

Item 6

**REPORT OF THE DEVELOPMENT MANAGEMENT TEAM LEADER
ON ENFORCEMENT MATTERS**

Other Matters – Enforcement

Pembrokeshire Coast National Park Authority

Committee Report : Prosecution

Reference No: EC13/0053

Case Officer: Karen Bolton

Received on : 4- Apr-2013

Site Address: Land at Mead Meadow, the Ridgeway, Manorbier SA70 8LG

Breach: The erection of a timber built single storey dwellinghouse with surrounding decking and the change of use of the land from agriculture to residential storage.

Summary

An Enforcement Notice was served by this Authority on 26th January 2015 following development undertaken on land at Mead Meadow, Manorbier, without the benefit of planning permission.

An appeal was made against the Enforcement Notice which was upheld and as a result the Enforcement Notice came into effect on 6th January 2016 with a compliance period to remove the unauthorised development by 6th July 2016. To date the Enforcement Notice has not been complied with.

Background

A complaint was first received by the Authority on the 4th April 2013 from a member of the public alleging the construction of a timber framed building in the open countryside for domestic use.

The site was visited by the Enforcement Officer and the owners were immediately advised to cease works as planning permission was unlikely to be forthcoming. At that stage, the build had just begun. The build continued unabated and a Planning Enforcement Notice was put on the property on the 26th January 2015 requiring the removal of the building, services, ancillary touring caravan and children's play equipment from site and the cease of the use of the land for residential storage.

At the subsequent appeal the Planning Inspector upheld the Planning Enforcement Notice (see attached Appeal Decision) dated 6th January 2016 which requires the unauthorised building to be removed and the land restored by 6th July 2016.

The site was visited to check compliance with the Enforcement Notice on 14th July 2016 and again on 6th October 2016 where it was evident that the Enforcement Notice has not been complied with.

The Authority wrote to the occupier's agent, again on 9th November 2016 informing him that the Notice has not been complied with and also reminding him that failure to comply with the Notice could result in legal prosecution proceedings against his clients by this Authority.

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Pembrokeshire Coast National Park Authority has advised the family and the agent (acting on behalf of the family) to contact Pembrokeshire Housing Association and the Housing Department of Pembrokeshire County Council to seek alternative living accommodation on a number of occasions. However, the Authority has been advised that Pembrokeshire County Council Housing department has not been approached.

At the time of writing this report the Enforcement Notice has still not been complied with. Officers have written to the landowner advising that the matter will be reported to the Development Management Committee seeking authority to proceed with prosecution as a result of non-compliance with the Notice.

Planning History

- NP/226/87 Renovation of outbuildings to provide dog kennels (Breeding and Boarding) at Mead Meadow Cottage, The Ridgeway, Manorbier. – Approved
- EC13/0053 Planning Enforcement against unauthorised building and change of use of land at Mead Meadow Cottage, The Ridgeway, Manorbier.
- APP/L9503/C/15/3005090 Planning Appeal Decision at Mead Meadow Cottage, The Ridgeway, Manorbier. – Enforcement Notice upheld

Conclusion

The Authority has a statutory duty to ensure that new development does not damage the natural beauty, character and special qualities of the National Park.

The site lies within an area of land designated within the Local Development Plan as being countryside. The erection of the dwelling house on the land has not been justified as being essential for agriculture or another purpose for which a countryside location is essential, consequently, the development is contrary to Policies 1,7,44 and 47 of the adopted Local Development Plan, Planning Policy Wales (Edition 9, November 2016) and Technical Advice Note 6 (2010).

The building by virtue of its siting, form and scale causes an unnecessary incursion into the rural countryside which causes significant harm to the visual amenities and openness of the area and the special qualities of the National Park. The development is insensitively sited within the landscape, results in a use incompatible with its location and fails to harmonise with, or enhance the landform and landscape character of the National Park contrary to Policies 1,7,8,15,29 and 30 of the adopted Local Development Plan.

The enforcement of planning control is in the wider public interests by preventing inappropriate and harmful development. To allow unauthorised development to remain undermines the Authority's ability to take action against similar inappropriate development within the National Park and to fulfil its statutory objects.

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The failure to comply with an Enforcement Notice after it has taken effect is a criminal offence answerable, in the first instance, in the Magistrates Court.

The landowner has not complied with the Enforcement Notice within the required time, nor within the time that has elapsed since and further action to remedy the breach of planning and its harmful impact is therefore required.

Recommendation

In view of the issues identified it is considered expedient to pursue action in respect of the unauthorised development carried out. The development is unauthorised and impacts to an unacceptable degree on the unspoilt character of the countryside within the National Park and fails to comply with the aims of the policies contained within the adopted Local Development Plan and Policy and Guidance set out in Planning Policy Wales (Edition 9, November 2016) and Technical Advice Note 6 – Planning for Sustainable Rural Communities (July 2010)

Therefore, it is requested that the Chief Executive/Director of Planning/ Team Leader: Development Management be authorised to instruct solicitors to commence prosecution proceedings in the Magistrates Court in relation to the non-compliance with an Enforcement Notice requiring the:

- (i) Permanent removal of the unauthorised dwelling house and all concrete block supports from the land.
- (ii) Permanent disconnection and removal of all connections to services such as septic tank, water and electricity.
- (iii) Permanent cessation of the use of the land for the storage of an ancillary touring caravan, domestic garden furniture and children's play equipment.
- (iv) Permanent removal of the touring caravan and all domestic garden furniture and children's play equipment from the land.
- (v) Removal from the land of all building materials and rubble arising from compliance with requirements (i) to (iv) above and the restoration of the land to its former condition as a field suitable for agricultural use.

Legal Implications (to include Human Rights Implications)

Following service of the Enforcement Notice, the recipient had a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended) which they availed themselves of and subsequently lost the Appeal. The time for complying with the Enforcement Notice has passed and during the period of grace since then there has been no sign of compliance with the Notice.

As the development is in domestic occupation it is necessary for the authority to consider if the rights of the occupiers under the Human Rights Act 1998 and in particular the rights under Article 8 to the respect for private and family life which provides:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

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2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

In this case the development and occupation of the land has been held to be unlawful following a legal process and the exercise by the occupiers of their right of appeal. Ample time has been given to enable the occupiers to relocate and appropriate and timely advice has been given to them. In the circumstances, the commencement of criminal proceedings is a proportionate response in a democratic society in the interests of the planning control of the use of land and the protection and preservation of the special qualities that have led to this location being included within a National Park.

Equal Opportunities Implications (to include Welsh Language Issues)

None.

Recommendation

In view of the issues identified it is considered expedient to pursue action in respect of the unauthorised development carried out. The development is unauthorised and impacts to an unacceptable degree on the unspoilt character of the countryside within the National Park and fails to comply with the aims of the policies contained within the adopted Local Development Plan and Policy and Guidance set out in Planning Policy Wales (Edition 9, November 2016) and Technical Advice Note 6 – Planning for Sustainable Rural Communities (July 2010). The proposed course of action is proportionate in the circumstances and compatible with the Authority's obligations under the Human Rights Act 1998.

Therefore, it is recommended that the Chief Executive/Director of Planning/ Team Leader: Development Management be authorised to instruct solicitors to commence prosecution proceedings in the Magistrates Court in relation to the non-compliance with an Enforcement Notice requiring the:

- (i) Permanent removal of the unauthorised dwelling house and all concrete block supports from the land.
- (ii) Permanent disconnection and removal of all connections to services such as septic tank, water and electricity.
- (iii) Permanent cessation of the use of the land for the storage of an ancillary touring caravan, domestic garden furniture and children's play equipment.
- (iv) Permanent removal of the touring caravan and all domestic garden furniture and children's play equipment from the land.
- (v) Removal from the land of all building materials and rubble arising from compliance with requirements (i) to (iv) above and the restoration of the land to its former condition as a field suitable for agricultural use.

REPORT OF THE DEVELOPMENT MANAGEMENT TEAM LEADER ON APPEALS

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

<u>NP/15/0310/FUL</u>	Eco-smallholding, including one dwelling - One Planet Development Land Adjacent to Castle Hill, Newport, Pembrokeshire, SA420QE
Type	Hearing
Current Position	The Hearing took place on 1 st November 2016. We await the Inspectors Decision.
<u>NP/15/0031/OUT</u>	Residential development - 27 dwelling units (outline seeking approval of Access & Layout) Land off Trewarren Road, St Ishmaels, Haverfordwest, Pembrokeshire, SA62 3SZ
Type	Inquiry
Current Position	The Inquiry took place on 27 th October 2016. We await the Inspectors Decision.
<u>NP/16/0288/TPO</u>	Remove 2 trees – 14 Trafalgar Road, Tenby
Type	Written Representations
Current Position	The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.
<u>NP/15/0649/CLE</u>	Certificate of lawfulness for seasonal use as camping with car park Slate Mill Lodge, Dale
Type	Hearing
Current Position	The Hearing took place on 22 nd November 2016. We await the Inspectors Decision.

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 11/10/16

gan Alwyn B Nixon BSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 24/10/16

Appeal Decision

Site visit made on 11/10/16

by Alwyn B Nixon BSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 24/10/16

Appeal Ref: ENV/3155844

Site address: 14 Trafalgar Road, Tenby, Pembrokeshire, SA70 7DW

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 consent to undertake work to trees protected by a Tree Preservation Order.
- The appeal is made by Mr Ronald Murphy against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref: NP/16/0288/TPO, dated 18 April 2016, was refused by notice dated 7 July 2016.
- The work proposed is to fell two sycamore trees.
- The relevant Tree Preservation Order (TPO) is the Pembrokeshire Coast National Park Authority TPO 31 (Car Park and Surrounding Area, Upper Park Road, Tenby), which was confirmed on 16 December 1998.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant was not present at the property at the time arranged for my visit. However, I was able to inspect the trees and carry out my assessment adequately from public land, due to their location on the boundary with the adjacent car park.

Main Issue

3. This is whether the Authority's decision to refuse consent to fell is justified, having regard to the contribution which the trees make to public amenity and the reasons put forward why the trees should be felled.

Reasons

4. The 2 trees are part of a group of 3 sycamores (identified as group G1 in the TPO Schedule) situated on a low bank forming the boundary between the rear garden of 14 Trafalgar Road and an adjacent multi-storey public car park. The sycamores are linearly spaced about 1m apart. The westernmost tree of the group (referred to in the tree reports as T1) has grown from the base of the bank and is agreed to be on the car park land owned by Pembrokeshire County Council. T2 and T3 have grown from the top of the bank and are apparently deemed by the County Council to be within the appellant's ownership, although the appellant disputes this. The appeal relates to an

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application to remove T2 and T3 only; however, removal of these would inevitably have implications for the stability of T1. A tree report prepared for the County Council and submitted with the application states that it would be inadvisable to remove one or more of the trees in the group without removing all of them.

5. The proximity of the trees to each other is such that they effectively form a single canopy of branches and are best considered as a single entity as regards their contribution to amenity and the fact that all would be likely to go if this appeal is successful. The group stands on the boundary of the public car park, close to the south-eastern front corner of the multi-storey car park structure. The trees are early-mature specimens, probably self-seeded, which extend to a height of around 14m above the bank on which T2 and T3 stand. The trees are not particularly fine specimens but collectively they make a significant contribution to public amenity due to their prominent position adjacent to the front corner of the car park structure. In this location they soften the visual impact of the car park structure and provide valuable greening of the local townscape.
6. The professional report submitted with the application assessed the trees utilising the widely-used TEMPO methodology. In accordance with TEMPO guidance the three trees have been evaluated as a single group. The assessment recorded a zero score in the "Retention Span" section, indicating that a TPO was not justified. The report states that this zero was mainly due to the "nuisance" nature of the trees, both current (branches interfering with the car park structure and overhanging the parking area) and the envisaged future worsening of the "nuisance" factor, given the likelihood of on-going branch decline and progression of decay. Due to this zero score the report did not go on to carry out an expediency assessment in respect of the appellant's wish to remove the trees in order to build a boundary wall and to eliminate the costs of maintaining the trees in a proper condition.
7. The zero score was assigned because T1 (which is not directly the subject of the appellant's application and current appeal) is already a nuisance tree, all 3 are presenting increasing liability in relation to the car park and they are said to be outgrowing their context. T2 is also said to have a suspected hollow column. However, the detailed examination of each tree in the same report makes clear that issues of branches interfering with the car park have been addressed by limb reduction mainly to T1, and that future potential nuisance/public risk can be managed by regular hazard assessment and periodic reduction and removal of declining sections of branches before they can fall towards the parking area. The assessment states that the likely deterioration of T1 is not considered to be an immediate hazard and the overall deterioration of the quality of the limbs is likely to be slow. Due to its position sheltered by its neighbours, T2 is not said to present an immediate problem; T3 is stated to be in relatively good condition compared to T2; overall no reason was found to consider this tree a significant hazard in the immediate future.
8. From the Park Authority's Decision Report it is apparent that discussions with County Council representatives have confirmed that, notwithstanding the disputed question of ownership of T2 and T3, works for public safety reasons to branches overhanging the car park would be likely to be undertaken by the County Council in any event as part of their on-going management programme for trees along the entire car park boundary. In the light of this the Park Authority does not consider that a significant nuisance arises from T2 and T3. The Park Authority's professional view is that, with such periodic management, T1, T2 and T3 have a retention span of 20-40 years.

9. I have also taken into account the appellant's stated wish to construct a boundary wall where the trees now stand. However, I consider that satisfactory boundary security could alternatively be provided by planting additional hedge species alongside the retained trees. I do not find the wish to construct a wall sufficient justification for the loss of this group of trees, with the attendant loss of public amenity that this would entail. Whilst I note that the appellant would intend to plant 2 fruit trees within the garden, and it is possible that the County Council would also replace with a new tree planted on its land, this would not adequately redress the harm to amenity that would be caused by removal of the appeal trees at this time.

Conclusion

10. Having considered the contribution which the trees currently make to public amenity and the reasons put forward why they should be felled, and notwithstanding the replacement tree proposals advanced, I have concluded that felling of the trees is not justified. Accordingly, the appeal does not succeed.

Alwyn B Nixon

Inspector