

DEVELOPMENT MANAGEMENT COMMITTEE
23rd March, 2011

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

APPEALS:

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

NP/08/441	5 dwellings Land adjacent to Blockett Farm, Little Haven
Type	Hearing
Current Position	An application has been received by the Authority and therefore the appeal will be held in abeyance for 3 months.
NP/09/273	Personal application for lifetime permission to continue residential use of chalet Higney, Rhodiad, St Davids
Type	Hearing
Current Position	The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.
NP/10/017	Low impact horticultural smallholding & retention of 2 polytunnels The Nursery, Mount Pleasant Cross, Cosheston
Type	Hearing
Current Position	A hearing was held on 27 th January, 2011 and the Inspectors decision is awaited.
ENF/09/10	Unauthorised siting & occupation of caravan The Nursery, Mount Pleasant, Cosheston
Type	Hearing
Current Position	A hearing was held on 27 th January, 2011 and the Inspectors decision is awaited.



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 17/01/11

Site visit made on 17/01/11

gan **A D Poulter BA BArch RIBA**

by **A D Poulter BA BArch RIBA**

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 07/03/11

Date: 07/03/11

Appeal Ref: APP/L9503/A/09/2117921

Site address: Higney, Rhodiad, St Davids, SA62 6PW.

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 Chris Harding against the decision of the Pembrokeshire Coast National Park Authority.
- The application Ref NP/09/273, dated 18 June 2009, was refused by notice dated 22 October 2009.
- The development proposed is a personal application for lifetime permission to continue living at home address.
- This decision supersedes that issued on 24 March 2010. That decision on the appeal was quashed by order of the High Court.

Decision

1. I dismiss the appeal.

Preliminary Matters

2. The description of development given above is taken from the application form. The appeal relates to a building which has been described as a chalet, and associated land. As the building has been occupied as a dwelling for some time the application is retrospective. I consider that the proposal would be more aptly described as being for the 'continued residential use of the appeal property', with the appellant offering to accept a condition limiting this to his use for his lifetime. I have dealt with the appeal on this basis.

Main Issue

3. I consider these to be the effect of the continued residential use of the appeal property on the natural beauty and the economic and social well-being of the National Park.

Reasons

4. The appeal site lies between a traditional farmhouse known as Rhos-y-Gors and a more modern dwelling known as Sunrays. The surrounding area is characterised by an open, windswept, predominantly agricultural landscape, with occasional isolated farmsteads. Its considerable natural beauty is recognised by its designation as part of the Pembrokeshire Coast National Park.

5. There is no dispute that a building has stood at this spot for many years. The evidence indicates that it was a prefabricated structure. At some point original asbestos-cement cladding was replaced with concrete blocks. In 2006 or thereabouts the appellant undertook further substantial works to the building. The external walls are now rendered and painted. The occupied part of the structure has a conventional domestic entrance door and windows. An adjoining section of the building, which is used as a workshop and store by the appellant, has a pair of double doors at the front and a more utilitarian rear window. The building has a uniform near-flat corrugated metal roof over the whole structure.
6. Although the building is small and simple, over the years it has been transformed. It is now predominantly residential in character. The associated land has mown grassed areas, neatly kept planting, and normal domestic paraphernalia is apparent. Passers-by would be in no doubt the land and buildings are in domestic use. The visual impact is mitigated by the location between two existing residential properties, and from distant viewpoints the land and building are not prominent. However, the development that has taken place has introduced a significant element of domesticity into the landscape. I therefore consider that it has significantly eroded its agricultural character and natural beauty. I have taken into account that the appellant has offered to accept a condition limiting the continued residential use of the appeal property to his use for his lifetime. Nevertheless, even if such a condition were to be imposed, I have no indication that the appellant would occupy the property for other than a considerable length of time. It is therefore likely that the adverse effect on the character and appearance of the area would remain for a significant period.
7. I conclude for the above reasons that the continued residential use of the appeal property would cause significant harm to the character of the landscape and the natural beauty of the National Park.
8. The development plan for the area now comprises the Pembrokeshire Coast National Park Local Development Plan (LDP, September 2010). I note representations to the effect that the development plan is not of direct relevance, but as this appeal arises from an application for planning permission it is necessary that I consider the appeal on its individual planning merits, with regard to the development plan and other material considerations.
9. The most relevant of the LDP Policies that have been provided to me is Policy 7, which sets out the limited circumstances in which development will be permitted outside identified Centres within the National Park. Sections (a) to (d) and (g) relate to residential uses. I shall consider each of these in turn.
10. With regard to section (a), as they are dissimilar and well separated I do not consider that Rhos-y- Gorse and Sunrays comprise a physically coherent group of buildings. Nor do I consider that they make up an otherwise continuous frontage, or that the appeal site should be considered as a small gap between isolated groups of dwellings. Although the appeal building meets the appellant's need for accommodation that he can afford, it is not proposed that it would become affordable housing as defined at paragraph 9.2.14 of PPW. In any event, whilst the appellant is willing to accept the standard of construction and limited accommodation provided by the appeal building, I have no evidence that it would be suitable as part of the stock of affordable houses. For reasons I have given above I consider that there would be adverse effects on the character and appearance of the area. The site does not have good accessibility to centres, except by the use of private vehicle. I conclude that the proposed development would not meet the requirements of LDP Policy 7(a)

11. With regard to sections (b) and (c), it is not argued that the proposed housing is essential for farming or forestry needs, or that it would comprise diversification of a farm.
12. Section (d) relates to the conversion of appropriate buildings. The appeal building was originally an asbestos-cement clad structure, and was then clad in blockwork. There is no evidence that it was ever of architectural merit. At no time prior to the works being carried out by the appellant was it of a form or general design that would have made a positive contribution to the character of the area. I therefore do not consider that the proposal constitutes the conversion of an appropriate building, and conclude that it would not meet the requirements of LDP Policy 7(d).
13. Section (g) cross-refers to Policy 47, which relates to low impact development making a positive contribution. This contains 8 criteria, all of which must be met for a proposal to be acceptable. In this instance the development would not integrate well into the landscape and would have adverse visual effects. There is no evidence that the proposed use includes activities that require a countryside location or which are directly tied to the land, and which would provide sufficient livelihood for and substantially meet the needs of residents on the site. The proposal therefore does not meet the criteria necessary to be acceptable under LDP Policies 7(g) or 47.
14. As there would be significant harm to the natural beauty of the National Park, the continued residential use of the appeal property would conflict with its statutory purposes, which are to conserve and enhance its natural beauty, wildlife and cultural heritage and to promote opportunities for public understanding and enjoyment of its special qualities. The proposed development would therefore also conflict with LDP Policy 1 which requires development to be compatible with these objectives, and with LDP Policies 8 and 15, which respectively seek to protect and enhance the National Park's special qualities, and to ensure that the qualities of the landscape are not lost. In accordance with paragraph 5.3.6 of Planning Policy Wales (PPW, Edition 3 July 2010) I give great weight to conserving and enhancing the natural beauty, wildlife and cultural heritage of this area. The conflict with the statutory purposes of the National Park is therefore a consideration that weighs heavily against the proposal.
15. National Park Authorities have a duty to seek to foster the economic and social well-being of their local communities¹. This is reflected in LDP Policy 1. The appellant clearly is held in high regard and has strong local support as someone who contributes his skills as a carpenter to the benefit of the local community. I accept that a local community is made up of individuals. Its economic and social well-being can therefore encompass the contribution made by, and needs of all individual members of the community, including the appellant.
16. The Authority issued an enforcement notice in August 2008². That was withdrawn following the issue of the now-quashed appeal decision in March 2010, but action could be recommenced. I recognise that a consequence of my decision may be that the Authority may decide to take further enforcement action, and that the appellant may therefore be forced to find alternative accommodation for himself and his carpentry business.

¹ Environment Act 1995, S62

² Ref ENF/07/08, notice dated 7 August 2008.

17. To be fully suitable for the appellant, his residential accommodation would need to provide for access for a disabled relative who would visit him regularly, as well as being affordable and within the local community. I accept that it is likely that the number of opportunities to obtain such accommodation would be limited. Nevertheless, the analysis of housing availability and allocation from November 2008 contained in the 'Planning Background' submitted in support of the application shows that they are likely to arise from time to time. The County Council operates a housing scheme, which provides a mechanism for prioritising the allocation of available social housing on the basis of need. Although the appellant has not been successful in securing suitable alternative accommodation through this system in the past, his level of priority would be likely to rise in the event the Authority decides that it would be expedient to take further enforcement action.
18. At the time of the application the only vacant unit on a local industrial estate would have been too large for the appellant's carpentry business, and there is evidence that the Authority has taken enforcement action against several unauthorised workshops. However, I do not consider that this amounts to convincing evidence that there are no suitable or available alternative premises elsewhere within the community, from which the appellant could conduct his carpentry business.
19. I consider for these reasons that the continued residential use of the appeal property by the appellant would not be essential to foster the economic and social well-being of the local community. I conclude that my decision would be compatible with the duty to seek these objectives. In any event, in accordance with LDP Policy 1, compatibility with the statutory National Park purposes is an over-riding consideration.
20. I conclude for the above reasons that the proposed development would conflict with the development plan for the area.
21. The Inspector who made the March 2010 decision took the August 2008 enforcement notice as the starting point for his consideration of the proposal. This alleged '*the material change of use of the chalet from an ancillary unit of accommodation/store within the former farmyard of Rhos-y-Gors, the main farmhouse, to a separate unit of accommodation for full-time occupation*'. The requirements of the notice were to '*cease the use of the chalet as a separate unit of residential occupation*'. He took the notice as indicating that, even if the appeal should fail, the building could be used in an ancillary capacity with the existing farmhouse and the effect would be similar. If that is so it would provide a possible fallback position. However, the description of the existing use purported in the enforcement notice is not conclusive as to the lawful use at the time of issue. In any event, it does not identify the use of the original unit of accommodation/store as being residential. My view is that the August 2008 enforcement notice did not indicate that the building could be used in an ancillary residential capacity.
22. The residential use of the appeal property was the subject of an unsuccessful appeal against the failure to give notice within the prescribed period of a decision on an application for a certificate of existing lawful use or development (LDC) for the '*erection of the building, its conversion to a dwelling house, and use as such*'³ (the '*2009 appeal*'). The Inspector who determined that appeal heard detailed evidence from several witnesses relating to the history of uses of the site. He concluded an

³ Appeal Ref APP/L950/X/08/2072924, decision dated 16 February 2009.

LDC should not be granted for the use of the property as a dwellinghouse, since a continuous use as such for the relevant 4-year period had not been proven. It has since been argued for the appellant that this decision is flawed, as the use of the building at one time for agricultural storage did not involve development, and therefore could not have caused a period of a previous residential use to cease or to materially displace it. The period for a challenge to that decision has long passed. In any event the current appeal, under s78 of the 1990 Act, is not an appropriate vehicle to seek to establish the lawful use of the building. A regime for that purpose exists under s191. Nevertheless, while I make no formal determination of the matter, my understanding is that, although a change of use to agriculture would not have resulted in development having taken place for the purposes of the 1990 Act, the continuity of residential use before and after was broken when the building was used for agricultural storage. On this basis I do not consider that it is apparent that the 2009 appeal Inspector's conclusions with regard to continuity of residential use were flawed.

23. Further representations have also been made to the effect that there was continuity of occupation of the building between June 2004, when the appellant's predecessor (Mr Brammah) occupied the property, and 7 August 2008, when the enforcement notice was issued. That can have no bearing as it includes a period after the relevant date in September 2007 when the application for the LDC was made. Again, the correct procedure to establish whether the residential use of the building is lawful is by way of s191.
24. I find nothing in the representations that have been made to turn me from the view that considerable weight should be attached to the 2009 appeal Inspector's reasons and conclusions. On the basis of these it is unlikely that the appeal site and building could lawfully be subsumed within the residential curtilage of the adjacent farmhouse and be used for residential accommodation, or indeed that any form of residential use would be lawful without the grant of planning permission. I therefore do not consider that a realistic fallback position exists that would result in a similar visual impact to the proposed development.
25. There is evidence that the site has been neglected and untidy in the past. I acknowledge that as a consequence of my decision the site may become disused for a time, and may become neglected and untidy again. However, a degree of untidiness would be in keeping with many farmsteads in an agricultural landscape. On balance, I do not consider that the continued residential use of the appeal property would be preferable. Although adjoining parts of the curtilage of Rhos-y-Gors appeared to be in use for the storage of materials and equipment at the time of my inspection, for similar reasons, I do not consider that this justifies the proposed development.
26. There are additional personal compassionate circumstances relating to the breakdown of the appellant's marriage, resulting in his leaving the family home in St Davids and consequent hardship. He has a need to maintain contact with his disabled daughter, and to care for his grandson on a frequent basis. I have great sympathy for the appellant, and paragraph 3.1.6 of PPW advises that the personal circumstances of occupiers, personal hardship or the difficulties of businesses which are of value to the local community may be material to the consideration of a planning application. However, personal circumstances rarely outweigh the more general planning considerations. Even if a personal occupancy condition were to be imposed there would be significant harm and conflict with planning policy. The harm would be likely to be of significant duration, and would relate to the natural beauty of the National Park, which is a consideration to which I give great weight. On balance, I do not

consider that the appellant's personal circumstances are sufficiently exceptional or compelling to outweigh the more general planning considerations in this instance.

27. I recognise that dismissal of the appeal would interfere with the appellant's rights under Article 8 of the European Convention, relating to home and family life. There would also be interference with Article 1 rights, relating to control of the use of property. However, this must be weighed against the wider public interest. For reasons given above I have found that the proposal would be harmful to the purposes of the National Park. I am satisfied that the legitimate aim of conserving and enhancing its natural beauty can only be adequately safeguarded by refusal of permission. On balance, and taking into account that the Authority would have the discretion in any consequent enforcement action to fix the period for compliance to take account of the availability of suitable alternative accommodation, I do not consider that dismissal of the appeal would be disproportionate.
28. Representations have been made to the effect that the appellant has not had an equal opportunity of presenting his case, and that this has interfered with his rights under Article 6. However, I am satisfied that the appellant has been provided with a reasonable opportunity to make his representations, and that the appeal process has provided a fair and public hearing by an independent and impartial tribunal established by law.
29. I have concluded that the proposed development would conflict with the development plan for the area. I do not consider that the appellant's personal circumstances are sufficiently exceptional or compelling to outweigh the more general planning considerations in this instance. I have taken into account the appellant's human rights, but find no material considerations that would indicate that the appeal should be determined other than in accordance with the development plan. I conclude on balance that the appeal should be dismissed.

A D Poulter

INSPECTOR