

## REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT ON APPEALS

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

<b>NP/12/0426</b>	Erection of wind turbine – Brawdy Farm, Brawdy, Haverfordwest
<b>Type</b>	Written Representations
<b>Current Position</b>	The initial paperwork has been forwarded to the Inspector.
<b>NP/13/0059</b>	Variation of Conditions 2 & 14 of NP/11/0068 and NP/11/0069 to allow for use A1 (retail), A2 (financial) and A3 (food & drink) – Royal Playhouse Cinema, White Lion Street, Tenby
<b>Type</b>	Written Representations
<b>Current Position</b>	The appeal has been allowed and a copy of the Inspectors decision is attached for your information.
<b>NP/13/0219</b>	Erection of detached two bedroom dwelling house, infill plot adjacent to Greenhill, Portclew Road, Freshwater East
<b>Type</b>	Hearing
<b>Current Position</b>	The initial paperwork has been forwarded to the Inspector and a hearing is arranged for 11 <sup>th</sup> December 2013.
<b>NP/13/0233</b>	Agricultural building – land at The Belts, The Rhos
<b>Type</b>	Written Representations
<b>Current Position</b>	The initial paperwork has been forwarded to the Inspector.
<b>NP/13/0236</b>	Conservatory at the rear – 9 Portland Square, Solva
<b>Type</b>	Written Representations
<b>Current Position</b>	The initial paperwork has been forwarded to the Inspector.
<b>EC09/100</b>	Change of use of land by siting of caravan and metal container – Happy Acres, Lydstep
<b>Type</b>	Written Representations
<b>Current Position</b>	The initial paperwork has been forwarded to the Inspector.
<b>EC12/0144</b>	Change of use of land to mixed agricultural and residential – Good Acre, Broad Haven
<b>Type</b>	Hearing
<b>Current Position</b>	The initial paperwork has been forwarded to the Inspector and a hearing has been arranged for 8 <sup>th</sup> January 2014.

## Penderfyniad ar yr Apêl

## Appeal Decision

Ymweliad â safle a wnaed ar 9/07/13

Site visit made on 9/07/13

gan G P Thomas BA(Hons) DMS MRTPI

by G P Thomas BA(Hons) DMS MRTPI

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 18/10/13

Date: 18/10/13

**Appeal Ref: APP/L9503/A/13/2196095**

**Site address: Royal Playhouse Cinema, White Lion Street, Tenby SA70 7ET**

**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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted and under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
- The appeal is made by South Terrace Properties Ltd against the decision of the Pembrokeshire Coast National Park Authority.
- The application Ref NP/13/0059, dated 7 February 2013, was refused by notice dated 25 March 2013 for the following reason:
  - Policy 48 of the Local Development Plan (adopted in 2010) states that development which would adversely affect the operation of a community facility or results 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. It is not considered that sufficient evidence has been provided to demonstrate that the D2 use or other community facility is no longer required, nor has a satisfactory business case been provided that shows that any D2 or other community use is unviable. As such the development is contrary to Policy 48 of the Local Development Plan.*
- The application sought planning permission to: *Construct 39 apartments, 68 bed hotel, 3 commercial units & replacement Cinema* without complying with conditions attached to planning permission Ref NP/11/068 and to listed building consent NP/11/069, both dated 29 July 2011 referred to as the Royal Gatehouse Hotel.
- The conditions in dispute are Nos. 2 & 14 of NP/11/068 and NP/11/069.

Condition No 2 states that:

The development hereby permitted shall be carried out, and thereafter retained, strictly in accordance with Plan Numbers: A11(90)01 (Site Plan), AL(00)01 (Former Elevations), AL(00)11 (Site Survey), AL(00)02 (Former Floor Plans), AL(00)03 (Existing Situation for Cinema and Rear of Hotel), AL(00)12 (Existing Cinema Layouts), AL(01)01 (Masterplan – 22<sup>nd</sup> March 2011), AL(01)05 (Public Square Landscaping), AL(01)04 (Roof Plan), AL(01)02 (Ground Floor Plan), AL(01)03 (Basement – Level 5 Plans 8<sup>th</sup> March 2011), AL(01)30 (Detailed Sections), AL(01)20 (Proposed Sections), AL(01)31 (Detail Section 2), AL(01)32 (Detail Section 3), AL(01)33 (Detail Section 4), AL(01)34 (Detail Section 4), AL(01)10 (Proposed Elevations – 14<sup>th</sup> March 2011), AL(01)11 (Proposed Elevations – 14<sup>th</sup> March 2011), AL(01)12 (Proposed Elevations) and latest Highway drawing and subject to any following conditions.

The reasons given for condition No 2 are:

To ensure a proper standard of development and appearance in the interests of conserving:

the amenities and architectural character of the area. Local Development Plan – Policy 1 – National Park Purposes and Duty (Strategy Policy, Policy 8 – Special Qualities (Strategy Policy), 15 – Conservation of the Pembrokeshire Coast National Park, 29 – Sustainable Design (Strategy Policy) and 30 Amenity.

Condition 14 states that:

Commercial Unit 1 shall be restricted to uses falling under class A1, A2 or A3 (excluding food take away use) of the Use Classes Order 1987, Unit 2 to uses falling under Class A1 and Unit 3 for purposes ancillary to the cinema use. The hotel shall be restricted to uses falling under Class C1 and the cinema under Class D2.

- The reasons given for condition No 14 are:

To ensure the provision of a mixed use development appropriate to the town centre and seaside resort location. Local Development Plan – Policy 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).

## Decision

1. The appeal is allowed and planning permission is granted for 39 apartments, 68 bed hotel and 3 commercial units at Royal Gatehouse Hotel, White Lion Street, Tenby SA70 7ET in accordance with the application Ref NP/13/0059, dated 7 February 2013, without compliance with condition numbers 2 and 14 previously imposed on planning permission Ref NP/11/068 dated 29 July 2011 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:

2. The development hereby permitted shall be carried out, and thereafter retained, strictly in accordance with Plan Numbers: A11(90)01 Rev A (Site Plan), AL(00)01 (Former Elevations), AL(00)11 (Site Survey), AL(00)02 (Former Floor Plans), AL(00)03 (Existing Situation for Cinema and Rear of Hotel), AL(00)12 (Existing Cinema Layouts), AL(01)01 Rev A (Masterplan – 22<sup>nd</sup> March 2011), AL(01)05 (Public Square Landscaping), AL(01)04 (Roof Plan), AL(01)02 Rev A (Ground Floor Plan), AL(01)03 (Basement – Level 5 Plans 8<sup>th</sup> March 2011), AL(01)30 (Detailed Sections), AL(01)20 (Proposed Sections), AL(01)31 (Detail Section 2), AL(01)32 (Detail Section 3), AL(01)33 (Detail Section 4), AL(01)34 (Detail Section 4), AL(01)10 (Proposed Elevations – 14<sup>th</sup> March 2011), AL(01)11 (Proposed Elevations – 14<sup>th</sup> March 2011), AL(01)12 (Proposed Elevations) and latest Highway drawing and subject to any following conditions.

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

2. The appeal is allowed and the listed building consent Ref NP/11/069 for 39 apartments, 68 bed hotel and 3 commercial units granted on 29 July 2011 by the Pembrokeshire Coast National Park Authority is varied by deleting conditions numbers 2 and 14 and substituting for them the following conditions:

2. The development hereby permitted shall be carried out, and thereafter retained, strictly in accordance with Plan Numbers: A11(90)01 Rev A (Site Plan), AL(00)01 (Former Elevations), AL(00)11 (Site Survey), AL(00)02 (Former Floor Plans), AL(00)03 (Existing Situation for Cinema and Rear of Hotel), AL(00)12 (Existing Cinema Layouts), AL(01)01 Rev A (Masterplan – 22<sup>nd</sup> March 2011), AL(01)05 (Public Square Landscaping), AL(01)04 (Roof Plan), AL(01)02 Rev A (Ground Floor Plan), AL(01)03 (Basement – Level 5

Plans 8<sup>th</sup> March 2011), AL(01)30 (Detailed Sections), AL(01)20 (Proposed Sections), AL(01)31 (Detail Section 2), AL(01)32 (Detail Section 3), AL(01)33 (Detail Section 4), AL(01)34 (Detail Section 4), AL(01)10 (Proposed Elevations – 14<sup>th</sup> March 2011), AL(01)11 (Proposed Elevations – 14<sup>th</sup> March 2011), AL(01)12 (Proposed Elevations) and latest Highway drawing and subject to any following conditions.

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

### **Preliminary Matters**

3. The application that is the subject of this appeal relates to conditions that are duplicated in the planning permission and listed building consent. The application seeks to vary the conditions in order to allow all of the commercial space, including the cinema (which falls under a Class D2 use), to be used for uses falling under use Classes A1 (shops), A2 (financial and professional services) and A3 (food and drink).
4. It is argued that I should also consider the implications on another planning permission<sup>1</sup>. However, I do not have details of that permission before me and I am not aware that the disputed conditions were imposed on those permissions. I have had regard to the effect on Tenby as a whole rather than simply on the site itself in determining this appeal.

### **Main Issue**

5. The effect that varying the disputed conditions would have on the appearance of the development and the area and, whether the resulting development would be appropriate to the town centre and seaside resort location.

### **Reasons**

#### *Background*

6. An application, to vary condition Nos 2 and 14 was first made to the Pembrokeshire Coast National Park Authority [NPA], in December 2011<sup>2</sup> on the basis 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. That application was refused in February 2012. Following that decision the appellant instructed agents to market the site with a view to securing a cinema operator. The marketing failed to secure an interest by any cinema operators and the appellant argues there is no real possibility of a cinema being economically viable in this location. It is on that basis that the application (which is the subject of this appeal) to vary the conditions was re-submitted to the NPA in February 2013. This application was accompanied by a marketing report and information relating to commercial viability.
7. The application was reported to the NPA Development Management Committee [the Committee] in March 2013 with an officer recommendation to vary the conditions, subject to the amendment of the Section 106 agreement in relation to a commuted sum for libraries/community use. The Committee did not consider that sufficient evidence had been provided to show that any D2 use or other community facility is no longer required and that a satisfactory business case had not been provided showing

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<sup>1</sup> NP/11/064-069

<sup>2</sup> Ref NP/12/0019

that a D2 or other community use is unviable. The application to vary the conditions was refused.

*Appearance*

8. The application to vary the disputed conditions does not seek to amend the external appearance of the development that has been approved. Having granted planning permission and listed building consent for the scheme the NPA has determined that it would be acceptable in terms of its impact on the Conservation Area and varying the conditions would have no implications on this assessment. I conclude that varying the conditions would not affect the appearance of the development or of the area and would accord with the reasons given for imposing Condition No 2.

*Resulting development*

9. Policy 48 of the Pembrokeshire Coast National Park Local Development Plan [LDP] presumes against the loss of a community facility unless it could be shown that the facility is no longer required or is not commercially viable. A cinema is defined as a community facility for the purposes of this policy.
10. In terms of viability, the officer's committee report indicated that having assessed the submitted material, including the commercially sensitive data, the Estates Officer concurred with the valuation of the construction costs and with the findings of the viability report. He had no reason to doubt the findings of the marketing exercise and the prospect of securing a new cinema tenant for the development was unlikely. The officers considered that the lack of interest in a cinema or events venue questioned the ability of Tenby to attract a new cinema or other events operator into the town. The marketing exercise was in compliance with the requirements of Policy 48 and demonstrated that a cinema facility was no longer required and was not commercially viable.
11. In its appeal submissions the NPA questions the robustness of the marketing and financial submissions made by the appellant. I am satisfied that the agents appointed by the appellant to carry out the marketing exercise are experienced in this specialist field and I do not accept the assertion that the targeted mail shot was a superfluous exercise. The NPA submissions question the extent of the marketing exercise on the basis that an independent cinema operator was not approached directly. I do not consider this invalidates the marketing exercise and I note that the operator did not show any interest after having been made aware of the development. I am satisfied, on the basis of the response made by the agent, that the sales particulars were not misleading or that the marketing exercise was compromised. Whilst the NPA submissions have a different view to the appellant in terms of various financial considerations, I am satisfied that the appellant was justified in including the costs it identified in the marketing exercise. These are commercial considerations that a developer is reasonably entitled to make in seeking to dispose of a development.
12. Whilst the NPA submissions consider that the cinema could operate on a viable basis this appears to be on the basis of grant funding or greater investment from the landlord. The appellant indicates that funding through a Welsh Government Initiative cannot be made available due to viability. I accept the arguments put forward by the appellant that the retention of the cinema prejudices the funding and implementation for the whole scheme. On this basis I am not convinced by the arguments that the overall development should effectively cross-subsidise the cinema provision.

13. The NPA appeal submissions are at variance with the Estates Officer analysis of the material submitted by the appellant. An existing events venue in Tenby is currently underused and whilst consideration has been given to other leisure/community uses for the cinema site, there is no evidence that a viable use can be found. The local authority has discounted the possibility of relocating the public library. I am not satisfied that the NPA appeal submissions are sufficient to indicate there is a realistic prospect that a cinema or other suitable leisure operator will be found for the site.
14. Whilst I acknowledge that many people wish to see a cinema re-opened in Tenby, for the above reasons I consider the appellant has made realistic efforts to market the cinema use and the evidence shows that a cinema or other leisure use on this site would not be commercially viable.
15. On balance I am satisfied that it is not justified to place the whole of the development in jeopardy on the basis that a cinema or other leisure use will be forthcoming. Whilst LDP Policy 2 seeks, amongst other things, to protect and enhance Tenby's facilities I am satisfied that for the above reason there is sufficient justification to remove the requirement for the cinema development on this site.
16. Turning to the alternative uses that are sought. The cinema site is included as part of an allocation for employment/mixed use in the LDP. I agree with the officer's report to the Committee that there is limited scope for an employment related development on the cinema site and a lack of demand or need for commercial floor space in the town centre. There is merit in the argument that varying the conditions to enable the A1, A2 or A3 uses would be acceptable within this location which is outside the defined primary retail frontage and would provide a mix of uses that will encourage footfall to this part of the town.
17. For the above reasons I conclude that the resulting development would be appropriate to this town centre and seaside resort location and varying the disputed conditions would accord with the reasons given for imposing Condition No 14.
18. I have had regard to all other matters raised but find nothing to sway me from my conclusions.

### **Other Matters**

19. The appellant had submitted a S106 Unilateral Undertaking<sup>3</sup> relating to the planning permission that is already in place to make a financial contribution towards additional education facilities and off-site public open space and recreational facilities. Since the cinema (or alternative community provision) is not to be provided, the appellant has submitted a S106 Unilateral Undertaking that replicates the previous contributions and includes an additional contribution towards off-site library and community facilities in Tenby. I find the Unilateral Undertaking is necessary to make the development acceptable in planning terms, is directly related to the proposed development and is fairly related in scale and kind to the proposed development.

*Gwynedd P Thomas*

Inspector

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<sup>3</sup> Section 106 Town and Country Planning Act 1990