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/15/0335	Variation of Condition no 2 of NP/14/0073 to allow the sale of hot take-away food until 21:30 Café Aromas, Trafalgar Road, Tenby
Type	Written Representations
Current Position:	The Appeal was dismissed and the Inspectors report is attached.

EC/15/0079	Unauthorised Gypsy/Traveller/Residential Site Land off The Ridgeway, Manorbier Newton,
Type	Hearing
Current Position:	The Appeal Hearing will take place on 8th March, 2016.

NP/15/0085	Change of use of fort & island to visitor attraction uses including C1, D1 and D2 with gift, food & drink & retail uses A1 and A3. Change of use of generator house to ticket and retail use A1 & A3. Restore/replace railings, install 2 cranes, 2 boat landings, construct security residence use C3, construct toilet & pumping facilities, install cliff nature walk, signage, path lighting, operations lighting, replace fort entrance bridge, install services, repair stairs & install new, install CCTV St Catherines Island, Castle Beach, Tenby, SA70 7BP
Type	Public Inquiry
Current Position:	The Appeal Inquiry will take place on 22nd March, 2016.

EC/13/0053	Erection of dwelling and change of use of land Mead Meadow, The Ridgeway, Manorbier
Type:	Hearing
Current Position:	The Appeal was dismissed and the Inspectors report is attached.

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 20/10/15

gan Melissa Hall BA (Hons), BTP, Msc, MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07/12/2015

Appeal Decision

Site visit made on 20/10/15

by Melissa Hall BA (Hons), BTP, Msc, MRTPI

an Inspector appointed by the Welsh Ministers

Date: 07/12/2015

Appeal Ref: APP/L9503/A/15/3132289
Site address: Trafalgar House, 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 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.
- The appeal is made by Tenby Cafe Aroma Limited against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/15/0335/S73, dated 10 June 2015, was refused by notice dated 29 July 2015.
- The application sought the sale of hot take-away food from the existing café without complying with a condition attached to planning permission Ref NP/14/0073, dated 31 March 2014.
- The condition in dispute is No 2 which states that: *'The take away use hereby permitted shall only take place between the hours of 07:30 to 20:30.'*
- The reason given for the conditions is: *'To preserve the amenities of neighbouring properties – Pembrokeshire Coast National Park Local Development Plan Policy 30 (Amenity).'*

Decision

1. The appeal is dismissed.

Background

2. I understand that planning permission was granted in 1975 under Ref NP/145/75 for the change of use of a general grocers to a café. Condition 2 of that permission states that '*The premises are not to be used for the sale of take-away hot food*'.

3. Permission was subsequently granted for the removal of Condition 2 of planning permission Ref NP/145/75 in 2014 and its replacement with a condition stating that '*The take away use permitted shall only take place between the hours of 07:30 to 20:30*'. The reason stated for that condition is '*to preserve the amenities of neighbouring properties*'.

4. The appeal before me seeks an extension of the opening hours to 21:30, particularly during the peak summer period, to respond to customers who wish to utilise the take away facility rather than eat at the premises.

5. Other parties have raised concern that the café use has ceased and the premises are now in use as a take away such that it no longer operates under the terms of the earlier planning permissions to allow an element of hot take-away food sales from an existing café. The Authority has not taken issue with the existing use of the premises. I also note the alleged procedural irregularities in the application to vary Condition 2 of planning permission NP/145/75, approved under Ref NP/14/0073. However, that decision is not before me. I have therefore determined the appeal on the basis on which it was considered by the Authority.

Main Issue

6. Against this background, the main issue is the effect the variation of the condition to allow longer opening hours would have on the living conditions of neighbours.

Reasons

7. The appeal site, which lies on the edge of Tenby town centre, fronts the highway junction of Trafalgar Road with Park Road and South Parade. The appeal property is located in a terraced row of commercial properties where neighbouring ground floor uses include a convenience store, a counselling and support facility, a souvenir / sweet shop and an insurance broker. Opposite the site, on the other side of Trafalgar Road, is a glass blowing / retail unit, a grocers / florist with another fish and chip shop beyond.

8. The closest dwellings are situated in Trafalgar Road beyond the convenience store and support facility, where the street, and those adjoining, become predominantly residential in nature. Several of the upper floors of the row of commercial properties may also be in residential use.

9. I observed that there are traffic regulation orders in the form of double yellow lines outside and in the vicinity of the appeal premises and the adjacent on-street parking bays in South Parade are, in part, restricted to disabled parking only. Consequently, some of the closest on street parking facilities available are interspersed between the on-street residents parking bays along Trafalgar Road and Picton Road in addition to the South Parade parking bays.

10. With the exception of the convenience store, it would appear that the commercial uses that I observed operate primarily during day time hours. The other fish and chip shop that I observed fronts Upper Park Road, and has a different siting relationship with the residential properties than that which is before me. At the time of my visit, the activity in the vicinity of the site was relatively high. However, given the edge of centre location, the largely residential nature of the surrounding streets and that several of the closest commercial uses are likely to be closed during the evening, I would expect the level of activity to be much reduced after normal business hours and into the night, notwithstanding the position of the premises fronting a main highway.

11. Noise can be created by activity associated with the extended hours of operation at a time when I consider that residents have a reasonable expectation of a quieter environment. Impulse noise, such as raised voices from staff and customers entering and leaving the premises, the slamming of car doors or the start-up of a car engine can have a startle effect on residents in the context of the ambient noise conditions at the time they occur.

12. I accept that the existing take away can operate until 20:30 hours, and that the extension of opening hours sought is limited. However, in situations such as this, the

matter at issue is finely balanced. Given the high proportion of residential properties in the vicinity, the characteristics of the surroundings that I have described and the concerns raised by existing residents, I have given significant weight to the living conditions of neighbours in this instance.

13. I have had regard to the fallback position which is that the hours of opening in relation to the café use are unrestricted. The number of tables and chairs provided for customer use inside the premises is restricted. In my view, the use of the external seating area would predominantly be limited to periods of fine weather. Furthermore, the use of the premises as a café is unlikely to generate the volume and frequency of customers akin to a takeaway use. In this context, I consider that the activity associated with a café is distinctly different from that of a take-away use in terms of the frequency of the comings and goings and the level of disturbance that it would create.

14. Thus, I am not satisfied that activity at the premises generated by staff or customers could be adequately controlled to ensure there would be no unacceptable disturbance to residents. I therefore conclude that the proposal would have a significant harmful impact on the living conditions of the residents in the immediate vicinity of the site. This would conflict with Policy 30 of the adopted Pembrokeshire Coast National Park Local Development Plan insofar as it would have an unacceptable impact on amenity.

Other Matters

15. Regarding indiscriminate parking on highway, I note that the Authority has raised no objection to the proposal in highway safety terms. Neither is there substantive evidence before me that the existing use attracts indiscriminate parking or compromises highway safety. Hence, I have no reason to disagree with the Authority in this regard.

16. The concern as to whether the external seating area is on a public highway is a matter for the Authority and not for this appeal.

Conclusion

17. For the reasons outlined above, and having regard to all matters raised, I conclude that the condition is necessary to protect the living conditions of nearby residents with regard to noise and disturbance. The appeal is therefore dismissed.

Melissa Hall

INSPECTOR

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Gwrandawiad a gynhaliwyd ar 14/10/15
Ymweliad â safle a wnaed ar 14/10/15

gan Alwyn B Nixon BSc(Hons) MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06/01/16

Appeal Decision

Hearing held on 14/10/15
Site visit made on 14/10/15

by Alwyn B Nixon BSc(Hons) MRTPI

an Inspector appointed by the Welsh Ministers

Date: 06/01/16

Appeal Ref: APP/L9503/C/15/3005090
Site address: Land at Mead Meadow, Manorbier, SA70 8LG

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs S Creese against an enforcement notice issued by Pembrokeshire Coast National Park Authority.
- The Council's reference is EC13/0053.
- The notice was issued on 26 January 2015.
- The breach of planning control as alleged in the notice is: (i) Without planning permission, the erection of a timber built single storey dwellinghouse with surrounding decking; and (ii) without planning permission, the change of use of the land from use for agriculture to use for the storage of a touring caravan, domestic garden furniture and children's play equipment used ancillary to the unauthorised dwellinghouse referred to at (i) above.
- The requirements of the notice are: (i) permanently remove the unauthorised dwellinghouse and all concrete block supports from the land; (ii) permanently disconnect and remove all connections to services such as septic tank, water and electricity; (iii) permanently cease the use of the land for the storage of an ancillary touring caravan, domestic garden furniture and children's play equipment; (iv) permanently remove the touring caravan and all domestic garden furniture and children's play equipment from the land; (v) remove from the land all building materials and rubble arising from compliance with requirements (i) to (iv) above and restore the land to its former condition as a field suitable for agricultural use.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

Ground (e): That the notice was not properly served on everyone with an interest in the land

2. The argument advanced in relation to this ground was that the enforcement notice was not correctly served on the minors of the Creese family. However, the Authority

served the notice on all those identified as having a relevant interest in the land, acting on the information received in response to planning contravention notices and a land registry search. The appellant accepted this at the hearing, and I am satisfied that the notice was properly served on everyone with an interest in the land. The appeal on ground (e) therefore fails.

Ground (b): That the breach alleged has not occurred as a matter of fact

3. On this ground it is argued that the breach of planning control as described in the notice has not actually occurred. In essence it is argued that the formation of the structure on the land at which the notice is primarily directed did not constitute a building operation. Rather, it is said that the structure is a caravan or caravan/chalet and its placement on the land constitutes a use of land which has not amounted to operational development.

4. Case law has established that in determining whether the carrying out of development on land constitutes a building operation there are three main factors to be considered: size; permanence; and physical attachment to the ground. Each of these factors by itself is not necessarily determinative; regard is to be had to all three factors, and any other relevant considerations.

5. The structure is designed to provide residential accommodation in the form of an open-plan living and kitchen area, four bedrooms and a bathroom. The whole living space comprises a pitched roof single storey structure measuring about 8.5m x 14.5m and 4.3m to the apex of the roof. The structure is raised about 1m above ground level on a framework of support beams resting on a series of blockwork piers; it is surrounded on three sides by raised decking, again supported by piers, which provides a walkway around two sides of the living accommodation and an amenity deck measuring about 11m x 6m at the front.

6. A series of photographs taken by the Authority show that the structure was erected over the course of many months from before April 2013 to around July 2014. The photographs show the progressive construction of the structure at the site, with external walls formed by softwood frame components, subsequently clad internally and externally; battened and tiled roof on supporting rafters; internal room areas formed by the erection of timber studwork, subsequently clad to form walls and ceilings. The photographs conclusively show the disputed structure to have been gradually assembled on site using normal constructional components and materials over a considerable period, in the manner of a conventional building. Although it is argued that no recognised building contractor was involved, the evident manner of its construction points unequivocally to a building operation.

7. At the hearing I heard that the structure is intended to be a fixed unit providing self-contained living accommodation on a permanent basis; there is no suggestion that it is a temporary structure or that it is designed or intended to be moved from one location to another. Although it was suggested for the appellant that the structure could be lifted by a large crane, from what I have seen of its design and evident method of assembly I consider this extremely unlikely. It is certainly not designed with movement to another location in mind.

8. The structure is not set into the ground in the manner of walls springing from conventional building footings, nor is it built directly on a foundation slab. Instead it is raised off the ground on blockwork piers. However, this does not mean that the erection of the structure does not constitute a building operation. Having regard to the

whole structure and its means of construction, and taking into account all of the three main considerations of size, permanence and physical attachment to the ground, I am in no doubt that, as a matter of fact and degree, the development comprises a building operation and is properly described in the notice as the erection of a timber built single storey dwellinghouse with surrounding decking.

9. In the light of these matters, the argument that the structure should be regarded as a caravan and thus only a use of land plainly fails. The building's method of construction on site, its lack of design as a mobile structure and its dimensions clearly take it outside the definition of a caravan. Applying terminology such as caravan/chalet does not alter the essential characteristics and dimensions of the structure and how it has been erected on the site. Its construction has plainly constituted a building operation. Whilst I accept that caravans have at times previously occupied the same location, the suggestion that the present structure is actually an adaptation of a pre-existing caravan on the site is wholly implausible and unsupported by evidence.

10. A related argument made by the appellant is that the land has historically formed part of the curtilage of the adjacent house at Mead Meadow, and so there has been no material change of use of the land to which the notice relates. However, Mead Meadow has its own clearly defined garden area, which is separated from the enforcement notice land by a well-defined old hedgebank. I accept that the enforcement notice land is part of the registered agricultural holding, and that there is a long-established means of passage between this land and the garden area of Mead Meadow. However, the statement of Mrs S Davies, submitted by the appellant, whilst referring to the enforcement notice land as part of the garden areas of Mead Meadow in previous decades, indicates that the land was comprised of rough grass, rushy vegetation and scrubby trees due to its boggy condition. The 2005 valuers' report photograph referred to shows the land as a discrete enclosure down to grass apart from some sheds and a caravan. The response to the planning contravention notice states that the sheds have historically been used as shelter for goats, dogs, sheep, chickens, turkeys, cattle and various other agricultural uses. The children's play equipment and domestic garden furniture cited in the notice are associated with the use and occupation of the new dwelling.

11. I recognise that after acquiring Mead Meadow in 1988 a caravan was placed on the land, and that this caravan was later replaced by others. I heard that these caravans were used for various purposes, including as a sleepover and play facility by Mrs Creese's sons when they were younger and by a friend for a temporary period whilst between houses. In more recent times it seems the caravan was also stayed in for periods. However, there is no written detail or documentation concerning this, and the oral evidence given as to the details, dates and duration of such uses was vague in the extreme. It is impossible to draw from this any clear picture of the use of the caravans on the enforcement notice land in the years prior to the erection of the new dwelling. Aerial photographs of the land taken through the years show little other than the placement of a caravan on the land. I consider that the evidence concerning the previous presence of caravans on the land and the use to which they may have been put is insufficient to lead to a conclusion, on the balance of probability, that the land is part of the curtilage of Mead Meadow, when set alongside evidence of the land's history of agricultural use and condition and its separateness from the dwelling.

12. On this matter I conclude, on the balance of probability and as a matter of fact and degree, that the enforcement notice land does not comprise part of the residential curtilage of Mead Meadow. Whilst there is evidence of historical use for the siting of a

caravan, which may at times have been used for purposes ancillary to the residential occupation of Mead Meadow, the nature and duration of such previous use is uncertain. I conclude that a material change of use of the land has occurred in conjunction with the erection of a dwelling, as alleged in the enforcement notice.

13. Accordingly, for the reasons given, the appeal on ground (b) does not succeed.

Ground (c): That the matters stated in the breach do not require planning permission

14. On ground (c) it is argued that there has not been a breach of planning control because the uses are permitted by virtue of being within the curtilage of the farm house Mead Meadow and are ancillary to the farm house and holding.

15. However, this argument relies on two contentions: first, that what has taken place does not involve a building operation and is purely a use of land, and second, that such use is ancillary to the use of Mead Meadow as a dwelling and is taking place within its curtilage. As I have set out above in relation to the appeal on ground (b), both contentions are incorrect. The development which has taken place constitutes a building operation comprising the erection of a dwellinghouse, providing a separate and self-contained unit of 4-bedroomed living accommodation and evidently occupied as such. Planning permission would be required for such development even had the land formed part of the curtilage of Mead Meadow prior to the new development taking place; the provisions of the general permitted development order concerning development within the curtilage of a dwelling house do not extend to the erection of a new dwelling.

16. Accordingly, the appeal on ground (c) fails.

Ground (d): That it was too late to take enforcement action

17. This ground is argued on the basis that, if any breach of planning control has in fact occurred, such breach actually occurred around 1988, when the late Mr Creese brought the first caravan onto the land. In effect, it is contended that what initially occurred at around that time has simply continued through to the present day.

18. However, this argument does not stand scrutiny. The enforcement notice is directed at the erection of a timber-built single storey dwellinghouse with surrounding decking. For the reasons I have set out in relation to ground (b) above, the enforcement notice correctly identifies the breach that has taken place. As I have concluded, the development which has now taken place constitutes a building operation. It is a wholly different form of development to the stationing of a caravan on land for some purpose, which is a use of land. Consequently, the questions of when a caravan was first brought onto the land, for what purposes it and its successors were used and for what periods do not go anywhere in terms of any argument on ground (d). The evidence clearly demonstrates that, apart from the re-use of the concrete slab and some blockwork piers on which the previous caravan rested, the building is a new structure. It is not an adaptation of a pre-existing caravan. It is not contended that the building was substantially complete four years before the date of the enforcement notice; photographic evidence shows it in the course of construction during 2013 and 2014.

19. Accordingly, the appeal on ground (d) also fails.

Ground (f): That the steps in the notice are excessive, and lesser steps would overcome the objections

20. The argument advanced on this ground is simply that there are no steps to be taken because the land use has not changed since 1988. In reality this is not a meaningful ground (f) argument; rather, it is a repeat of arguments put in relation to grounds (b), (c) and (d) why the notice should not be upheld. I have explained above why these arguments do not succeed. No lesser steps were put forward at the hearing as more appropriate for the enforcement notice to specify in the event of it being upheld.

21. For this reason the appeal on ground (f) does not succeed.

Ground (g): That the time given to comply with the notice is too short

22. In relation to ground (g) no longer time for compliance has been suggested. Instead it is stated that no time limit is suitable, because it is asserted that the notice would require the occupants of Mead Meadow to leave and discontinue the use of Mead Meadow as an agricultural holding. This is not a meaningful argument in relation to ground (g); it again is effectively a contention that the enforcement notice should be quashed, rather than its details be modified as regards the time period for compliance.

23. Moreover, this also overstates the consequences of compliance with the notice's requirements. The notice is directed only at the new dwelling that has been erected and the use of land associated with this. It does not affect the original dwelling at Mead Meadow or the use of the agricultural holding as such. No appeal on ground (a) is before me; nor is there a deemed application for me to consider.

24. In considering the time given for compliance I have had regard to the fact that the requirements of the enforcement notice will deprive the occupants of the dwelling of their present home. I am conscious that the appellant's son, his partner and four children will lose their present accommodation; the best interests of the children are a primary consideration. However, no special circumstances have been advanced why the occupants need to reside at this particular location or arguments made why living elsewhere would cause undue hardship. No arguments have been made which lead me to conclude that six months is an insufficient period of time for alternative living accommodation to be arranged and the other requirements complied with from a practical standpoint. The Authority advised well before the dwelling was completed and occupied that the erection of a new dwelling in this location was unlikely to gain permission. I am satisfied that the extent of interference with private rights is necessary and proportionate, in accordance with the law and in the public interest. At the hearing the Authority confirmed its readiness to work with the appellant if difficulties in securing alternative accommodation within the necessary timescale were shown to be occurring in practice.

25. In the light of the foregoing I am satisfied that the period of six months specified in the enforcement notice is reasonable. The appeal on ground (g) therefore does not succeed.

Overall conclusion

26. For the reasons given, the appeal fails on all grounds. Having taken into account all matters raised, I therefore dismiss the appeal and uphold the enforcement notice.

Alwyn B Nixon **Inspector**

APPEARANCES

FOR THE APPELLANT:

Mr N Parry	Family member, acting as agent for the appellant
Mrs S Creese	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs K Bolton	Planning Enforcement Officer, Pembrokeshire Coast National Park Authority
Mr L Jones	Head of Development Management, Pembrokeshire Coast National Park Authority

DOCUMENTS SUBMITTED AT THE HEARING

1 Aerial photographs submitted by the local planning authority

2 Aerial photographs submitted by the appellant

3 Enlargement of 2005 valuers' photograph of the land, submitted by the appellant