

Item 6 - Report on Planning Applications

Application Ref: NP/13/0059

Application Type	Variation/Discharge
Grid Ref:	SN13240062
Applicant	South Terrace Properties Ltd
Agent	Mr P Baxter, Asbri Planning
Proposal	Variation of Conditions 2 & 14 of NP/11/068 & NP/11/069 to allow for use for A1 (retail), A2 (financial) and A3 (food & drink)
Site Location	Royal Playhouse Cinema, White Lion Street, Tenby, Pembrokeshire, SA70 7ET
Case Officer	Vicki Hirst

Summary

This application seeks permission under Section 73 of the Town and Country Planning Act (as amended) to vary conditions 2 and 14 of the applications NP/11/068 and 11/069 in relation to the re-development of the Gatehouse site, to allow for the use of all commercial space on the ground floor, including the proposed cinema (which falls under a D2 use) for uses falling under use classes A1 (shops), A2 (financial and professional services) and A3 (food and drink). The main issues to be considered are the loss of the D2 (assembly and leisure) use and the appropriateness of the uses applied for. It is considered that the loss of the D2 use can be justified in this instance having regard to the unique set of circumstances in relation to this development. Furthermore, it is considered that the mix of uses now sought is acceptable, as B1 employment uses which are prioritized in the development plan are unlikely to attract tenants in light of the current demand trends in the area. It is also not considered that the ground floor of this part of the development, in respect of which this application is made, would be suitable for affordable housing as also prioritized by policy. It is however considered that a contribution should be made to libraries and community uses through a variation of the Section 106 agreement requiring this payment.

The application is recommended for approval subject to the amendment of the Section 106 agreement in relation to a commuted sum for libraries/community use.

Consultee Response

Tenby Town Council: Approve - The submitted evidence shows that the cinema element would appear to be unviable and members feel that the conditions should be varied to allow this high profile development to continue to completion.

Tenby Civic Society: Reply -

1. It is for the planning Authority to judge the financial merits of the applicants case; we are a charity and do not analyse other organisations financial policies..

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2. We regret the potential loss of a community use and its exchange to commercial uses. Large schemes can be expected to contain some community planning gain; the economy and development costs seem to be placing this at risk..

3. We regret the common practice of including concessions of design or use in the first application to receive approval, only for them to prove 'practical' and be abandoned in later applications seeking, and usually gaining, approval.

4. In all events, the Listed Playhouse Cinema frontage is a unique design and landmark in Tenby, speaking both of its role from 1880 as an Assembly Building and its later role as a cinema. The frontage makes an excellent feature to bound the new piazza, with suitable existing arches to incorporate entrance doorways and window openings. It must be retained in the scheme, whether in its current structural form, or as a last resort if circumstances force it, as a replicated reconstruction.

Tenby Conservation Forum: Objecting - The Tenby Conservation Forum would wish to oppose this request of variation of the conditions of the original approval and request that the Authority continues to require a significant A4 component for the benefit of the local community.

There are three grounds for this objection.

1. It is clear from the associated documentation that the agents acting for the applicants have not sought to involve cinema operators in determining the exact amount of space or its specific configuration but have presented them with a 'Hobson's Choice' situation. At the time of the original application concern was expressed by many that the proposal was expressed in a form to guarantee its failure and this appears to have been borne out by events.

2. The financial terms offered to the cinema operators have similarly been set to ensure failure. When the original planning application for the development of the Royal Gatehouse, Royal Lion, Aldelphi and associated sites was approved, it was approved as a single entity. Implicit in this was the assumption that some parts of the development would be highly profitable and some, such as the affordable housing component, less so. Under such circumstances, it is normal for the fully commercial aspects of the development to cross-subsidise those offering community benefits. It is, therefore, necessary for any request for a change of conditions based upon a commercial analysis claiming non-viability, to be based upon the whole development, not upon a single part specifically selected for this purpose. If the developers could demonstrate that the returns upon the project as a whole including the flats and hotel would be insufficient if it fails to obtain a commercial return on the cinema component, there would be a case to be discussed. Without this, the claim should be rejected out of hand.

3. If the cinema were to be dropped from the development, it should be replaced by another A4 category use giving community benefits. The Conservation Forum and many other bodies which have commented on the original proposals has always been clear that there should be a community element in the development to replace the cinema, health club, public rooms and other community facilities that formerly existed on the site. Although some have argued specifically for a cinema, we have not, stating that this is just one

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option. Indeed, the Civic Society has recently written to the County Council and National Park officials suggesting that the cinema location could be used for a public library.

Estates Officer - Findings are based on a general market commentary and with regard to other local cinemas, but the figures provided suggest that a single screen cinema is unlikely to be a viable proposition. The marketing exercise confirms this view and there is no disagreement with the findings of the marketing agents

Public Response

None to date

Policies considered

Please note that these policies can be viewed on the Policies page Pembrokehire Coast National Park website - <http://www.pembrokeshirecoast.org.uk/default.asp?PID=549>

LDP Policy 02 - Tenby Local Service and Tourism Centre

LDP Policy 48 - Community Facilities and Infrastructure Requirements

LDP Policy 50 - Town and District Shopping Centres

PPW5 Chapter 07 - Economic Development

PPW5 Chapter 10 - Planning for Retailing and Town Centres

TAN 04 - Retailing and Town Centres

TAN 13 - Tourism

Officer's Appraisal

Background

Planning permission and listed building consent were granted in 2011 for the re-development of the site, formerly occupied by the Gatehouse hotel, Playhouse cinema and the car park adjacent to the cinema. The approved development included 39 apartments, a 68 bed hotel, 3 commercial units and a replacement cinema with car parking, servicing facilities and a new access road. (NP/11/068 and 11/069).

Condition 2 of that permission required the development to be carried out in accordance with the approved plans, whilst condition 14 restricted the use of Commercial unit 1 to uses falling under use classes A1 (shops), A2 (financial and professional services) or A3 (food and drink), Unit 2 to uses falling under Class A1 and Unit 3 for purposes ancillary to the cinema use. The hotel was restricted to uses falling under class C1 (hotels and hostel) and the cinema under use class D2 (assembly and leisure).

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An application was submitted last year under Section 73 of the Planning Act seeking to vary conditions 2 and 14 to allow for all commercial units in the scheme (including the cinema) to be used for either A1, A2 or A3 uses. The application was recommended for approval at the Development Management committee on 22nd February 2012 but members resolved to refuse permission on the grounds that insufficient information had been provided in relation to the marketing of the D2 (assembly and leisure) use to demonstrate that the use was no longer required, nor had a satisfactory business case been provided to show that any D2 or other community use was unviable. The proposal made no other alternative community facility available as would be calculated under the Authority's adopted Supplementary Planning Guidance in relation to Planning Obligations. In addition the proposal was considered to be unacceptable as a mixture of uses is required to ensure the vitality, viability and diversity of the town centre is maintained and enhanced and the loss of the D2/community use would undermine these requirements. As such the proposal was considered to be contrary to the Authority's Development Plan policies. (NP/12/0019).

Current Application

The current application again seeks permission under Section 73 of the Town and Country Planning Act (as amended) to vary conditions 2 and 14 of the above applications to allow for the use of all commercial space, including the cinema for uses falling under use classes A1, A2 and A3. As Unit 1 has already received planning permission for this use, the application is in relation Units 2 and 3 and the cinema itself.

The application was accompanied by a Planning, Design and Access Statement, a Supporting Statement, including information on viability which is commercially sensitive and a Marketing Report dated 5th February 2013. Since the refusal of the application last year, the site has been marketed with a view to securing a cinema operator for the development.

Analysis

As this application has been made under Section 73 of the Act consideration is confined only to the question of the conditions subject to which planning permission should be granted. If it is decided that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted or that it should be granted unconditionally, planning permission should be granted, and if it is decided that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the application should be refused.

In essence, this means that the overall development proposal cannot be re-considered, only the matters that the variation of the condition raises. In this respect the application essentially seeks to allow for a different type of commercial development to that previously granted and subsequently controlled by condition. The existing planning permission provides a mixture

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of D2, A1, A2 and A3 uses in defined commercial units. The application seeks to provide a mixture of the A1, A2 and A3 uses in any of the units without any D2 provision. The result of this request could result in a mix of uses, or a monopoly of one use.

With regard to the policy framework, the main issues to be considered are:

- The loss of the D2 use
- The appropriateness of the uses applied for

Loss of the D2 Use

The D2 use covers any assembly or leisure use, but in this particular case the scheme clearly proposed the development of a cinema. This did not however preclude other uses falling under the D2 definition taking place (subject to approval of any changes to the design of the building).

In support of the application, the applicant states (in summary):

The current operation was clearly not viable and this formed part of the case in applying for listed building consent for the demolition of the cinema building. Notwithstanding this, the application included a new cinema with the retention of the old façade. On progressing the scheme and obtaining more detailed costs, it is apparent that the construction of a cinema is 2.5 times higher than for alternative commercial uses such as retail. A full viability exercise has been carried out using management accounts from the previous cinema use with a "best case" approach taken. It has been estimated that 50,000 people would visit the cinema each year (and which is considered optimistic). Previous attendance was significantly lower and the new cinema has less seats than the old. The construction costs have also been prepared with a comparison for A1, A2 and A3 uses also being prepared. The figures suggest that the cinema would lose £126,000 in 2013 and £106,000 in 2014. With capital investment required of £900,000 no funder is willing to invest due to the risk. The invested capital is estimated at not being recovered for 20 years.

The applicant submits that in the absence of funding, the retention of the cinema would prejudice the funding and implementation of the overall scheme.

The marketing exercise that has been undertaken states (in summary):

The agents engaged to carry out the marketing have a good position in the leisure sector and have a dialogue with key operators. Marketing was carried out through boards on site, preparation of particulars, mailshot to all leisure operators on the mailing list and direct contact with major operators who due to the nature of the cinema use are limited with a handful of players. The market is dominated by national operators rather than independent local ones who were all contacted individually. The agents experience suggests that the normal required size for a cinema is around 20,000 square feet and even in those scenarios the cinema acts as a loss leader with no commercially viable

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rent, but attracting retailers and restaurants at a higher rate per square foot. The feedback from the direct marketing to the national operators has been negative due to the limited size of the building and the limited catchment area rendering it financially unviable. Much of the catchment is already catered for by the new Carmarthen cinema. There was some discussion with the Tenby Trust but due to the capital expenditure required a viable proposition was not in place even on a subsidized basis. The property has also been marketed for alternative uses including a restaurant, coffees shop and offices but only one expression of interest was made which was not followed through.

The Planning, Design and Access Statement concludes in summary that:

With regard to national and local planning policies there is an overriding need to encourage appropriate economic development in key locations such as this. However, it is clear that in the absence of funding and a willing occupier for the cinema use, its retention would prejudice the funding and implementation of the overall scheme. In accordance with Policy 48 of the Local Development Plan, it has been demonstrated that the retention of the cinema use is not commercially viable and through the marketing exercise that there is no interest by any cinema operators and there is no real possibility of any cinema or leisure use being economically viable in this location. It is also stated that whilst works have commenced on the apartments, in order to commence works on the hotel and cinema, funders require pre-lets due to their exposed risk. Due to the inability to secure a tenant for the cinema unit, there is a need for maximum flexibility to optimize opportunity and funding. The need to regenerate this site is in the wider interest of the locality and the proposal to make this part of the building available for alternative commercial uses would be consistent with the aims and objectives of the development plan.

Policy 48 of the LDP is concerned with community facilities (which a D2 use would fall under) and states that development which would adversely affect the operation of a community facility or result in its loss will not be permitted except where a suitable replacement or enhanced facility is to be made available or where it can be shown the facility is no longer required or is not commercially viable.

The Authority's Estates Officer assessed the figures (including the commercially sensitive data) on the application last year and which have not changed in this submission. It should be noted that he is not an expert on the cinema property market and as such his comments are based on a general market commentary. He states that despite an upturn in the cinema market during the 1990s the expansion has since tailed off dramatically, but even at its peak there was never any drive for single screen sites.

With regard to this particular proposal he notes that the original cinema in Tenby shut some time ago, and that there are cinemas at Carmarthen, Milford Haven, Haverfordwest and Fishguard. The available catchment area for Tenby is therefore already served by Carmarthen and Haverfordwest as commercial ventures. Their admission prices are higher than those shown in

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the valuation for Tenby suggesting that the turnover figures may be on the low side. He concurs with the valuation for the construction costs and the assessment includes a figure based on net internal floor area whereas the Valuation Office adopt a gross internal floor area figure for rating purposes. If this gross floor area were to be adopted, it would serve to increase the rental value putting further pressure on the site's viability. As such he concurs with the findings on the viability. He also has no reason to doubt the findings of the marketing exercise undertaken by the agents since the last application and this confirms his views on the unlikely prospect of securing a new cinema tenant for this development.

He also referred previously to the experience of the nearby De Valance which was conceivably competing for a similar operator as for the Gatehouse site. The De Valance is largely under used and despite the Town Council seeking expressions of interest only one was received, this being by a large pub chain. Such an interest would not apply to the current situation at the Gatehouse as a pub would fall under an A3 use. The lack of interest in a cinema or events venue such as the De Valance raises basic question marks over the ability for Tenby to attract a new cinema or other events operator into the town.

The marketing exercise that has been carried out since last year's refusal clearly demonstrates that despite focused marketing there is no interest in this site for the operation of a new cinema. In light of this exercise which is in compliance with the requirements of policy 48, it is considered that it has been demonstrated that this facility is no longer required, nor is commercially viable.

Consideration also needs to be given to whether there are other D2 uses that could be attracted to the town and utilise this space. The D2 use covers a range of leisure uses, such as music and concert halls, bingo and dance (excluding nightclubs), swimming baths, gyms, skating rinks, and other indoor and outdoor sports facilities. As set out above, the De Valance offers similar facilities for music, bingo and dance and no interest has been shown in using the facility for this purpose. Pembrokeshire County Council provides a range of indoor sports facilities at the existing leisure centre in Tenby as part of its overall sports strategy, and it is therefore unlikely that a new facility would attract a buyer when there is a comparable facility in the area.

In conclusion, whilst no actual marketing for these alternative types of use has been demonstrated, it is considered that it has been demonstrated that due to the lack of viability of this unit for a D2 use it is highly unlikely that an investor will be found for this unit for any other assembly or leisure use.

In the absence of any investment into the D2 use, it is evident that the overall scheme relating to the Gatehouse re-development is in jeopardy. The overall re-development scheme is essential to regenerate Tenby and to re-instate this exceptionally important site within the historic Conservation Area of the town. Whilst the residential element of this development has commenced and the hotel element has been pre-let, the remaining elements remain in jeopardy in the absence of any prospective tenants. Whilst there is agreement with

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Tenby Civic Society and Tenby Conservation Forum's aspiration to achieve a development that provides a social and community element, in light of the Estates Officers assessment and the marketing exercise that has been carried out it is considered that it is extremely unlikely that a tenant will be found for these types of uses. As such the completion of the whole development on this extremely important focal site in Tenby remains uncertain. This, it is considered, would be hugely detrimental to Tenby itself, but also to the overall attraction of the Pembrokeshire Coast National Park as a tourist destination. As such, with regard to the unique set of circumstances in relation to this site and the marketing exercise that has been undertaken since the previous refusal the loss of the D2 use can be accepted in this case and is justified in line with adopted planning policy.

The appropriateness of the uses applied for

In light of the above conclusion, it is necessary to consider whether the proposed alternative uses are appropriate. Policy 48 of the LDP states that when considering a new use for a redundant community facility an employment use or affordable housing will be prioritised. Employment uses in this situation are not those falling under use classes A1, A2 or A3. This site is within the town centre of Tenby and only specific types of employment uses will be appropriate, including offices falling under the B1 use class of the Use Classes Order or Sui Generis uses (any other uses not within the definitions of the Use Classes Order) normally found within centres. The applicant has provided evidence from a local surveyor/managing agent of a lack of demand or need for commercial floor space within the town centre. He states that demand has suffered a significant decline and the drop off in "start up" businesses has resulted in a surplus of office accommodation which would be taken up in preference to new units due to the lower start up costs. He does however state that there is still a demand for retail and food sales property demonstrated by a number of recent completions by national operators within the town. In light of this information which your officers believe follows a national trend at present, it is considered that alternative uses falling under classes A1, A2 or A3 uses are acceptable within this town centre location, outside of the primary retail frontage and will provide a mixture of uses that will encourage footfall to this site and thus assist the revitalization of this part of town.

Policy 48 also requires consideration to be given to affordable housing as an alternative to any community use. In this respect, the units that are the subject of this application are situated on the ground floor, with hotel accommodation above. In view of the location of the ground floor units within the general hotel and already approved commercial unit area, and also bordered by the car park and service area for these, it is not considered that these units would be suitable for affordable housing in this instance.

Planning Obligations

It was concluded at the time of the original application that the cinema element of the original proposals was sufficient and appropriate in the

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circumstances as functioning as an 'on-site community facilities' which would be required to service the residential element of all the schemes. Now that this facility is not to be provided (and no alternative community provision shown) it is essential that the library/community facilities planning obligation is again considered as a necessary element of the original proposal as required by policy 48. The adopted SPG on planning obligations provides for a £187 per dwelling contribution if this is to be an off-site element, as a contribution to upgrade existing facilities to serve this new residential population. A contribution of £11,594 (62 units x £187) would therefore be necessary to enable existing facilities to upgrade/extend to fulfill this planning requirement. The developer has been asked to confirm whether this would be acceptable. This funding would be appropriately held for the benefit of upgrading community facilities, essentially within walking distance of the development, within the town of Tenby, preferably by Tenby Town Council. An additional legal agreement, or amendment to the existing legal agreement would need to be entered into.

Conclusion

In conclusion, therefore it is considered that the loss of the D2 use can be justified in this instance and with regard to the unique set of circumstances in relation to this development. Furthermore, it is considered that in view of the evidence provided with regard to the current demand trend for office accommodation in the town, that the mix of uses is acceptable in this instance as a B1 employment use is unlikely to attract any tenants. It is also not considered that the ground floor of this part of the development would be suitable for affordable housing. It is however considered that a contribution should be made to libraries and community uses through a variation of the Section 106 agreement requiring this payment.

Recommendation

It is recommended that subject to the amendment of or entering into of an additional Section 106 agreement in relation to this development requiring a contribution sum to be paid in respect of libraries and community facilities, condition 2 of NP/11/068 and 11/069 be amended to relate to the current set of drawings and condition 14 of the same approvals be amended to read:

"All commercial units shall be restricted to uses falling under class A1, A2 or A3 (excluding take away) of the Use Classes Order 1987, and the hotel shall be restricted to uses falling under use class C1."

Reason: To ensure the provision of a mixed use development appropriate to the town centre and seaside resort location", LDP policies 2 (Tenby Local Service and Tourism) Centre, 36 (Loss of Hotels and Guest Houses) 49 (Retail in the National Park) and 50 (Town and District Shopping Centres).


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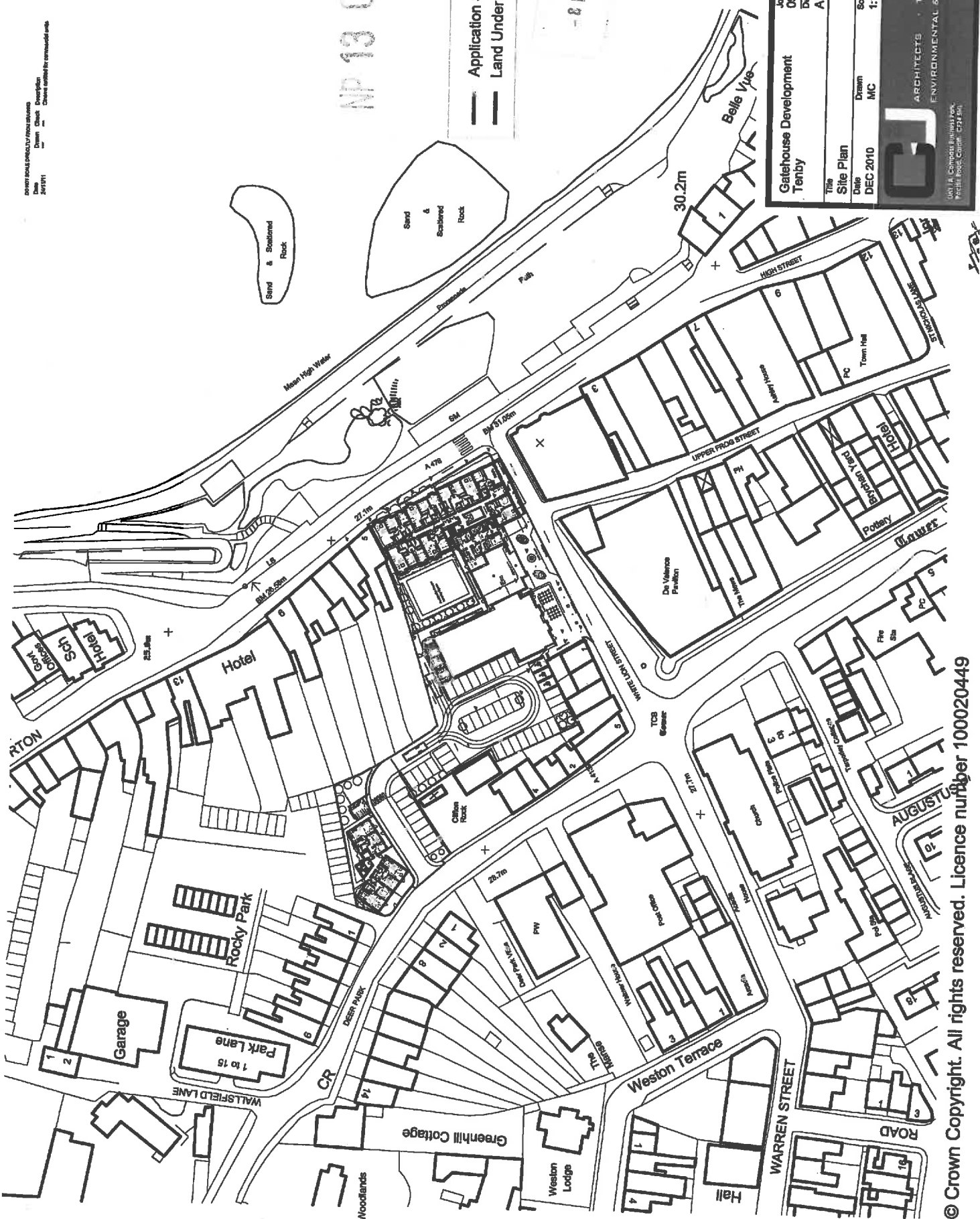
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Application Site
Land Under Applicants Control

Job No.	09_030	Rev.	A
Drawn	AL(90)01	Drawn	MC
Title	Gatehouse Development Tenby	Scale	1:1000 @ A3
Date	DEC 2010	Drawn	MC


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