to other conditions and limitations detailed within the relevant part of the GPDO.
18. Given the above standard conditions within the GPDO, PCNPA's suggested condition that the development be carried out in accordance with the approved plans and documents would be unnecessary duplication. Similarly, as the approval given under Part 6, Class A, explicitly relates to the erection of a building, on agricultural land, which is reasonably necessary for the purposes of agriculture within the agricultural unit, a further condition restricting its use to agriculture would be unnecessary. There is no indication within the approved details that internal or external lighting is proposed and it would not, therefore, fall within this prior approval. Consequently, the suggested condition in relation to lighting is not necessary.
19. PCNPA has also suggested a condition that would make the permission temporary for a period of 5 years. A permission granted by the GPDO is continuous while the Order is in force or re-enacted, and unless the permission is revoked or withdrawn. I also note that the appellant indicates that the materials and form of the structure are not of a temporary nature and such a time limit would offer little security for the enterprise or justify the significant financial investment. Therefore, such a restriction would be inappropriate and unreasonable.
20. Accordingly, in this case, I do not consider it necessary or appropriate to impose conditions in addition to those already contained within the relevant part of the GPDO.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed and prior approval granted.
22. 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 (the Act). I consider that this decision is in accord with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's well-being objectives as required by section 8 of the Act.

JP Tudor

INSPECTOR



Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 01/11/22

gan **J P Tudor BA (Hons), Cyfreithiwr**
(ddim yn ymarfer)

Arolygydd a benodir gan Weinidogion
Cymru

Dyddiad: 11/11/2022

Costs Decision

Site visit made on 01/11/22

by **J P Tudor BA (Hons), Solicitor**
(non-practising)

an Inspector appointed by the Welsh
Ministers

Date: 11/11/2022

Costs application in relation to Appeal Ref: CAS-01742-Z5T0Q5

Site address: Land on north side of Jason Road, Freshwater East, Pembroke,
Pembrokeshire SA71 5LE

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

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Mr Jacob Whitson for a full award of costs against Pembrokeshire Coast National Park Authority (PCNPA).
 - The appeal was against the refusal of prior approval for a polytunnel, single span, 9.14m wide, 25.6m long, metal frame.
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Decision

1. The application for an award of costs is refused.

Procedural Matter

2. PCNPA did not respond to the application for costs within the relevant initial timeframe. However, I decided it was appropriate to provide a further opportunity to respond, given the potential cost implications. Subsequently, PCNPA provided a brief written response.

The Submissions

3. The submissions for the applicant and the response from PCNPA were made in writing.

Reasons

4. The Welsh Government's Development Management Manual - Section 12 Annex: Award of Costs (the Annex) advises that parties are normally expected to meet their own costs and that, irrespective of the outcome of an appeal, an award of costs may only be made where one party has behaved unreasonably and that unreasonable behaviour has led other parties to incur unnecessary or wasted expense in the appeal process [Paragraph 1.2].
5. It is alleged by the applicant that PCNPA did not adopt a constructive or collaborative approach in dealing with the application. As discussed in the main appeal decision, the

applicant considers that suggestions made by PCNPA were impractical and did not take account of the proposed dual use of the polytunnel for horticulture during the summer and as accommodation for hens during winter. An alternative opaque green covering for the polytunnel, suggested by PCNPA, would have been unsuitable for its intended horticultural use for part of the year, while the suggestion that it should be sited in the vicinity of an existing building serving the holding was not possible, as the applicant advises that there are none. The applicant also considers that his suggestions on possible ways forward, including additional natural screening, were not explored.

6. Consequently, the applicant suggests that PCNPA's approach, as outlined above, resembles examples of unreasonable behaviour given in the Annex. Specifically, the applicant cites: paragraph 3.10 (a) which refers to a lack of co-operation with another party by refusing to provide requested information or seek additional information; and, paragraph 3.10 (h) which concerns refusing to co-operate in settling agreed facts, or supplying relevant information, so that proceedings are adjourned or prolonged unnecessarily.
7. While I have considered the applicant's submissions regarding an alleged lack of co-operation, I note that PCNPA has supplied copies of email exchanges between it and the applicant, following the application, in which various matters are discussed including the proposed materials and siting of the polytunnel. PCNPA also refers to the strict timescales which have to be met in prior approval applications which limits the time available for discussion before determination. In addition, in response to the application for costs, PCNPA suggests that a pre-application submission would have enabled greater opportunity for discussion of the proposals before the relevant timescales were triggered by the submission of the application.
8. Given that there is correspondence between the parties and taking account of the relevant time constraints, I do not consider that PCNPA has failed to cooperate or behaved unreasonably. Indeed, with reference to 3.10 (h), it cannot be said that it unnecessarily prolonged proceedings, as it met required timescales.
9. The applicant also submits that no detailed case was made by PCNPA outlining the reasoning behind its decision. In that regard, the applicant cites paragraph 3.10 (f) of the Annex which refers to failing to provide an adequate full statement of case where it is a requirement (i.e. unclear presentation of facts or arguments), that causes proceedings to be unnecessarily prolonged or adjourned. Although I note the applicant's view, PCNPA's reasons for refusal are sufficiently clear in its decision notice, and expanded upon in its Officer's Report, which it has relied upon for the purposes of the main appeal. There is no requirement for it to provide a formal statement of case, in addition, for the purposes of the appeal. Therefore, I do not agree that PCNPA has behaved unreasonably in that respect.
10. Paragraph 3.11 (k) of the Annex, also referred to by the applicant, relates to planning obligations, such as s106 Agreements, which are not relevant to this case.
11. The applicant considers that delay and additional expense has been caused by having to appeal. However, it seems to me that there was a legitimate planning judgement to be made about the visual effects of the siting, design and external appearance of the structure on the PCNP and its special qualities. Therefore, although I ultimately took a different view from PCNPA in the main appeal, I do not consider that it has behaved unreasonably in relation to procedural or substantive matters.

Conclusion

12. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Annex, has not been demonstrated. Accordingly, no award of costs is made.

JP Tudor

INSPECTOR