

DEVELOPMENT MANAGEMENT COMMITTEE  
15<sup>th</sup> December, 2010

**REPORT OF HEAD OF DEVELOPMENT MANAGEMENT**

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**SUBJECT:**

**To consider matters relating to enforcement and other planning issues:**

**APPEALS**

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

<b>NP/08/441</b>	5 dwellings Land adjacent to Blockett Farm, Little Haven
<b>Type</b>	Hearing
<b>Current Position</b>	An application has been received by the Authority and therefore the appeal will be held in abeyance for 3 months.
<b>NP/09/331</b>	2 dwellings Land between The Bungalow & Rosemount, Broadway, Broad Haven
<b>Type</b>	Written Representations
<b>Current Position</b>	The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.
<b>NP/09/469</b>	Dwelling and garage Pontiago House, Pontiago, Goodwick
<b>Type</b>	Hearing
<b>Current Position</b>	A hearing was held on 8 September 2010 and the Inspectors decision is awaited.
<b>NP/09/495</b>	Conversion to holiday let The Old Laundry Building, Trewellwell
<b>Type</b>	Written Representations
<b>Current Position</b>	The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.

<b>NP/10/017</b>	Low impact horticultural smallholding & retention of 2 polytunnels
<b>Type</b>	The Nursery, Mount Pleasant Cross, Cosheston
<b>Current Position</b>	Hearing A hearing was held on 12 October 2010 and the Inspectors decision is awaited.
<b>NP/10/033</b>	Retention of Dwelling
<b>Type</b>	Bettws Newydd, Parrog, Newport
<b>Current Position</b>	Inquiry A hearing was held on the 20, 21, 22, 26, 27 & 28 October, 2010 and the Inspectors decision is awaited.
<b>NP/10/115</b>	Conversion of attic and extension
<b>Type</b>	Zamboanga, St Brides Lane, Saundersfoot
<b>Current Position</b>	Written Representations The Authority's statement has been forwarded to the Inspectorate.
<b>NP/10/145</b>	Replacement dwelling (amendment to original approved design)
<b>Type</b>	Swn-y-Wylan, Newport
<b>Current Position</b>	Written Representations The appeal has been allowed and a copy of the Inspectors decision is attached for your information.
<b>ENF/03/10</b>	Non compliance with planning conditions 4 & 5 of Planning Permission NP/06/445
<b>Type</b>	Morwynt, Abercastle
<b>Current Position</b>	Written Representations The Authority's statement has been forwarded to the Inspectorate
<b>ENF/07/10</b>	Unauthorised portacabin in barn
<b>Type</b>	Hendre Fawr Farm, St Dogmaels
<b>Current Position</b>	Written Representations The initial papers have been forwarded to the Inspectorate and a site visit was held on the 9 <sup>th</sup> November, 2010.



## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 7/10/10

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 09/11/10

## Appeal Decision

Site visit made on 7/10/10

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 09/11/10

**Appeal Ref: APP/L9503/A/10/2132640**

**Site address: Swn-Y-Wylan, Golf Course Road, Newport, Pembrokeshire SA42 0NR**

**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 planning permission.
- The appeal is made by Mr James Flitterman against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/10/145, dated 24 March 2010, was refused by notice dated 20 May 2010.
- The development proposed is a replacement dwellinghouse at Swn-y-Wylan. Amendments to design approved under NP/09/098 as varied by NP/09/418 and letter dated 2<sup>nd</sup> October 2009 from PCNPA confirming approval of minor amendments.

### Decision

1. I allow the appeal, and grant planning permission for a replacement dwellinghouse at Swn-y-Wylan. Amendments to design approved under NP/09/098 as varied by NP/09/418 and letter dated 2<sup>nd</sup> October 2009 from PCNPA confirming approval of minor amendments at Swn-Y-Wylan, Golf Course Road, Newport, Pembrokeshire SA42 0NR in accordance with the terms of the application, Ref NP/10/145, dated 24 March 2010, and the plans submitted with it, subject to the conditions in the schedule below.

### Main Issue

2. I consider the main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

3. The appeal property overlooks a Golf course and estuary and is located on the southern side of Golf Course Road. There are a number of predominantly single and split level bungalows strung-out along Golf Course Road that have variable designs and materials utilised in their construction. Swn-Y-Wylan is not the southern most dwelling on the road, but is grouped with Fairways, which despite a sizeable gap between it and the next property, Baptiste, is seen in the context of the wider panorama of properties that end by the Golf Club accommodation complex. These properties are seen from the golf course car park and from across the estuary at Parrog, Newport. In assessing this proposal, I viewed the appeal site from these various locations in conjunction with the photomontages and submitted plans.
4. The design and composition of the properties on Golf Course Road including that of the appeal property and its immediate neighbour are broadly unremarkable in their appearance. These reflect common north-south roof planes interspersed in general by

gable roof front projections and a dominance of horizontal glazing in their west facing elevations. The appeal property has a substantial flat roof addition projecting from the front of the property which dominates its appearance. The upper section which extends above the eaves is predominantly glazed; the lower section consists of garages. The dwelling which is set in a steep slope has a shallow main pitch, render and timber clad walls, and extends in depth to its rear.

5. The Authority agrees that the existing dwelling has no architectural merit and has granted planning permission for its replacement. This planning permission granted a wider dwelling than the original property with a central gable feature which would be predominantly glazed. Its roof runs west to east and would be conjoined to a lower roof either side that would have a north-south plane. The main west facing roof would be marginally lower than the ridge of the existing dwelling and the proposed gable ridge would only project slightly above it.
6. The proposed dwelling is a near replication of the design previously accepted. However, the floor level is higher and so is the ridge of the main roof and that of its proposed central gable. The dispute revolves around the increased height of the proposed dwelling. However, the main proposed ridge of the dwelling would be 173mm higher than the existing dwelling on the northern roof plane, excluding the lower section of roof nearest to Fairways. The proposed gable ridge would be some 1m higher than the existing ridge of the dwelling. The proposed main roof on the southern plane would be the same height as the existing ridge of the dwelling, but would extend further across. I consider the height difference between the proposed and the existing dwelling would be imperceptible, and having regard to the design of property which the Authority have previously granted planning permission.
7. The overall undulating topography, the variable composition of dwellinghouses in the area, leads me to conclude that the proposal would be no more visually intrusive than the original dwelling, given the slight margins of difference involved and the wide panoramic views with which this proposal would be seen. I am aware that the Authority has recently adopted its Local Development Plan (LDP) which replaces the Joint Unitary Development Plan where this pertains to the Authority's administrative areas. I am not aware of any planning policies which this proposal would undermine in relation to the Park's purpose of conserving or enhancing its natural beauty. The LDP need not repeat national planning policies, and I find that this proposal would not conflict with paragraph 9.3.3 of Planning Policy Wales Edition 3.
8. I do not agree that the proposal would dominate or be visually overbearing in the context of Fairways. Fairways is orientated at an angle to the proposed location of the dwelling and as indicated the proposed height difference is slight in comparison with the existing dwelling. Over the wide panoramic vista of the landscape to which this proposal would be viewed and the significant variance of style of houses seen in this view, I do not consider that the development would be a dominant or overpowering feature. I note the reference to an appeal decision in Broad Haven, but this can be distinguished from the details of the proposal before me. I doubt that the situations are comparable.
9. I therefore conclude that the proposal would not harm the character and appearance of the area.

### **Schedule of conditions**

10. I have considered the Council's suggested list of conditions in accordance with Circular 35/95. Suggested conditions 2 and 3 are not needed, since the existing dwelling would be demolished in order for the replacement dwelling to be built. The requirement for compliance with the approved plans is implicit in granting this permission, and any material deviation would require a fresh planning application. I have amalgamated suggested conditions 7 and 8 in the landscaping details to be agreed. Suggested condition 9 has also been modified for this to be agreed with the

Authority. Suggested condition 11 has also been modified, to reflect the current proposal. Conditions 2 – 7 are therefore needed in the interests of the visual appearance of the area.

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to, and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until there has been submitted to, and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows/hedge banks on the land, and details of any to be retained, together with measures for their protection in the course of development.
- 4) No development shall take place until there has been submitted to, and approved in writing by the local planning authority details of the means of providing underground electrical and telephone cabling to serve the property. Development shall be carried out in accordance with the approved details.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargements, extensions or other alterations to the dwelling shall be erected, or the siting of a caravan within the curtilage of the dwellinghouse shall take place under Parts 1, 2 and 5 of Schedule 2.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the northern elevation.

*Iwan Lloyd*

INSPECTOR



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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 8/10/10

**gan Iwan Lloyd BA BTP MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 18/11/10**

## Appeal Decision

Site visit made on 8/10/10

**by Iwan Lloyd BA BTP MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 18/11/10**

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**Appeal Ref: APP/L9503/A/10/2133250**

**Site address: Old Laundry Building/Cottage, Trewellwell, Solva, Haverfordwest, Pembrokeshire SA62 6XE**

**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 planning permission.
  - The appeal is made by Mr Nick Neumann against the decision of Pembrokeshire Coast National Park Authority.
  - The application Ref NP/09/495, dated 5 November 2009, was refused by notice dated 27 January 2010.
  - The development proposed is conversion of Old Laundry Room to Sustainable Holiday Let.
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### Decision

1. I dismiss the appeal.

### Main Issues

2. The main issues in this case are as follows:
  - the effect of the proposal on the character and appearance of the building and the surrounding area, and
  - whether the proposal to install low carbon technology in the scheme outweigh any harm to the character and appearance of the building and the surrounding area.

### Reasons

3. The building is the former laundry for the existing farmhouse to the north. This complex has been converted to 7 holiday units. The building is set within woodland and overlooks a large pond. A footpath bounds the building to the north and there is a small clearing to the front, sides and rear of the building with access along a track. The site is located in the countryside. Planning permission has been granted in June 2010 under reference NP/10/111 for the conversion of the outbuilding to a holiday let. This scheme differs from the appeal submission in that it shows the erection of a single storey side lean-to and the conversion of an existing side lean-to. The proposal under this appeal seeks to extend to the rear and provide a smaller side lean-to and the conversion of the existing lean-to. The proposed rear extension incorporates a store and bedroom and measures some 4.4m by 4.4m with the part of the store being recessed and therefore would be marginally smaller than these overall dimensions.

4. The main building is a single skin brick construction with slate roof and the existing lean-to is mainly random stone with brick quoins. The main building measures some 6m by 4m. It has a simple and functional appearance with a large opening to the north and two uniform sized window openings on the east and west elevations.
5. Since the appeal was lodged the authority has adopted its Local Development Plan (LDP) which replaces the Joint Unitary Development Plan (JUDP) where this pertains to the Authority's administrative areas. The Authority and the Appellant has now referred to the relevant policies in the LDP, although those supplied may not be numbered the same as the final printed version of the LDP. Therefore, I shall only refer to the title of the policy. LDP strategic policy on countryside indicates that outside identified centres the conversion of appropriate buildings to a range of uses, with affordable housing being given the priority in residential conversions will be permitted. The policy also indicates that the conversion must not result in unacceptable impacts upon the structure, form, character or setting of the building and be unobtrusive in the landscape. In relation to sustainable design strategic policy, all proposals for development will be expected to demonstrate an integrated approach to design and construction in relation to relevant criteria.
6. Planning Policy Wales Edition 3 (PPW Edition 3) adopts a positive approach to the conversion of rural buildings for business re-use providing they are suitable for the specific use and their form, bulk and general design are in keeping with their surroundings. The guidance indicates that if the existing building is unsuitable for conversion without extensive alteration, rebuilding or extension, similar control to that for a new house in the open countryside will apply. Planning Policy Wales Technical Advice Note 12: *Design* (TAN 12), paragraph 5.8.4 indicates that character retention will often involve the least amount of change possible to the external appearance in conversion schemes.
7. In this case, the proposal promotes sustainable building technologies in the design and as part justification for the extended footprint. A sedum roof would be incorporated in the extension and timber cladding to the walls. The store would house the boiler for an air source heat pump for the under floor heating and hot water and controls for the rainwater harvesting.
8. However, the objectives of good design as set out in figure 4.2 PPW Edition 3 means the relationship between all elements of the natural and built environment which goes beyond aesthetics and that this is applied to all development proposals. In my view, the extension which is partly used as justification for the sustainability of the scheme is not a minor component of the proposal. It is a sizeable addition, and one which would be clearly seen and read as such from the footpath nearby, despite its seclusion in the woodland, public footpaths cross the site. The simple form and composition of the building would be significantly altered in layout and in terms of scale. The rear extension does not involve the least amount of change possible. The character of the building would be changed and harmed because it would read in combination with other alterations as predominantly new build. I therefore conclude that the integrity of the building would be significantly altered as a result of the proposal which conflicts with the guidance in PPW Edition 3, TAN 12 and LDP strategic policy on the countryside.
9. I conclude that the proposal would harm the character and appearance of the building and the surrounding area.

10. In relation to the second issue, sustainable building design is one component of good design. However, design of a sustainable building should be integral to the design of the whole development. The comparisons drawn between the sustainability credentials of the approved scheme and the appeal proposal do not serve to justify the development for the conversion and extension. The design approach should identify the constraints, one of which would be to retain the character of the building with minimal change and apply a sequential approach to energy reduction and then a range of possible low carbon design solutions. I am not convinced with the argument that in order to incorporate low carbon technology in the building the extension to the building as part of the scheme is needed. This is contrary to the designed approach advocated in TAN 12 and in Planning Policy Wales Technical Advice Note 22: *Planning for Sustainable Buildings* paragraphs 1.6.2, 3.2.2-3.2.3 and 4.1.3-4.1.5.
11. I therefore conclude that the proposal is contrary to the LDP sustainable design strategic policy which obliges development to demonstrate an integrated approach to design and construction. I conclude that the proposal to install low carbon technology in the scheme would not outweigh the harm to the character and appearance of the building and the surrounding area.
12. Having regard to all other issues raised including the numerous examples of conversion schemes allowed with extensions, I conclude that the proposal fails on both main considerations. For the reasons given above I conclude that the appeal should be dismissed.

*Iwan Lloyd*

INSPECTOR





## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 8/10/10

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 16/11/10

## Appeal Decision

Site visit made on 8/10/10

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 16/11/10

**Appeal Ref: APP/L9503/A/10/2133224**

**Site address: Land between 'The Bungalow' and Rosemount, Broadway, Broad Haven, Haverfordwest, Pembrokeshire SA62 3HX**

**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 outline planning permission.
- The appeal is made by Messrs Roch, James & Lewis against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/09/331, dated 20 July 2009, was refused by notice dated 27 January 2010.
- The development proposed is creation of new access for two infill dwellings plus highways/parking improvements for the existing dwelling 'The Bungalow'.

### Decision

1. I dismiss the appeal.

### Preliminary Matters

2. The planning application is submitted in outline with means of access considered at this stage. The illustrative plan shows the access, layout, scale, landscaping, and appearance of the proposed development, and as a result, there is sufficient information provided to ensure that the provisions of Article 3 of the GPDO<sup>1</sup>, which came into effect in October 2008<sup>2</sup>, are met. The details on the plan and on the application form show an option to connect to a temporary bio-disk until the main sewer upgrade is implemented or the connection to the main sewer.
3. Planning permission has been granted on the site for the same development in July 2010. This permission under reference NP/10/164 was a later scheme which would connect the foul water to the main sewer, although one of the dwellings would be required as an affordable dwelling unit, and is restricted by planning condition.
4. The Authority has recently adopted its Local Development Plan (LDP) which replaces the Joint Unitary Development Plan (JUDP) where this pertains to the Authority's administrative areas. The JUDP policies referenced in submissions have now been

<sup>1</sup> The Town and Country Planning (General Development Procedure) Order 1995

<sup>2</sup> The Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2008

superseded and therefore comments were sought from the parties on the determining issues. Both parties have commented and the appeal is considered on this basis.

### **Main Issues**

5. The Appellants' point out that the Authority does not make reference to affordable housing in their statement and are merely concerned with the single issue of the capacity of the foul drainage system. However, the Authority does not accept the Appellants' point in relation to the concern over the delay in the processing of the planning application and the issue of natural justice that the matter of affordable housing cannot be now raised. The Authority refers to the argument that this application and the subsequent approval should be considered in relation to the prevailing policies and the circumstances at the time of determination. That is what I must also consider which obliges consideration of appropriate provision of affordable housing having regard to the shift in national policy since 2006, indicating that this is a material planning consideration. For these reasons, I am of the view that it is appropriate to examine the matter in the context of this appeal.
6. The main issues are whether the proposal is acceptable having regard to national and local planning policies relating to affordable housing, and the adequacy of the foul drainage system to deal with the development.

### **Reasons**

7. In relation to the first issue, the Appellants are seeking to build 2 houses without the affordable housing provision, and are seeking an unfettered permission. The subsequent application granted under reference NP/10/164 obliges one of the two properties to be an affordable dwelling. This requirement arises from the adoption of a policy in November 2009 requiring a minimum of 50% affordable housing unless evidence is submitted to show that the provision is not needed or would be financially unviable. The site is located outside a recognised settlement and in line with the aspirations of this policy to meet affordable housing need which accords with the Assembly's policy, small sites which are more prevalent in rural areas should make a contribution in meeting that need.
8. Planning Policy Wales Edition 3 (PPW Edition 3) advocates that infill development, which is the premise of this proposal, should be for affordable housing to meet local need as set out in paragraph 9.2.22. Given the thrust of national policy towards delivering affordable housing and the policy adopted by the Authority, the proposal which seeks two open market dwellings on the site fails to accord with this policy and guidance. No evidence has been presented to show that the scheme is unviable or that the affordable housing unit is not needed. I note the frustration in relation to the delay over the processing of the planning application because of the concern about the foul drainage issue. However, this appeal must be dealt with in accordance with the policies which prevail at the time of determination. The unwillingness to ensure that the planning application provides 1 affordable dwelling unit on the site through planning condition or obligation means that there is no mechanism in place to deliver the requirement to meet planning policy.
9. I therefore conclude that the proposal is not acceptable having regard to national and local planning policies relating to affordable housing.
10. In relation to the drainage concern, it is material that planning permission has been granted for the same development with a connection established to the main sewer. The technical objection from Welsh Water has been overcome since improvements

have been made to the drainage system in the catchment area. The Authority's objection cannot therefore be sustained on the latest available information and I note that the proposal provided an option to connect to the main sewer. This matter has been resolved and could be conditioned accordingly.

11. I conclude on this issue the foul drainage system is adequate to deal with the development.
12. Notwithstanding, my favourable conclusion for the Appellants on drainage matters this is not outweighed by the proposal's lack of provision of affordable housing. I have considered all other matters raised including the letter of representation, but it appears that policies in the National Park differ from the those sites located outside it. In any event, these matters do not outweigh my conclusion on the main issue.
13. For the reasons given above I conclude that the appeal should be dismissed.

*Iwan Lloyd*

INSPECTOR

**ENF/08/10**                      Unauthorised dwelling  
Bettws Newydd, Parrog, Newport  
**Type**                              Inquiry  
**Current Position**              A hearing was held on the 20, 21, 22, 26, 27 & 28  
October, 2010 and the Inspectors decision is awaited.

**ENF/09/10**                      Unauthorised siting & occupation of caravan  
The Nursery, Mount Pleasant, Coshaston  
**Type**                              Hearing  
**Current Position**              A hearing was held on 12 October 2010 and the  
Inspectors decision is awaited.

**ENFORCEMENT AND OTHER MATTERS**

**NP/10/342- Temporary siting of mobile trailer for sale of ice cream- The Castle Hotel, Little Haven**

A retrospective planning application to retain the above ice-cream trailer at The Castle Hotel was refused planning permission under delegated powers on the 7<sup>th</sup> October, 2010. The application was refused on the grounds that the mobile trailer adversely affects the special character of the Little Haven Conservation Area.

The trailer remains in situ some two months following this decision, it is not felt that the trailer should remain due to its detrimental effect in the area.

In view of the above it is recommended that:-

Authority be given to proceed with the service of an Enforcement Notice to secure the removal of the ice cream trailer from The Castle Hotel.

**ENF/09/09- 25 St Margarets Way, Herbrandston, Milford Haven**

Members will recall that at their meeting held on the 24<sup>th</sup> March, 2010 it was resolved that officers be authorised to prosecute the owner of the above dwelling house in the Magistrates Court for failure to comply with the terms of an Enforcement Notice.

The Notice required the removal of a metal flue pipe in the roof of an outbuilding at 25 St Margarets Way, Herbrandston.

The prosecution took place at Haverfordwest Magistrates Court on the 2<sup>nd</sup> December, 2010 where the defendant, who had pleaded not guilty at a previous hearing, was found guilty and was given a 12 month conditional discharge and a costs fine of £650. The flue had been taken down on the 1<sup>st</sup> December, 2010.

Members are requested to note the content of this report.

## **NP/10/417 - 5 replacement windows (retrospective) & 3 replacement windows Tabor Chapel, Dinas Cross**

### **Site Description and Background**

Members will recall that an application for listed building consent for partial retrospective consent and partially proposed works for the replacement of windows in Tabor Chapel vestry was reported to the Development Management committee meeting last month. It was resolved to refuse listed building consent.

It was also agreed that a further report would be presented in respect of the proposed action with regard to the unauthorised work at a subsequent meeting. This report is therefore in relation to that matter.

As members were advised, Tabor Chapel is a Grade II listed building situated some 100 metres north of the A487 in Dinas Cross adjacent to the minor road leading to Brynhenllan. To the west of the site lies a car park. The building is in two distinct parts, the main two storey element containing the chapel, and the rear single storey element being the vestry. The main building was first built in 1792, rebuilt in 1842 and renewed in 1882 and the vestry is a 1921 addition.

It was brought to the Authority's attention in 2003 that a number of the original timber sash windows in the main chapel building were being replaced with UPVC windows. The chapel trustees were advised that listed building consent was required for this work and work ceased on the replacement windows. However further work was subsequently carried out on the vestry windows, replacing these with UPVC units. The trustees advised this Authority that it was their understanding that the vestry was not part of the listing, and that they were exempt from the need for listed building consent in any case under the ecclesiastical exemption afforded to many religious buildings under section 60 of the Listed Building Act 1990 and the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994. The legislation is complex and legal advice was sought on this matter. The advice received however, is that the Chapel trustees in this instance are not exempt as they do not have the necessary sharing (of church buildings) agreement in place as required by the legislation to meet the ecclesiastical exemptions. The trustees were requested to provide this agreement if it existed but none has been forthcoming. In addition, Cadw has confirmed that the vestry is included in the listing of the chapel. As such it is evident that listed building consent is required.

The trustees have attempted to partly regularise the situation through the submission of the listed building application that was discussed last month, but it was resolved to refuse consent on the grounds that the works by reason of the proposed materials and style of windows would be out of character with and detrimental to this Grade II listed building. It is similarly considered that the windows installed in the main chapel building are also detrimental to the character of the listed building.

As such, the situation remains that both the windows installed in the main chapel building (and which did not form part of the previous application) and those in the vestry are unauthorised. As the unauthorised works relate to a listed building a criminal offence has also occurred.

### **Options and Analysis**

Whilst there is sympathy with the predicament that the trustees have found themselves in, the unauthorised works remain to the building and are considered to be unacceptable and cause harm to the listed building. It is therefore considered that action should be taken to secure the removal of the works and to ensure that new replacement windows are provided in a style and design that are appropriate to this building.

As the works constitute both a breach of planning regulations and are a criminal offence, it is open to this Authority to instigate prosecution proceedings and/or to take enforcement action to secure the removal of the unauthorised works. Advice in respect of this matter is found in Circular 61/96 "Historic Buildings and Conservation Areas" and states "Enforcement may be desirable for the benefit of the building in question, while the work entailed by enforcement may represent a sufficient response to the offence. Unauthorised work may often destroy historic fabric, the special interest of which cannot be regained by enforcement. Well-publicised, successful prosecutions can provide a valuable deterrent to the wilful damage or destruction of listed buildings".

In this particular case, it is evident that the works which were carried out to both the main building and subsequently to the vestry were done under the false belief that the works were exempt from listed building control and were not a deliberate attempt to flout the regulations. Furthermore, whilst the windows that have been installed are inappropriate, in the event of their further replacement with more appropriate windows, it is not considered that any long lasting or irreversible damage has been caused to the fabric of this listed building. The trustees are keen to resolve this matter through negotiation and the instigation of prosecution action in this instance, and at this stage of the proceedings, is not considered to be necessary or appropriate.

However, it is considered that formal enforcement action is necessary to ensure that the windows are replaced and to provide a formal period of compliance.

The applicants have stated that the windows were donated and that their replacement will be hugely expensive and possibly lead to closure of the chapel. Whilst these comments are noted, it is not felt that this is sufficient reason to not take any action, but in view of the special circumstances relating to this case based on misunderstanding and genuine belief that the works were exempt from consent, it is considered that a reasonable and realistic approach should be taken to secure compliance. As set out above the building is in two distinct parts; the original chapel building and its later vestry addition. Whilst the whole building is

listed, it is considered that the vestry is of lesser historic and architectural interest than the main chapel. It is therefore considered that priority should be given to replacing the windows in the main building with a longer period for compliance for the vestry windows.

It is considered that a period of five years should be given for the replacement of the windows in the main building, and a further five years be given for the replacement of those in the vestry which it is hoped will enable the trustees to secure the necessary funds to restore this important listed building to its original form.

### **Recommendation**

That authority be given to take enforcement action to secure the replacement of all UPVC windows in Tabor Chapel with a compliance period of five years for those within the original chapel building and ten years for those in the vestry.

### **Tree Preservation Order**

**Type:** Confirmation of Tree Preservation Order

**Reference:** Tree Preservation Order 122 – Land at Port Lion, Near Llangwm

### **Description:**

This Tree Preservation Order was made to protect a significant Hazel located at the junction of footpath and the main through road of Port Lion.

### **Consultee Response**

Burton Community Council - Supported

### **Public Response:**

7 letters of Objection

The main issues raised are:

1. The Tree Preservation Order is Invalid as it does not relate to a 'tree' as such
2. The Tree is a public nuisance as it overhangs a public footpath, affecting access
3. The tree blocks out a considerable amount of natural light to windows
4. The Tree is not a particularly fine example of its type; there are many other more impressive hazels in the area
5. Owners can not get agricultural machinery onto site
6. The tree increases the number of vermin / squirrels around the adjacent property
7. The Planning application for the site was refused because of the tree
8. The Hazel can be relocated within the site

## Officers Appraisal:

The following National guidance is relevant to the consideration of the Proposal:

Planning Policy Wales Edition 3 – Chapter 5 (paras. 5.2.9 and 5.2.10)  
Technical Advice Note 10 – Tree Preservation Orders (1997)

The 'Tree Preservation Order Guide to law and good practice' and 'TAN 10' – state that it is not expedient to make a Tree Preservation Order in respect of trees under good Arboricultural management. It is clear from the form of the tree that it has not been managed in the recent years, allowing it to develop into a mature specimen of amenity value.

In respect of issue (1) above - *Bullock vs. secretary of the state* (1980) - Case law states that 'trees' would include coppice, also the definition of a tree from Alan Mitchells authoritative *'Field guide to Trees of Britain and North Europe'* states that .....*Hawthorn qualifies.....Elderberry and Dogwood do not.....Hazel has been given the benefit of the doubt.* It is considered in this case that this hazel clearly is defined as a tree.

In respect of Issue (2) - Approved works carried out will ensure access along the footpath can be achieved through the selective coppicing of stems that will also retain the tree's form

In respect of issue (3) – It is not considered that this tree will block light to any significant content and remedial work could be carried out in the in the event of any problem subject to approval by this Authority.

In respect of Issue (4) - The location of the tree at the intersection of a foot path and the main through road of Port Lion has enabled the tree to grow relatively unimpeded from all sides. Other specimens are found in the surrounding hedgerows, however they are generally in linear hedgerows with other species; leading to suppression and preventing the natural spreading form characterised by this tree.

In respect of issue (5) - The site does not have agricultural access at present due to the location of a stile at the entrance to the site; however it appears to have been successfully managed in the past, with the fields well maintained and tended. Approved management of the tree to allow clearer access along the footpath could also allow smaller agricultural machinery to access the site if the stile is ever removed. The entire site measures approximately 0.56 of an acre, so it would appear that small agricultural machinery should be able to manage the site sufficiently.

In respect of Issue (6) - The location of the tree is no longer part of any contiguous native hedgerow so is unlikely to be part of a corridor used by squirrels / vermin to progress through the area and access the property in question. As stated in other correspondence, Hazel hedging is common in the



area which would provide a safer source of food for squirrels than the exposed location of the tree in question. It should also be stated that the tree will be a benefit to other species that contribute to the wider biodiversity of the area, such as lichens, mosses birds and invertebrates.

In respect of Issue (7) - Although the tree in question would be deemed as a material constraint in the planning application, the refusal was not solely because of the Hazel. Local Planning Authorities should also consider making Tree Preservation Orders where trees of amenity value are under threat, which this one was as a result of the planning application. The consideration of the impact of development on trees is nonetheless a material planning consideration.

In respect of Issue (8) - The proposed transplanting of the Hazel to another location within the plot would retain the visual amenity from the foot path; but would lose its amenity as it would no longer be visible from the road or act as a marker for the foot path.

### **Recommendation**

Although the visual aesthetics of a tree is subjective, the objective guidelines for implementing a Tree Preservation Order are all sufficiently met by the Tree in question; taking into account the following criteria:

#### Visibility -

- Next to the main through road of Port Lion
- Visible from footpath and is a distinct marker for the footpath – as such is an important feature in the area.

#### Individual impact –

- The Hazel is significant in size and of good form with a continued future potential to amenity. Due to the very nature of hazel it will continue to be a feature as the loss of old stems being replaced by new stems

#### Wider impact –

- Suitable to the setting as it is a native species found throughout the area.
- The tree appears to be a remnant of the original hedgerow which has, over time, lost the original species and been superseded with non-natives.
- Simpler approved management will not require expensive aerial tree work to manage - simply coppice a dangerous stem and the stool will replace the stem through natural re-coppicing – thus limiting the cost of management

Recommendation.

**That Tree Preservation Order 122 be Confirmed.**