

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:-

NP/14/0446 Use of land for the stationing of one gypsy static caravan, retention and re-siting of one touring caravan together with utility/day room, septic tank, alteration to ground levels, formation of earth bunds and improvements, alterations to access- The Oaks, Land Adj. to Wynd Hill Farm, Manorbier

Type:

Hearing

Current Position: The initial papers have been forwarded to the Planning Inspectorate and a Hearing has been arranged for 22nd September, 2015.

NP/14/0609 Certificate of Lawfulness for Polytunnel
Land at The Belts, The Rhos, Haverfordwest

Type: Written Representations

Current Position: This appeal has been dismissed and the Inspectors decision is attached.

EC13/0053 Erection of dwelling and change of use of land
Mead Meadow, The Ridgeway, Manorbier, Tenby,
Pembs, SA70 8LG

Type: Hearing

Current Position: The initial papers have been forwarded to the Planning Inspectorate and a Hearing has been arranged for 14th October, 2015



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 27/04/15

Site visit made on 27/04/15

gan Declan Beggan BSc (Hons) DipTP
DipMan MRTPI

by Declan Beggan BSc (Hons) DipTP
DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 21/07/15

Date: 21/07/15

Appeal Ref: APP/L9503/X/15/2230104

Site address: Land at The Woodland Farm, The Belts, The Rhos, Haverfordwest, Pembrokeshire, SA62 4AN

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

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ('the Act') against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms L Screen against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/14/0609, dated 27th October 2014, was refused by notice dated 9th January 2015.
- The application was made under section 192(1)(a) of the Act.
- The development for which a LDC is sought is for a polytunnel.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the development as used by Authority on the refusal notice, and copied into the banner heading above is more concise; it is on this basis that I have determined the appeal.

Appeal site and surroundings

3. The site lies within a field to south of the A40, off a minor road between Millin and The Rhos. The field forms part of a number of other fields in the Appellant's ownership. On the day of my visit I observed within the field an assortment of items including bales of hay, manure, a greenhouse, water butts, hosing, a caravan and a recently constructed agricultural building. The dissembled metal framework including anchor tubes for the polytunnel the subject of the appeal was placed adjacent to where it is proposed to be erected. The appeal site forms part of a larger holding comprising of 13.76 ha that is used for agricultural, forestry and horticultural purposes including flower, herb, salad leaf, fruit and vegetable production, in addition to haylage production.

The Proposed Lawful Use

4. The appeal relates to a polytunnel which is intended to protect and support cropping within the horticultural area of the land. The polytunnel would measure 16.7 m long, by 6.09 m wide by 2.59 m high and extend to an area of approximately 101 metres square. It would be constructed with 12-14 metal hoops which are to be anchored into the ground by the use of metal anchor tubes at the corners and centre points. The anchor tubes are 0.75 m in length and include a 0.4 m square anchor plate which would be buried into the ground. The hoops are covered with clear polythene sheeting which are anchored at the edges using wooden batten/base rails.
5. The appellant states the polytunnel is intended to be temporary as the polythene covering has a maximum life of 5 years. As regards the degree of permanence, the appellant maintains that as the polythene covering has a maximum life of 5 years and there is also the need for crop rotation of plants grown directly into the soil, these factors demand that the structure will have to be moved periodically and at the very least within the life cycle of the polythene covering. It is maintained the polytunnel would be erected or dismantled within 1 day by non-specialist staff with non-specialist tools.

Main Issues

6. The main issues are:
 - Whether the proposal is a use of land or operational development;
 - If the proposal is a use of land for agricultural or forestry purposes would it be development having regard to section 55(2) (e) of the Act; and
 - If the proposal is operational development would it be permitted development under Class A of Part 6 of Schedule 2 of the Town and Country Planning (General Permitted development) Order 1995 (as amended) ('the GPDO').

Reasons

Use of land or operational development

7. It is the appellant's case that a LDC should be granted because the erection of a polytunnel to be used for agricultural purposes is not development for the purposes of planning control. The appellant cites in support of her position the case of *Hall Hunter Partnership*¹, which held that three factors: size, degree of physical attachment and permanence indicated whether or not operational development occurs.
8. The appellant argues the proposed use of the site is lawful and neither requires nor creates any material change of use. The appellant is of the view that the size, degree of permanence and physical attachment of the polytunnel are not substantive and does not meet the definition of operational development as stated in Section 55 (1) of the Act². As regards its' size, it is maintained the small scale nature of the structure

¹ *Hall Hunter Partnership v First Secretary of State* (2006), (2006) EWHC 3482 (Admin)

² Section 55 (1) of the Act states, 'Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'.

means it can be erected in a day by two non-specialist people and without the aid of specialised tools or machinery. It is argued such a small scale structure therefore does not require deep or substantive fixings and instead will be temporarily anchored into the ground using anchor tubes with plates which allows the tunnel to be moved when required. As regards the degree of permanence, the appellant maintains that as the polythene covering has a maximum life of 5 years and there is also the need for crop rotation of plants, these factors will result in the structure being moved periodically and at the very least within the life cycle of the polythene covering. On this basis, it is claimed that the erection of the polytunnel would not be operational development.

9. The appellant and the Authority also drew my attention to established law³ that sets out the three primary factors mentioned above in assessing what constitutes a "building" in regards to the definition of development.
10. After having regard to the case law, the Authority argues it is evident that the proposed polytunnel is a building operation that would result in development. In regards to its size, the Authority are of the view that its length, width and height along with its polythene covering and access doors gives it a significant bulk with the same characteristics visually as a building. They also refer to the submitted evidence pointing to the fact that the polytunnel will remain in the same location for at least 5 years and then moved to somewhere else within the site; such a timeframe they argue is significant having regard to the Woolley Chickens case (cited below), which referred to the 'Authority' in that case, not correctly directing itself on the issue of permanence, citing Schiemann LJ's observation in the Skerritts case, that in situ was concerned with 'a sufficient length of time to be of significance in the planning context'. As regards the degree of physical attachment, the Authority argue the anchor plates being buried to a depth of 0.6 m with the overall anchor tube being 0.7 m, indicates a substantial degree of attachment to the ground and is comparable to that found in the Hall Hunter Case (cited previously), where the polytunnels in that instance were anchored with legs that were screwed into the ground at a depth between 0.6 m and 1.0 m.
11. Applying the three factors above I am of the opinion the polytunnel, whose dimensions are 16.7 m long, by 6.09 m wide by 2.59 m high and extends to an area of some 101 metres square, is substantial in size. Whilst the Appellant states the polytunnel will have to move to meet the needs of crop rotation, and that it is intended to be temporary as the polythene covering has a maximum life of 5 years, nonetheless, I consider that this represents a substantial degree of permanence especially when the appellant has indicated no firm time frame, nor precise location within the overall holding when and where the polytunnel could be moved to. In respect of its degree of attachment to the ground, the polytunnel would be anchored into the ground by at least 6 positions via anchor tubes measuring 0.75 m in length with a 0.4 m square anchor plate which is buried into the ground up to a depth of approximately 0.6 m. This equates to a substantial degree of attachment to the ground notwithstanding whether they are fitted without the aid of mechanical assistance.

³ Barvis Ltd v Secretary of State for the Environment (1971) 22P. & C.R. 710, Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd (1949) 1KB385, Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (2000) 2 P.L.R. 102, R (Save Woolley Valley Action group Ltd) v North East Somerset Council (2012) EWHC 2161 (Admin).

12. In this instance, after taking account of all the evidence before me, I find, as a matter of fact and degree, on the balance of probability that the polytunnel the subject of this appeal constitutes operational development.

If the proposal is a use of land for agricultural or forestry purposes would it be development having regard to section 55(2)(e) of the Act

13. Bearing in mind my findings on the first issue, it cannot therefore benefit from section 55(2)(e) of the Act⁴.

Permitted Development

14. The provisions of Schedule 2 Part 6 Class (A) of the Town and Country Planning (General Permitted Development) Order 1995 allows on units of 5 hectares or more, the erection of a building which is reasonably necessary for the purposes of agriculture. The Authority argue that it is a condition of the provisions that a developer shall, before beginning the development apply to the Local Planning Authority for a determination as to whether the prior approval of the Authority will be required and therefore the appellant in this instance would need to submit a prior approval notification before being able to proceed lawfully with the development. I agree. In applying Part 6 it is clear that Class (A) development is permitted under the regulations only if an application is made to the Local Planning Authority prior to beginning the development for a determination as to whether prior approval is required for its siting, design and external appearance. In order for the appellant to proceed lawfully with the polytunnel such a prior notification application would need to be submitted to and approved by the Authority. The prior notification procedure has not been implemented in this case so the erection of the polytunnel would not constitute agricultural permitted development.

Conclusions

15. I have found that the polytunnel would constitute development for the purposes of section 55 of the Act. Section 57 of the Act goes on to say that planning permission is required for the carrying out of any development of land. The polytunnel does not benefit from planning permission granted by the Authority and I have found that it would not be agricultural permitted development (although it would be open to the appellant to implement the prior notification procedure under Class A of Part 6 of Schedule 2 of the GDPO). The proposal does not have planning permission and would not therefore be lawful.

16. After taking account of all the evidence before me (including the case law cited by the parties), and for the reasons given above, I conclude that the Authority's refusal to grant a LDC was well founded, and the appeal should fail. I will exercise the powers transferred to me under the Act.

Declan Beggan

INSPECTOR

⁴ Section 55(2)(e) of the Act relates to operations or uses of land that shall not be taken for the purposes of the Act to involve development of the land, it states, 'the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;'