

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/15/0085/FUL 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 Catherine's Island, Castle Beach, Tenby.
Type Public Inquiry
Current Position: The appeal has been allowed and a copy of the Inspectors decision is attached for your information.

NP/15/0143/FUL Change of use from A1 retail bakery to A3 hot food takeaway
The Old Bakery, Church Street, Tenby.
Type Written Representations
Current Position: The initial papers have been forwarded to the Planning Inspectorate.

NP/15/0404/FUL Retrospective planning application for the erection of 2 buildings - stables/sheds
Tresissillt, St Nicholas, Goodwick.
Type Written Representations
Current Position The initial papers have been forwarded to the Planning Inspectorate.

NP/15/0431/FUL Ground/first floor extensions to garage & alterations to main bungalow roof space to create bedrooms/bathrooms, plus Juliet balconies to rear elevation and creation of integral annex
29 Millmoor Way, Broad Haven, Haverfordwest
Type Written Representations
Current Position The initial paperwork has been forwarded to the Planning Inspectorate.

EC/13/0040 Installation of uPVC windows in Grade II Listed Building
Anghorfa Dawel, St Davids, Haverfordwest
Type Written Representations
Current Position: The initial papers have been forwarded to the Planning Inspectorate.

EC/15/0079

Type

Current Position:

Unauthorised Gypsy/Traveller/Residential Site
Land off The Ridgeway, Manorbier Newton,
Hearing

The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.

EC/15/0104

Type

Current Position:

Unauthorised removal and replacement of shop front on a listed
Building

Cadwaladers, Cheltenham House, Tudor Square, Tenby
Written Representations

The appeal has been allowed and a copy of the Inspectors decision is attached for your information.

EC16/0004

Type

Current Position

Installation of Upvc windows and stainless steel flue
Tower Cottage, Lower Frog Street, Tenby

Written Representations

The initial papers have been forwarded to the Planning Inspectorate.



Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 22/03/16
Ymweliad â safle a wnaed ar 23/03/16

gan **James Ellis LLB (Hons) Cyfreithiwr**
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 13/05/16

Appeal Decision

Inquiry held on 22/03/16
Site visit made on 23/03/16

by **James Ellis LLB (Hons) Solicitor**
an Inspector appointed by the Welsh Ministers
Date: 13/05/16

Appeal Ref: APP/L9503/A/15/3135582

Site address: St Catherine's Island, Castle Beach, Tenby, Pembrokeshire SA70 7BP

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 grant of planning permission subject to conditions.
 - The appeal is made by Mr Peter Prosser of Tenby Island Project against the decision of Pembrokeshire Coast National Park Authority.
 - The application Ref NP/15/0085/FUL, dated 7 February 2015, was approved on 6 July 2015 and planning permission was granted subject to conditions.
 - The development permitted is "Change of use of fort and island to visitor attraction uses including C1, D1, D2 with gift, food and drink and retail uses A1, A3. Change of use of generator house to ticket and retail use A1, A3. Restore/replace railings, install two cranes, two boat landings, construct security residence use C3, construct toilet and pumping facilities, install cliff nature walk, signage, path lighting, operations lighting, replace fort entrance bridge, install services, repair stairs and install new, install CCTV".
 - The conditions in dispute are Nos 3 to 16 which are set out in the First Schedule hereto.
 - The reasons given for the conditions are also set out in the First Schedule hereto.
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Decision

1. The appeal is allowed and the planning permission Ref NP/15/0085/FUL for "Change of use of fort and island to visitor attraction uses including C1, D1, D2, with gift, food and drink and retail uses A1, A3. Change of use of generator house to ticket and retail use A1, A3. Restore/replace railings, install two cranes, two boat landings, construct security residence use C3, construct toilet and pumping facilities, install cliff nature walk, signage, path lighting, operations lighting, replace fort entrance bridge, install services, repair stairs and install new, install CCTV" at St Catherine's Island, Castle Beach, Tenby, Pembrokeshire SA70 7BP granted on 6 July 2015 by Pembrokeshire Coast National Park Authority ("the NPA"), is varied by deleting conditions 3 to 5, condition 7 and conditions 9 to 16 and substituting for them the conditions set out in the Second Schedule hereto.

Application for costs

2. At the inquiry an application for costs was made by the appellant against the NPA. This application is the subject of a separate decision.
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Procedural matters

3. The description of proposed development set out in the planning application leading to the grant of planning permission Ref NP/15/0085/FUL was more detailed than the description of development set out in the planning permission dated 6 July 2015. In addition to the development listed in the permission, the application referred to "Internal and external changes to grade 2* listed building, including two windows, new doors, removal of walls, installation of new stairs, creation of new partitions, installation of services, gas electric, water, waste water, installation of replacement flag pole, installation of solar panels, water tanks, telescopes, railings and new roof rooms". Ideally, the description of development in the permission should have followed that in the application. I do not have powers to change the description of development set out in the permission given that the document has been issued by the NPA. However, it is clear to me that, subject to conditions, permission was granted for the development set out in the application and I shall proceed to make my determination on this basis.
4. The reference to uses A1, A3, C1, C3, D1 and D2 referred to in the description of development are those set out in classes A1, A3, C1, C3, D1 and D2 of the schedule of the Town and Country Planning (Use Classes) Order 1987 ("the UCO") as it applies to Wales.
5. The appeal site has been the subject of a previous appeal decision Ref: APP/L9503/A/13/2210367 dated 4 August 2014. This appeal was generally concerned with the principle of the change of use of the fort and island to a visitor attraction. The previous Inspector dismissed the appeal before him on the basis that there was insufficient information before him to establish the extent of the impact of the proposal on protected species. In all other respects, the previous Inspector considered that the proposed use was acceptable, subject to the appropriate use of planning conditions. The previous appeal decision is a material planning condition to which I shall give considerable weight in my deliberations.
6. Following publication of the previous appeal decision, planning application Ref NP/15/0085/FUL was lodged with the NPA and the protected species issue was resolved. Other than the information submitted in connection with protected species, the application was in similar terms to the application which had been before the previous Inspector. On 6 July 2015 the NPA granted planning permission Ref NP/15/0085/FUL subject to some 16 planning conditions, 14 of which are now in dispute, with the appellant seeking removal of the disputed conditions.
7. At the inquiry, the appellant and the NPA were not legally represented. After consulting with the main parties and interested parties who were present, I therefore held the inquiry in a relatively informal manner dealing with each of the disputed conditions in the sequence set out on planning permission Ref NP/15/0085/FUL. Although the appellant was seeking removal of the disputed conditions, there was some debate at the inquiry, and also post-inquiry correspondence, concerning alternative wording to the conditions.

Main issues

8. The main issues are, therefore, whether the conditions in dispute meet the six tests set out in paragraph 3.1 of Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management ("WGC 16/14"). These are that conditions

should be: (i) necessary; (ii) relevant to planning; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects.

Reasons

The site and surroundings

9. I shall broadly follow the description given by the previous Inspector in decision Ref: APP/L9503/A/13/2210367. The appeal site is St Catherine's Island, a limestone outcrop up to 30m high which is set a short distance off the mainland and Tenby town. Positioned prominently at its highest, south-west end is St Catherine's Fort, built between 1868 and 1870, one of a series known as a Palmerston forts, commissioned to defend ports and harbours around England and Wales. The fort is a grade 2* listed building and much of the island is a Scheduled Ancient Monument ("the SAM"). The appeal site lies within the Tenby Conservation Area ("the CA").
10. The fort is constructed of dressed and tooled limestone blocks with substantial granite additions which add to its imposing, austere character and appearance. Its main entrance is approached from the landward side, across the beach and island and by a bridge over a dry moat cut through the rock. There are few openings, the main ones being on the seaward elevations to facilitate 6 internal gun emplacements, or casemates, 3 on each side of the main, ground floor hall. This part is rectangular, illuminated by skylights in the flat roof. This roof is set within deep parapets within which are proposed 'roof rooms' for food and drink with outside seating.
11. At the seaward end are 3 intermingled semi-circular bastions which provided sunken gun platforms at roof level, again within substantial perimeter parapets. The latter are wide, smooth and with shallow, outward facing slopes. It is on these surfaces that solar panels are proposed. Within the thick walls below the gun level are a number of rooms down to ground level. There are also smaller rooms over 2 levels inside the entrance elevation. These continue down to an additional basement level, the outer face of which is exposed onto the floor of the dry moat. This is where a toilet block is proposed.
12. The island topography has been considerably re-modelled in places to accommodate various military and other installations, including paths to and from the beach which separates the island from the mainland, and elevated boat landings for deliveries. The generator house, a flat-topped concrete structure set high on the island between the fort and beach, is a 20th C addition. Adjoining that is a lower platform, on which can be seen the remains of what is said to have been an early 20th C chalet or summerhouse. Lower still is the site of wooden cabins, erected when the fort was being built. It is on this site that the security building is proposed.
13. The fort was decommissioned in 1906 but resumed its military role during the Second World War. In between the wars and following, there is evidence that there was both a residential use in the form of the chalet as well as the adaption of the fort itself. However, its last use was as a zoo from 1968 until it closed in 1979, since when it has been vacant.
14. St Catherine's Island is separated from the mainland by Castle Beach, from which it is accessible for 6 hours twice each day at low tide but cut off at high tide. It is perhaps 100m from the mainland and Tenby town at its nearest point. At low tide, Castle Beach is a broad, sandy expanse which continues as South Beach to the south-west. To the north is Castle Hill, a high, rocky headland which juts out into the sea and, in turn, separates Castle Beach from the Harbour and North Beach beyond. As its name

implies, Castle Hill is the site of a medieval fortification, now a public park with circuitous paths and a bandstand prominently positioned facing St Catherine's Island. The hill provides expansive and elevated public views of the island and there is a strong visual association between them, as there is between the island and the mainland development lining the cliffs which flank Castle Beach.

15. Unlike the physical and visual separation between St Catherine's Island and North Beach and Tenby harbour created by Castle Hill, around Castle Beach the enveloping effect of the headland and the mainland creates a close relationship with the island. At this point the mainland buildings are principally late Georgian town houses, many of which are listed including Lexden Terrace, Grade II*, which front St Julian's Street but have elevations and gardens facing the sea. Most remain in residential use. They both define the edge of the town and face directly towards the island and its fort which feature prominently in the quite spectacular sea views available from both public and private vantage points. These give way southwards to large Victorian buildings, now mainly hotels and guest houses along Paragon and The Esplanade, both of which are along the cliff edge and also given wide public views of the island.

Condition 3

16. The previous Inspector referred to individual activities in the application before him and its supporting documentation, and said that it was important to bear in mind that together they would form a single composite or mixed use as a visitor attraction¹. He went on to refer to plans showing floor areas given over to shops, cafes and storage within the fort and the generator house, and a large proportion of the floor area of the fort described as "Exhibition Space". It is said that the "Exhibition Space" was clarified as being multi-use including space for display, interactive exhibits, interpretation, art installations, seating, viewing etc., as well as circulation routes and corridors to cover topics as diverse as the fort and its history and the maritime environment of the island². Mention is also made of the location of footpaths and public access areas, restored boat landing areas and details of external lighting. To this extent, the previous Inspector considered that the principal components and activities involved in the visitor attraction are clearly and sufficiently explained³.
17. However, the previous Inspector also made reference to other intended uses including elements of class D2 "Assembly and Leisure" and class C1 "Hotels" uses. It was explained to him that these were needed to allow, for example, weddings and entertainment to take place and that some overnight accommodation (not shown on the submitted plans) would be provided for some overnight events such as star gazing. My colleague said that the number or frequency of such events was not stated, nor, beyond weddings, was the nature of the "entertainments"⁴.
18. After considering various points, namely: the effect of the scheme on the vitality of Tenby's retail function; the special architectural and historic interest of the fort; the character and appearance of the CA; the setting of nearby listed buildings; the amenity of the area, including the living conditions of local residents; nature

¹ Previous appeal decision, paragraph 34

² Previous appeal decision, paragraph 36

³ Previous appeal decision, paragraph 37

⁴ Previous appeal decisions, paragraphs 38 and 39

conservation interests; and, overall, the special qualities of the Pembrokeshire Coast National Park, the previous Inspector found that, in principle (apart from a lack of information concerning protected species which lead to the dismissal of the appeal), the use as a visitor attraction was acceptable. He went on to say that where there was doubt over the use, suitable controls could be introduced, for instance limiting the activities and layout to those proposed in the application. He mentioned that other uses such as the hotel or entertainment uses were not included in the description of development on the application before him⁵.

19. The previous inspector went on to say that a wide range of activities may plausibly fall within the term "visitor attraction" and that potentially harmful limited period uses could also take place without planning permission unless controlled. He agreed with the NPA that there was a need for further clarification and definition but which could properly be dealt with by way of condition rather than require outright rejection. He considered that on these matters the way forward should be by imposing an appropriate degree of control over, for instance, the range of activities permissible and such operational matters as frequency of events, hours of use and deliveries, noise (including from music) or outside activities⁶.
20. In broad terms, the information before the NPA when it made its decision on application Ref: NP/15/0085/FUL was similar to that before the previous Inspector, although there was additional information concerning protected species. Moreover, the description of development in respect of application Ref: NP/15/0085/FUL had been changed to specifically refer to "visitor attraction uses including C1, D1 and D2 with gift, food and drink and retail uses A1 and A3" and the description of the security building included reference to class C3. At the inquiry, the appellant helpfully explained that the entertainment which might take place could involve such activities as film nights, theatre (including interactive theatre), banquets, and carol concerts. In addition to star gazing, other activities which could involve overnight stays might include scout camps.
21. After considering the evidence before me, including what I saw on my site visit, I find that the appeal site is a sensitive one. Not only does it have considerable significance as a heritage asset (the grade 2* listed building, the SAM and the CA), but it also has visual importance within the National Park when seen from various viewpoints in Tenby and it lies close to residential properties in Lexden Terrace where properties have a rear lounges and rear bedrooms facing towards the island. In addition, there is a communal garden area at the rear of the terrace facing towards the island. The term "visitor attraction" is wide ranging and, because of the sensitive nature of the appeal site, it is clear to me that the various uses/activities that could take place under the umbrella of an overarching "visitor attraction" use need careful control. In this context, although the appellant says that a visitor attraction use is a sui generis use, I note that the previous inspector referred to the proposal as a mixed or composite use. I concur with the previous Inspector and it is clear that various elements of the proposal would fall within classes set out in the schedule to the UCO.
22. I also agree with the approach taken by the previous Inspector where he considered that on uses falling outside the D1 "Exhibition Centre" use and associated food and

⁵ Previous appeal decision, paragraphs 70 and 71

⁶ Previous appeal decision, paragraph 72

drink and retail uses, there should be an appropriate degree of control over, for instance, the range of activities permissible and such operational matters as frequency of events, hours of use and deliveries, noise (including from music) or outside activities⁷.

23. The appellant suggests that certain conditions attached to the permission (including condition 3, or a variation of it) would be anti-competitive and affect business viability. Competition between business interests is not a material planning consideration and there is no detailed evidence before me to show how condition 3 (or any other condition) would impact on the viability of the appellant's business. In passing, I note here that no detailed business plan was submitted in support of the application or the appeal. I therefore give little weight to these arguments of the appellant in respect of this condition, and where made elsewhere.
24. The appellant also argues that condition 3 is not reasonable because he believes that it takes away permitted development rights for temporary uses on land outside buildings and their curtilages. However, it appears that condition 3 attached to planning permission Ref: NP/15/0085/FUL does not do this in that there is no specific reference in the condition to the removal of permitted development rights⁸.
25. As I have indicated, the information that has been provided by the appellant is helpful and refers to some activities (for example film nights, theatre, and weddings) which, according to the evidence of its witness at the inquiry, the NPA has no objection to in principle provided there are suitable controls.
26. To my mind, the information provided by the appellant about what he intends to do is limited in nature in that it does not, for example, refer to the frequency of events or the hours during which they might take place. In this context, the appellant has indicated that some events might involve persons staying on the island after 23.00 hours or staying overnight. Again, reference has been made to "scout camps", but this is by definition narrow would not include "guide camps" or other camps by organised groups of young persons. It is clear to me that further, more detailed information needs to be given by the appellant concerning the activities that could be undertaken on the island as part of the intended visitor attraction and controlled by the NPA through appropriate planning conditions. For example, in addition to the frequency of events and hours during which they might take place, it would be helpful to have information about where activities on the island would take place, if outside the fort. This information is needed to enable a decision maker to assess the full effects of proposed activities, both individually and cumulatively, on a variety of matters, including the living conditions of the occupiers of Lexden Terrace.
27. This then begs the question of how to control proposed activities through the imposition of planning conditions. The wording of condition 3 attached to planning permission Ref: NP/15/0085/FUL does not refer the full range of proposed activities mentioned by the appellant prior to the grant of permission, but it would not preclude activities from taking place if they remained ancillary to the "exhibition centre" use referred to in condition 3. In addition, it is always open to the appellant to make an application to vary the condition. Given that there was limited information before the NPA concerning activities (other than the "exhibition centre" use and areas where A1

⁷ See paragraphs 15 to 18 above

⁸ Paragraph 5.102 of WGC16/14 refers.

and A3 uses would take place) when it determined the application, I consider it was not unreasonable for the NPA to have worded the condition in the way it did, albeit that the development applied for was a "visitor attraction".

28. At the inquiry, there was, at my instigation, some discussion about the possibility of extending the range of activities included in condition 3 to include weddings and film nights etc., and to limit the occasions on which certain activities, such as weddings, might take place so as to facilitate the provision of all or some of the activities which the appellant wants to carry out and which extend beyond uses which might be ancillary to an "exhibition centre" use, whilst at the same time protecting those interests which are rightly of concern to the NPA. However, following the inquiry and after reading all the evidence, it seemed to me that, without further detailed information about what the appellant proposes to do, this approach would not be practicable in that a full assessment of the effects of the activities on those interests which are rightly of concern to the NPA cannot be carried out until after the information has been provided. Moreover, the wording of any such condition would be somewhat unwieldy, and might not include reference to all those activities that the appellant's business wishes to undertake as part of the tourist attraction. The "scout camps" and other young persons' camps are a case in point.
29. I therefore consulted with the parties after the inquiry about the possibility of condition 3 being varied so as refer to the development comprising a tourist attraction consisting of an exhibition hall use falling within Class D1 Non-residential institutions of the Town and Country Planning (Use Classes) Order 1987 and such other uses/activities full details of which shall have been set out in a management plan to have been submitted to and approved by the local planning authority in writing.
30. This did not find favour with the appellant who contended that if he had to go back to the NPA, this would involve unnecessary expenditure of valuable time, and possible obstruction by the NPA. This is noted by me but, as I have indicated, more information is need so that a decision maker can assess the full effect of proposed activities. This will, of necessity, involve interaction between the appellant and the NPA irrespective of the framework for the submission of further information, but that is part and parcel of the established planning process. I therefore give little weight to the point made by the appellant.
31. On the other hand, it was the view of the NPA that a management plan condition would not be precise in that the development could end up being different to that which had permission granted by the NPA. In this context, my attention was drawn to caselaw⁹. After considering the argument advanced by the NPA, I can only agree with it and I shall not, therefore impose it.
32. In general terms, given the need to control activities on the island, as identified by the previous Inspector, I shall for the purposes of clarity make a minor variation to condition 3 so that it refers to visitor attraction use (but limits such use to exhibition hall and ancillary uses). Otherwise the condition shall remain as drafted by the NPA. I am satisfied that the varied condition will meet the tests in WGC16/14.
33. Class A3 set out in the schedule of the UCO, as it applies to Wales, refers to "use for the sale of food or drink for consumption on the premises or of hot food for consumption on the premises". This does not preclude use as a night club which was a

⁹ *R (oao Warley) v Wealden DC* [2011] EWCH 2083 (Admin)

matter of concern to an interested party who asked that such use be specifically excluded from condition 3. It would be unreasonable for me to do this because condition 3 as imposed by the NPA does not contain such an exclusion. In any event, condition 3 contains a limitation because it requires class A3 uses to be ancillary to the "exhibition hall" use, and condition 5 refers to the hours on which visitors may be on the island. I shall not therefore add an exclusion to the condition.

Condition 4

34. This condition refers to the security building to be constructed near to the existing generator house. The application site is within an area where restrictive countryside policies apply to new dwellings. No case has been put forward that the building would constitute an essential dwelling for a rural enterprise. Also, any former residential uses that took place on the island are long gone. The previous Inspector said that although the cabin design shows that it would have the essential facilities for day to day living, it would be a multi-purpose building, the function of which would be supportive of and ancillary to the main visitor attraction use. He went on to say that it would, for instance, be used by staff when cut off from the mainland, as a first aid and medical room, as accommodation for security staff providing 24 hours supervision as well as, for example, visiting experts teaching on astronomy courses, as a staff room and an office. My colleague also said that, importantly, it is not evident that the cabin would be occupied as a sole or main residence; indeed, such a range of activities may not be conducive to that possibility¹⁰.
35. The previous inspector accepted the building as part of the scheme before him because its use would be multi-purpose and ancillary to the visitor attraction, rather than for permanent occupation as a dwelling. He said that this relationship would need to be maintained in order to justify permitting the building. He went on to say that although the appellant had indicated that the use of the building should be "without restriction", preventing its use as a sole or main residence and/or ensuring that it would only be used as part of the visitor attraction could and should be secured by condition¹¹. The NPA sought to achieve this by imposing condition 4.
36. The appellant challenged the condition on the basis that the development applied for was not an "exhibition hall" and that the purpose of the building is to have a full time residential presence for security on the island. This led to some debate at the inquiry about full time residential use and how that might be controlled. However, the principle of the use of the building has already been considered by the previous Inspector. There are restrictive policies relating to new dwellings, historic residential uses on the island are long gone and cannot now be relied on, and no detailed case has been put forward that the building would constitute an essential dwelling for a rural enterprise. In this context, I consider that the need for the provision of security is not, by itself, sufficient to justify a new dwelling. Consequently, some control over occupation of the building through imposition of an appropriate planning condition along the lines suggested by the previous Inspector is necessary.
37. The NPA has clearly taken account of the previous decision when imposing condition 4 and, for reasons which I have given, the imposition of such a condition is both reasonable and necessary. However, given my findings in respect of condition 3, I

¹⁰ Previous appeal decision, paragraph 89

¹¹ Previous appeal decision, paragraph 91

consider that the condition should be varied to refer to the visitor attraction as well as the "exhibition hall". I am satisfied that the varied condition would meet the tests set out in WGC 16/14.

38. I did give consideration to imposing an alternative condition requiring that the building should not be occupied as a sole or main residence. However, it seems to me that such a condition, which is often seen on holiday accommodation to prevent permanent occupation, is not as relevant to the development to be permitted as the condition which has been imposed.

Condition 5

39. Condition 5 on the planning permission seeks to restrict the hours during which visitors can be on the island. As I have previously mentioned, the island is close to residential properties in Lexden Terrace. The manner in which these properties are constructed is that rooms at the rear of the properties are effectively separated from rooms at the front of the properties by internal staircases in the middle of the properties and which extend to all floors of the properties. Rooms at the front of the properties face towards the town of Tenby where there is noise from persons in the street, traffic noise, and noise associated with business premises such as public houses which have late opening hours beyond 23.00 hours. However, the rooms at the rear of the houses (including bedrooms) face towards Castle Beach, the sea and the island.
40. Whilst there will be daytime noise from the beach, this will largely taper off in the evenings to when it gets dark as mentioned in evidence by an interested party at the inquiry. There will be some occasions throughout the year, particularly during the summer months, when occupiers of rooms at the rear of the houses in Lexden Terrace will experience noise from events taking place in the town. However, it seems to me that apart from these occasions, the occupiers of the terrace have a relatively quiet aspect at the rear of their properties during the evening and night time hours. Noise from the mainland can, on occasion, be clearly heard on the island as I heard on my site visit. It must follow that, on occasion, noise from the island will be heard from the mainland. In addition persons leaving the island are likely to access the mainland using the slipway from Castle Beach which is in close proximity to Lexden Terrace. I fully appreciate that there are issues with tides affecting when persons can get on and off the island, but I nevertheless find that a general requirement for visitors to leave the island by 23.00 hours is entirely reasonable given its location in relation to Lexden Terrace.
41. It is said by the appellant that this condition would affect his human rights in the context of his business. Even if the condition could be said to constitute an interference with the appellant's human rights this would, in my opinion, be heavily outweighed by a permission (without the condition) constituting an interference with the human rights of the occupiers of Lexden Terrace in respect of their private and family lives and their homes¹². I therefore give little weight to the appellant's argument.
42. Reference was also made by the appellant to the hours of some events being under the control of other legislation, namely the licensing regime. This is noted by me, but this is an area where controls can legitimately overlap. Under the licensing regime,

¹² Article 8 of the European Convention on Human Rights refers

noise and possible disturbance are generally looked at in terms of public nuisance. However, under the planning regime, the effects of noise and possible disturbance on the living conditions of the occupiers of nearby properties are considered. This is a lesser test and whilst a proposal might not lead to there being public nuisance, it could nevertheless be unacceptable in planning terms without the imposition of appropriate conditions. Moreover, some of the activities that the appellant would like to carry out on the island do not fall under the licensing regime. I again give little weight to the appellant's argument.

43. There are activities that the appellant wishes to carry out which would involve visitors staying on the island after 23.00 hours, for example astronomy nights, scout camps and weddings. However, following the findings of the previous Inspector, I consider that more information is needed about these activities, for example details of their frequency and of the hours during which they would take place before they could be specifically referred to in condition 5 as exceptions. The effects of the time of the proposed activities could then be assessed as part of the consideration of any future application to vary conditions.
44. Condition 5, as attached to permission Ref: NP/15/0085/FUL, does not prohibit persons being on the island after 23.00 hours but requires permission to be given for specific events. On the face of it, this approach appears to be reasonable, but the condition can be said to be imprecise following the same argument that the NPA put forward concerning a suggested variation to condition 3 to include reference to a management plan. I therefore have no option but to sever the words "unless the Local Planning Authority has otherwise agreed in writing an extension of these hours. Such permission to be given in advance and for a specific event or occasion" from the condition as their retention would not meet the tests in WGC 16/14.
45. I therefore conclude that a condition to control hours when visitors can be on the island is reasonable and necessary, and that condition 5 as varied meets the tests in WGC 16/14.

Condition 6

46. Condition 6 is concerned with amplified sound, music or public address systems outside the confines of the fort building. To some extent, I have already examined the impact of noise emanating from the appeal site on the living conditions of the occupiers of Lexden Terrace when I considered condition 5. I looked at various arguments raised by the appellant and there is no need for me to re-examine them here. Given the proximity of rooms at the rear of Lexden Terrace (which I have found to have a relatively quiet aspect) I consider it entirely reasonable for noise outside the fort to be controlled. At the inquiry, the NPA's witness explained that the NPA's ability to control noise in open outside areas, say by requiring certain noise levels not to be exceeded, would present particular challenges in terms of enforcement. Given the location of the appeal site in relation to the residential properties, I accept that that would be the case and can appreciate why the NPA used the wording that it did.
47. The appellant said that because of the way the condition is worded, it would preclude, for example, the use of audio guides or even mobile telephones. I do not consider this to be a good point against imposition of the condition because the condition, which is often found, is not designed to prohibit the use of audio guides and mobile telephones and, realistically, the NPA would not contemplate enforcement action in respect of their use. To my mind the imposition of the condition is reasonable and necessary. There may be some circumstances where it would be reasonable for amplified sound

or music or a public address system to be used outside the fort but no detailed evidence concerning such events was placed before me. In my view, condition 6, with the wording as set out on planning permission Ref: NP/15/0085/FUL meets the tests in WGC 14/16 and I conclude that it should be retained.

Condition 7

48. The written evidence of the NPA's witness confirms that this condition seeks to address points made by Natural Resources Wales ("NRW"), the advisor to Welsh Government on ecological matters. The appeal site lies within the Carmarthen Bay and Estuaries Special Area of Conservation ("the SAC") and the Tenby Cliffs and St Catherine's Site of Special Scientific Interest (the "SSSI"). The SAC has been designated because it has a high diversity of habitat types and/or species which are rare or threatened within a European context, whilst the SSSI designation includes specialised cave and overhang communities of plants for which the island is particularly identified. Most of the island, that above high tide level, is not subject to the obligations imposed by the designations.
49. A letter addressed by NRW to the NPA dated 13 April 2015 referred to a number of issues concerning ecology which NRW considered to be outstanding. However, a meeting between the NPA and NRW was held on 22 April 2015, following which a further letter was sent by NRW to the NPA on 11 May 2015. In this letter, NRW withdrew a holding objection subject to conditions being attached to the permission. With regard to concerns over localised impact of cable runs and the High Level Nature Route ("the HLNR") the letter goes on to say that these can be dealt with via appropriate "watching brief"/agreed method statement conditions and that there was scope to have some degree of flexibility in final routes of the cabling and HLNR to avoid sensitive features. As mentioned in the evidence of the NPA's witness at the inquiry, condition 7 seeks to address this.
50. After considering the evidence, I am satisfied that a construction method statement is necessary, but only insofar as it relates to: the laying of cables across Castle Beach and that part of the island below high tide level; and the detailed route and construction of the HLNR. There was some debate at the inquiry as to whether a watching brief was necessary or whether NRW should just be notified as to when works comprised in the laying of the cables and the construction of the HLNR is going to commence. Given the views of NRW, as expressed in the correspondence, I consider that a watching brief by an experienced ecologist is necessary (in order to protect rare plants) when the laying of cables across that part of the island below high tide is carried out and when the HLNR is being constructed. In addition, I consider it appropriate that a "toolbox talk" is given by an experienced ecologist to those contractors laying the cabling on that part of the island below high tide level and those constructing the HLNR. In arriving at this view, I am mindful that there would be costs implications for the appellant's business, but these are outweighed by the need for appropriate protection of the rare plants. I shall vary condition 7 accordingly and I am satisfied that the varied condition will meet the tests in WGC 16/14.

Condition 8

51. The appeal site, which is within the Pembrokeshire Coast Natural Park, is visible from various viewpoints in Tenby including beaches. At the present time, the natural form of the island and the historic fort built on it constitute an attractive feature in visual terms. The fact that the site is free from visual clutter makes an important contribution towards this. In wider views towards the town, there is little in the way

of the outside display of goods, except to a limited extent along the slipway leading from the town to Castle Beach. Overall, the outside display of goods is not a characteristic feature of this part of Tenby. The display of goods (such as those found on the slipway) if displayed outside the fort could, in my opinion, act as a significant detractor in views towards the appeal site. I therefore consider that a condition controlling the display of goods is reasonable and necessary and would meet the tests in WGC 16/14.

52. At the inquiry, the appellant referred to a number of items which might be for sale and displayed outside the fort, and which he considered would have little impact on views towards the island. Examples cited were wooden benches and works of art. In principle, I accept that some items may be acceptable in terms of their impact but, in order to fully assess this, much more information about the items, for example in terms of their type, style, size, materials, location and numbers is needed. In my view, condition 8, with the wording as set out on planning permission Ref: NP/15/0085/FUL meets the tests in WGC 14/16 and I conclude that it should be retained.

Condition 9

53. The reason given for condition 9 is that the site falls within an Area of Special Control of Advertisements as defined in the Town and Country Planning Control of Advertisement Regulations 1989. However the relevant regulations date from 1992. Condition 9 seeks to impose controls that are dealt with under another regime, namely the 1992 Regulations where within an Area of Special Control, there are only a limited number of advertisements that can be displayed without the need for express consent from the local planning authority. I therefore conclude that the condition is not necessary. I shall therefore remove the condition.

Condition 10

54. The appellant has pointed out that within the SAM, excavation works would require consent under a different regime and that the condition involves duplication. This is acknowledged by CADW¹³ and noted by me. However, some of the island lies outside the SAM and CADW says that the recording of excavation works outside the SAM would normally be controlled by conditions on a planning permission¹⁴. The island was clear quarried prior to the construction of the fort but has become re-vegetated. The fort was in use for military purposes over a number of years, lastly in the Second World War. It is therefore conceivable that there are items of archaeological interest associated with the fort on the island outside the SAM. Against this background, and notwithstanding the cost to the appellant of employing an archaeologist, I consider it reasonable and necessary for a condition along the lines of condition 10 to be imposed. I have, however, varied the wording of the condition so that it excludes works within the SAM, is limited to works carried out pursuant to planning permission Ref: NP/15/0085/FUL, and requires a copy of the watching brief report to be submitted to the NPA. The condition would, in my opinion, meet the tests in WGC 16/14.

¹³ Letter from Cadw to the Planning Inspectorate dated 29 December 2015

¹⁴ Ibid

55. CADW also suggested that a condition be imposed requiring a photographic record of the 20th C bridge and the generator house being carried out and a further condition requiring a written scheme of historic environment mitigation to be submitted to and approved by the local planning authority. As I saw on my site visit, the bridge has been taken down and a photographic record of it was made before this happened. It would be helpful for the appellant to submit a photographic record of the generator house to the NPA but I shall not impose a condition requiring this because it would go beyond those conditions already imposed on planning permission Ref: NP/15/0085/FUL. The same applies to a condition requiring a scheme of historic environment mitigation.

Condition 11

56. The appeal site is, as I have previously indicated, in a sensitive location. As such, I consider it vital that the development does not result in unwarranted light pollution. The previous Inspector accepted that the lighting scheme has been carefully designed, but said that the impact of the totality of the combined illumination on the locality is difficult to gauge since it would depend on the intensity of the light produced and the frequency and duration of use. He found that the impact of the lighting scheme could not be fully assessed but that it could be dealt with by way of condition. After considering the documentation before me on lighting, I can only concur with my colleague.

57. The appellant queried the qualifications of the NPA's officers in respect of lighting but it is always open to the NPA to seek advice from external consultants once more details of a lighting scheme have been submitted to it. The appellant says that the lighting to be used would be low voltage and would have critically small viewing angles. This is noted by me, but I consider that the luminous intensity of the lighting is relevant to its capacity to result in light pollution. The appellant also says that condition 11 says that details of the cumulative impact of the lighting have been requested and that this is an impossible question. My reading of condition 11 is that details of candela, frequency of use and duration of use have been requested, rather than details of cumulative impact. However, the information sought, together with details of viewing angles (as referred to by the appellant), should provide the NPA with sufficient information in order to assess the cumulative impact.

58. Since planning permission Ref: NP/15/0085/FUL was granted by the NPA the development has commenced. I shall therefore reword the condition, following a widely used format, to take account of this and include reference to viewing angles as suggested by the appellant. I conclude that the varied condition will meet the tests in WGC 16/14.

Conditions 12-15

59. Conditions 12-15 were recommended to be attached to permission Ref: NP/15/0085/FUL by Dwr Cymru Welsh Water. They appear to be standard conditions that are sent in response to consultations. The appellant says that the conditions duplicate controls in that drainage is dealt with under the Building Regulations. However, paragraph 5.59 of WGC 16/14 refers to drainage and says that conditions can be useful in securing provision of drainage details for approval and implementation. Indeed, there is a model condition (no. 38) set out in the Appendix to WGC 16/14. I therefore find that, in principle, the imposition of drainage conditions on planning permissions is acceptable practice, notwithstanding the Building Regulations.

60. In this case, the approved documentation provides some information about drainage. It is intended that there would be a new toilet block with a foul water pumping facility and a grey water collection system for water used to flush toilet facilities. In addition, foul water would be removed from the island by a pipeline crossing to the mains system on the mainland. The appellant says that there are also existing drains for surface water and land drainage. This information is helpful but, from the evidence before me, I consider that it is not comprehensive and does not deal with all drainage aspects of the development.
61. In addition, the appellant has said that it may take a number of years before the drainage system referred to in the approved plans can be implemented and that, at the present time, chemical toilets are used. There is, however, no detailed information before me to indicate whether or not this is satisfactory. Having regard to the evidence on drainage, I consider that that a condition should be imposed requiring further details about drainage, both in the short term and the long term, so that the NPA can be satisfied that effective drainage facilities will be provided for the development.
62. As I indicated when dealing with condition 11, since planning permission Ref: NP/15/0085/FUL was granted by the NPA the development has commenced. I shall therefore reword a condition to take account of this and I shall refer to a drainage scheme as well as a lighting scheme in varied condition 11. I conclude that the varied condition will meet the tests in WGC 16/14.

Condition 16

63. At the inquiry, the appellant fairly accepted that in cases where planning permission is given for solar panels, it is standard practice for a condition to be imposed requiring their removal after they have ceased operation. The reason for this is to conserve the character and setting of landscape. However, the appellant asked if a time period of 12 months could be given for removal. In post-inquiry correspondence, I did refer to a period of 24 months, but this was an error on my part. The NPA's witness at the inquiry had no objection to a period of 12 months and I consider that such a period would be entirely reasonable, striking a balance between the impact of the panels on the character and setting of the landscape and giving the appellant sufficient time to carry out the removal works. I shall also vary the wording of the NPA's suggested condition to follow a form of wording that is widely used throughout Wales. I conclude that the varied condition will meet the tests in WGC 16/14.

Conclusion

64. After having regard to all the evidence, and for the reasons given above, I conclude that the appeal should succeed in relation to some of the conditions in dispute, with conditions 9 and 13-15 being deleted, conditions 3, 4, 5, 7, 10, 11 and 16 being deleted and replaced by varied conditions, and condition 12 being deleted and replaced by a varied condition recast as part of condition 11. Conditions 6 and 8 shall be retained with the same wording as imposed by the NPA.

James Ellis

Inspector

Schedule 1 – Conditions in dispute and the reasons given for them

3. The primary use of the development is an exhibition hall falling within Class D Non-residential institutions of the Town and Country Planning (Use Classes) Order 1987. All other uses indicated on the approved drawings, and falling outside of Class D1, shall remain ancillary and subservient to the primary use. No uses (including temporary uses) shall be permitted to operate separately and independently of the primary use.

Reason: To make clear the uses allowed within the approved development. Policy - Local Development Plan – Policies 1 (National Park Purposes and Duty), 15 (Conservation of the Pembrokeshire Coast National Park) and 30 (Amenity).

4. The security building hereby approved shall not be occupied at any time other than for purposes ancillary to the primary use of the development as an exhibition hall falling within Class D. Non-residential institutions of the Town and Country Planning (Use Classes) Order 1987.

Reason: To make clear the type of accommodation approved as part of the development would not be approved as a separate or independent dwelling. Policy - Local Development Plan – Policies 8 (Special Qualities), 15 (Conservation of the Pembrokeshire Coast National Park) and 30 (Amenity).

5. Visitors are not permitted on the island outside of the hours of 07:00 to 23:00, unless the Local Planning Authority has otherwise agreed in writing an extension of these hours. Such permission to be given in advance and for a specific event or occasion.

Reason: To ensure that the amenities of occupiers of other buildings in the vicinity are protected. Policy - Local Development Plan – Policy 30 (Amenity).

6. No amplified sound, music or Public Address Systems are to be used outside the confines of the fort building.

Reason: In the interests of protecting amenity and preventing noise impact on surrounding areas. Policy - Local Development Plan – Policies 1 (National Park Purposes and Duty), 8 (Special Qualities), 15 (Conservation of the Pembrokeshire Coast National Park) and 30 (Amenity).

7. A Construction Management Plan to confirm the route and methods of construction to be used for the approved development, shall be submitted to and approved by the Local Planning Authority and approved in writing prior to the commencement of development. The plan shall include details of a watching brief and details of an appropriate "toolbox talk" for construction staff to be undertaken by a suitably qualified ecologist. The development shall thereafter, be carried out in accordance with the approved details.

Reason: To ensure a proper standard of development and appearance in the interests of conserving the amenity and ecology of the area. Local Development Plan – Policies 1 (National Park Purposes and Duty), 15 (Conservation of the Pembrokeshire Coast National Park) and 30 (Amenity).

8. No display of goods shall be permitted outside the confines of the Fort.

Reason: To preserve the character of the area and the Local Development Plan – Policies 1 (National Park Purposes and Duty), 15 (Conservation of the Pembrokeshire Coast National Park).

9. No sign or other advertisement shall be erected or displayed on the structure or on adjoining land without the express prior written consent of the National Park Authority.

Reason: The site falls within an Area of Special Control of Advertisements as defined in the Town and Country Planning Control of Advertisement Regulations 1989, the Local Development Plan and PPW5 Chapter 3.

10. In the event that excavation works (other than those consented) would be required on the island, the developer shall ensure that a professionally qualified architect is present during the undertaking of any ground works in the development area, so that an archaeological watching brief can be conducted. The archaeological watching brief will be undertaken to the standards laid down by the Institute of Field Archaeologists. The Local Planning Authority will be informed, in writing, of the name of the said archaeologist at least two weeks prior to the commencement of the development.

Reason: To allow for the assessment of the archaeological value of the site. Local Development Plan - Policy 8 (Special Qualities) and PPW3 Chapter 6.

11. Notwithstanding the details of the proposed external lighting shown on the approved plans, further details in respect of the candela, frequency of use and duration of use for the external lighting to both the Fort and the footpaths, shall be submitted to, and approved in writing by the National Park Authority. Such lighting, as approved, shall be installed and operated on site in accordance with the approved details and prior to the beneficial use of the development.

Reason: To safeguard the visual amenities and special character of the National Park Policy - Local Development Plan – Policy 1 (National Park Purposes and Duty), Policy 7 (Countryside), Policy 8 (Special Qualities), Policy 15 (Conservation of the Pembrokeshire Coast National Park), Policy 29 (Sustainable Design) and Policy 30 (Amenity).

12. No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the development showing how foul water, surface water and land drainage will be dealt with and this has been approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system. Local Development Plan – Policy 32 – Surface Water Drainage and Planning Policy Wales Edition 5 – Chapter 12.

13. Foul and surface water discharges must be drained separately from the site.

Reason: To protect the integrity of the Public Sewerage system. Local Development Plan – Policy 32 – Surface Water Drainage and Planning Policy Wales Edition 5 – Chapter 12.

14. No surface water shall be allowed to connect (either directly or indirectly) to the public sewerage system unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect the integrity of the Public Sewerage system. Local Development Plan – Policy 32 – Surface Water Drainage and Planning Policy Wales Edition 5 – Chapter 12.

15. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into a Public Sewerage System.

Reason: To protect the integrity of the Public Sewerage system. Local Development Plan – Policy 32 – Surface Water Drainage and Planning Policy Wales Edition 5 – Chapter 12.

16. The approved solar PV panels and associated equipment, when no longer required, must be removed, and the site restored to its former condition within 3 months of the cessation of the use of the microgeneration system.

Reason: In the interests of conserving the character and setting of the landscape. Local Development Plan – Policy 33 – Renewable Energy.

Schedule 2 – Conditions varied by the decision

3. The primary use of the development shall be as a visitor attraction limited to an exhibition hall falling within Class D1 Non-residential institutions of the Town and Country Planning (Use Classes) Order 1987. All other uses indicated on the approved drawings, and falling outside of Class D1, shall remain ancillary and subservient to the primary use. No uses (including temporary uses) shall be permitted to operate separately and independently of the primary use.

4. The security building hereby approved shall not be occupied at any time other than for purposes ancillary to the primary use of the development as a visitor attraction limited to an exhibition hall falling within Class D1 Non-residential institutions of the Town and Country Planning (Use Classes) Order 1987.

5. Visitors shall not be permitted on the island outside of the hours of 07:00 to 23:00 hours.

7. A Construction Method Statement to confirm the route of the High Level Nature Route and methods of construction to be used for the construction of the High Level Nature Route and the laying of cables on that part of the island below high tide level shall be submitted to and approved by the Local Planning Authority in writing prior to the commencement of operational development. The Construction Method Statement shall include details of a watching brief and details of an appropriate “toolbox talk” for construction staff, both to be undertaken by a suitably qualified ecologist. The construction of the High Level Nature Route and the laying of cables on that part of the island below high tide level shall thereafter be carried out in accordance with the approved Construction Method Statement.

10. In the event that excavation works (other than those within the area of the Scheduled Ancient Monument) would be required on the island pursuant to the planning permission hereby granted, the developer shall ensure that a professionally qualified archaeologist is present during the undertaking of any ground works in the development area, so that an archaeological watching brief can be conducted. The archaeological watching brief will be undertaken to the standards laid down by the Institute of Field Archaeologists. The Local Planning Authority will be informed, in writing, of the name of the said archaeologist at least two weeks prior to the commencement of the development and a copy of the watching brief report shall be submitted to the Local Planning Authority within two months of the archaeological fieldwork being completed.

11. The use hereby permitted shall cease within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:

- i) within 3 months of the date of this decision a scheme for lighting (notwithstanding the details of the proposed external lighting shown on the approved plans) such scheme to include: further details in respect of the

candela, viewing angles, frequency of use and duration of use for the external lighting to both the fort and the footpaths; and an implementation timetable ("the lighting scheme"), and a scheme for the drainage of the development (notwithstanding details of drainage shown on the approved plans) such scheme to include: details of foul and surface water, and land drainage (including any interim methods of foul drainage); and an implementation timetable ("the drainage scheme") shall have been submitted for written approval by the Local Planning Authority.

- ii) within 8 months of the date of this decision both or either of the schemes shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve both or either of the schemes, or fail to give a decision on both or either of the schemes within the prescribed period, a relevant appeal or relevant appeals shall have been made to, and accepted as validly made by the Welsh Ministers.
- iii) if any appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the relevant submitted scheme shall have been approved by the Welsh Ministers.
- iv) the approved schemes shall have been carried out and completed in accordance with their respective approved implementation timetables.

Once the approved schemes have been completed, lighting and drainage for the development shall thereafter be operated in accordance with the approved details.

16. The approved solar PV panels and associated equipment must be removed, and the site restored to its former condition, within 12 months after they cease to be used for generating electricity.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY :

Alan Southerby Temporary Head of Development Management,
Pembrokeshire Coast National Park Authority

He called

Alan Southerby

FOR THE APPELLANT:

Peter Prosser Appellant

He called

Peter Prosser

Tim Prosser Tenby Island Project

INTERESTED PERSONS:

Peter Rees Local resident

Louise Curnin Local resident

Howard Rawson-Humphries Interested party

Trevor Hallett Local Resident

DOCUMENTS

- 1 Local Planning Authority's letter dated 14 January 2016 giving notice of the inquiry
- 2 Local Planning Authority's rebuttal of the appellant's costs application



Penderfyniad ar gostau

Ymchwiliad a gynhallwyd ar 22/03/16
Ymweliad â safle a wnaed ar 23/03/16

gan **James Ellis LLB (Hons) Cyfreithiwr**
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 13/05/16

Costs Decision

Inquiry held on 22/03/16
Site visit made on 23/03/16

by **James Ellis LLB (Hons) Solicitor**
an Inspector appointed by the Welsh Ministers
Date: 13/05/16

Costs application in relation to Appeal Ref: APP/L9503/A/15/3135582
Site address: St Catherine's Island, Castle Beach, Tenby, Pembrokeshire SA70 7BP

The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Peter Prosser of Tenby Island Project ("TIP") for a full award of costs against Pembrokeshire Coast National Park Authority ("the NPA").
 - The inquiry was in connection with an appeal against the grant subject to conditions of planning permission for "Change of use of the fort and island to a visitor attraction uses including C1, D1, D2. With gift, food and drink and retail uses A1, A3. Change of use of generator house to ticket and retail use A1, A3. Restore/replace railings, install two cranes, install two boat landings, construct security residence use C3, construct toilet and pumping facilities, install cliff nature walk, signage, path lighting, operational lighting, replace fort entrance bridge, install services, repair stairs and install new, install CCTV".
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Decision

1. Pursuant to the application, a partial award of costs is allowed in the terms set out below.

The submissions for Mr Peter Prosser

2. The Chief Executive of the NPA promised the planning committee and TIP that he would personally oversee the writing of conditions. This appears to have not happened. Certainly, he has not visited the site. Without his expertise TIP have been landed with inappropriate conditions.
 3. TIP sought from the beginning to have meaningful dialogue to work out conditions appropriate for the site. This is easily shown from the e-mail trail. The writer of the conditions did not attend the site despite being requested to do so by TIP. To understand the possible influence on local amenity it is essential to see the situation from the site and witness the background noise, the prevailing wind and the distance between the site and its nearest neighbours.
 4. The writer of the conditions afforded TIP the opportunity to see and respond to the draft conditions. TIP's responses clearly say that they would appeal the conditions in the format presented as they do not comply with condition guidance. They are not
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necessary or relevant to planning or to the development. They are neither precise nor reasonable. TIP requested further discussion, but was not given this. The intention to appeal uninformed conditions has been made clear from the beginning but proper discussion has not been entered into.

5. The accepted use as a visitor attraction by the previous Inspector has been denied and instead draft conditions were changed without notice. This changed the whole premise of the visitor attraction into an exhibition hall. This is seen to fundamentally undermine the whole application and remove the viability of the project. This, in effect, renders the work of the previous Inspector and four and a half years of TIP's work and investment redundant. Immediately recognising this, it was explained to the NPA's Head of Planning that TIP would not be able to accept this and that TIP would feel the need to appeal such conditions. The Head of Planning declined the opportunity to review the conditions and instead suggested that an appeal might be the way forward for TIP.
6. TIP was keen to work out the conditions. TIP wrote to be involved in the process, suggested a meeting, asked for further discussion, and wrote clearly to say that it was not happy with the draft conditions. The NPA has failed to produce evidence to substantiate the reasons for the conditions and instead have produced vague, generalised and inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. TIP believes that it is unreasonable to not give the opportunity to discuss the conditions when clear problems exist.
7. The costs incurred in connection with the appeal are: preparation of the appeal forms and grounds of appeal, correspondence with relevant parties during the appeal, reading and research of the NPA's submitted material, research of quoted documents and relevant Acts, preparation of the statement of evidence, preparation for the inquiry, attendance at the inquiry. There is also the closing of the visitor attraction for the duration of the appeal due to absence of key staff, loss of income and staff employment costs.

The response by the NPA

8. Welsh Office Circular 23/93: Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings ("WOC 23/93") says that a local planning authority ("LPA") is at risk of an award of costs if, for example, it imposes conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant. Further guidance is contained within paragraph 20 of Annex 3 of WOC 23/93 which says that conditions should be imposed only where they are both necessary and reasonable. They should be enforceable, precise and relevant, both in planning terms and to the proposed development. The imposition of conditions which clearly fail to meet these criteria may lead to an award of costs.
9. Whilst accepting that there can, on occasion, be grounds for discussing potential conditions with applicants, nowhere does it say that it is an absolute requirement for the LPA to enter into such a dialogue. It is compliance with the tests set down in Welsh Government Circular 016/2014: Use of Planning Conditions for Development Management ("WGC 16/14") that is important. Nonetheless, Mr Prosser was involved in the process and explains that he was indeed given the opportunity to see and respond to the draft conditions. Further discussion would not have been appropriate or permissible within the context of the authority provided by the Development Management Committee, as recorded in the minutes. The procedure for formulating the conditions follows the process set down by the committee and was normal.

10. The reason for each of the contested conditions has now been demonstrated in evidence. It has also been demonstrated how each of the conditions meets the relevant tests set out in WGC 16/14.
11. The previous appeal decision makes it clear that conditions are necessary in order to properly control aspects of the proposed development. Mr Prosser also sets out in his claim that he was keen to be involved in the final wording of the conditions. However, this does not accord with the appeal that he has made which is written as seeking the wholesale removal of the conditions, as opposed to their alternative drafting of wording, a matter that has been seen as relevant in proceedings today.
12. It is evident from the previous appeal decision that in the event of planning permission being granted, conditions would be needed in order to maintain the correct balance between activities and impact and provide the necessary clarity. The NPA has set out in evidence why it believes the various provisions afforded by the contested conditions are necessary in this context, in that they help define, control and mitigate the proposed development and subsequent use of the site, as approved. Without them, it would not be possible to maintain the low key level of activity envisaged by the previous Inspector as being appropriate for the site. For this reason it would not have been possible to have recommended approval of the application without the conditions.
13. The previous Inspector said at paragraph 72 of his decision letter that there was a willingness to accept conditions and the minutes of the Development Management Committee on 27 May 2015 also confirm that Mr Prosser acknowledged the need for conditions. If Mr Prosser felt that tweaks were necessary in order to achieve a greater degree of flexibility and scope, etc., this could have been sought alternatively through the non-material amendment route via section 96A of the Town and Country Planning Act 1990 or failing that, via section 73.
14. Instead, Mr Prosser made his appeal seeking complete removal of the contested conditions, which is considered to be unjustified for all the reasons set out in evidence, particularly in the light of comments made by the previous Inspector. As such, it is considered unreasonable for the NPA to now have to defend its position through an appeal and public inquiry procedure.
15. In conclusion, the NPA believes that the conditions attached to the planning permission deal with relevant matters and are necessary, reasonable, enforceable, precise, relevant to planning and relevant to the development concerned.

Reasons

16. WOC 23/93 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
17. It is for the NPA to decide which of its officers are to write and check conditions to be attached to a planning permission, and also to decide if a site visit is necessary. For my purposes, it matters not whether or not the writing of conditions was overseen by the NPA's Chief Executive or whether or not a site visit was undertaken. I note that TIP attempted to have a meaningful dialogue with the NPA about suggested conditions, but there is no absolute requirement for the NPA to enter into such a dialogue. I therefore consider that, although it may have been helpful for there to have been a dialogue between the parties (notwithstanding the initial stance taken by the NPA's Development Management Committee), the NPA's refusal to enter into a

dialogue does not amount to unreasonable behaviour for the purposes of WOC23/93. Even if this had amounted to unreasonable behaviour, there is no guarantee that if a dialogue had taken place this would have resulted in the NPA changing its stance to result in the appeal not going ahead. In other words, even if there had been unreasonable behaviour on the NPA's part, this would not have necessarily resulted in the appellant incurring expenditure as a result of it.

18. After considering all the evidence before me, including appeal decision Ref: APP/L9503/A/13/2210367 dated 4 August 2014, it is my view that a comprehensive set of planning conditions is needed to control the development the subject of planning permission Ref: NP/15/0085/FUL including a condition (condition 3) to restrict the nature of activities that can be carried out under the umbrella of the description "visitor attraction". Of the 14 disputed conditions, I have removed some and varied others. With regard to the varied conditions, I have found that they are reasonable and necessary and comply with the tests set out in WGC 16/14. The NPA's reasons for imposing the conditions (as worded by the NPA) were substantiated by evidence given at the inquiry on behalf of the NPA by an experienced planning officer and the changes that I made to the wording of the conditions were, in general terms, for the sake of accuracy and ease of use. I therefore find that the NPA has not behaved unreasonably when it comes to the imposition of the conditions that have been varied by me.
19. Turning to those conditions which have been removed, 3 of the 4 relate to drainage, with the matters referred to in them effectively being dealt with within a varied all-embracing drainage condition. In my view the imposition of the drainage conditions, as originally worded by the NPA, does not amount to unreasonable behaviour on the part of the NPA.
20. This then leaves a last condition to be removed, which was concerned with the display of advertisements. The NPA's condition sought to remove the right to display any advertisements on the application site, the reason given for this being that the site is within an Area of Special Control of Advertisements. The condition seeks to impose controls that are dealt with under another regime, namely the Advertisement Regulations where within an Area of Special Control there are only a limited number of advertisements that can be displayed without the need for express consent from the local planning authority. In my decision on the planning issues, I concluded that the condition is not necessary.
21. Following on from my decision on the planning issues, I therefore find that the imposition of the condition concerning advertisements constitutes unreasonable behaviour for the purposes of WOC23 and which will have resulted in Mr Prosser incurring unnecessary or wasted expenditure in the appeal process.
22. I therefore conclude that a partial award of costs in favour of Mr Prosser be made, but that it be limited to expenditure incurred in the appeal process dealing with condition 9 attached to planning permission Ref: NP/15/0085/FUL.

Costs Order

23. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Pembrokeshire Coast National Park Authority shall pay to Peter Prosser, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal

process dealing with condition 9 attached to planning permission Ref:
NP/15/0085/FUL.

24. Mr Peter Prosser is now invited to submit to Pembrokeshire Coast National Park Authority, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

James Ellis

Inspector



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 08/03/16
Ymweliad â safle a wnaed ar 08/03/16

gan **Janine Townsley LLB (Hons)**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 10/05/16

Appeal Decision

Hearing held on 08/03/16
Site visit made on 08/03/16

by **Janine Townsley LLB (Hons)**

an Inspector appointed by the Welsh Ministers

Date: 10/05/16

Appeal A: APP/L9503/C/15/3133096

Site address: Land off The Ridgeway, Manorbier Newton, Tenby, SA70 8PB.

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 Ceri Boswell against an enforcement notice issued by Pembrokeshire Coast National Park Authority.
- The Authority's reference is EC15/0079/COU.
- The notice was issued on 24 July 2015.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change in use of the land to a mixed use for agriculture, the keeping of horses and for gypsy/traveller and/or residential purposes through the siting of a static caravan (marked "A" on the Plan) used for residential occupation, the siting of a touring caravan (marked "B" on the Plan), the siting of a timber domestic type shed (marked "C" on the Plan), the siting of dog kennels and a chicken shed (marked "D" on the Plan), the storage of building materials (marked "E" on the Plan), and the storage of vehicles and trailers (marked "F" on the Plan).
- The requirements of the notice are to (i) permanently cease the use of the land and the static and touring caravans for residential use and occupation, (ii) permanently remove all static and touring caravans, the timber domestic type shed, the chicken shed and dog kennels from the land, (iii) permanently remove all existing building materials and vehicles and trailers and cease the storage of building materials and vehicles and trailers on the land, (iv) permanently cease the use of the land for the keeping of horses; (v) remove all domestic paraphernalia from the Land and restore the land to its condition prior to the breach of planning control taking place.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation as set out below in the Formal Decision.

Appeal B: APP/L9503/C/15/3133097

Site address: Land off The Ridgeway, Manorbier Newton, Tenby, SA70 8PB.

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 Ceri Boswell against an enforcement notice issued by Pembrokeshire Coast National Park Authority.
-

- The Authority's reference is EC15/0079/OP.
- The notice was issued on 24 July 2015.
- The breach of planning control as alleged in the notice is without planning permission, the alteration of the existing ground levels, construction of hardstandings, creation of earth bunding and erection of a timber domestic storage shed marked in the position "C" on the Plan and the erection of a chicken shed and dog kennels, in the position marked "D" on the Plan.
- The requirements of the notice are (i) remove the timber domestic storage shed, chicken shed and dog kennels from the land; (ii) remove all hardstandings (including gravel/stonechips/paving slabs) off the land; (iii) restore the land to its former levels and reseed with grass.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation as set out below in the Formal Decision.

Background – Enforcement Notices (ENs) A and B

1. The site was purchased by the appellant and her partner in June 2015 in a response to eviction proceedings in relation to their former home, a privately rented house which was being repossessed due to their landlord's debts. The appellant and her partner have nine children between them, eight of whom live with them on a permanent basis.
2. At the time of my visit there was nobody living on site. The appellant explained at the hearing that whilst she and her family had been resident on the site until relatively recently, heavy rainfall meant that ground conditions became so poor they were unable to adequately access and egress the site. For this reason, the family had moved into temporary bricks and mortar accommodation with the intention of returning to the site as soon as practicable.

Procedural Matters

3. This decision relates to two appeals which have been made in relation to two ENs. Both relate to the same site but differ insofar as one relates to the alleged material change of use of the site as set out in EN A and the other to certain alleged building operations as set out in EN B.
4. Appeals against both ENs were made on grounds (a), (c), (f) and (g), however the prescribed fee was paid only in relation to the appeal against EN A. For this reason, the appeal against EN B is proceeding only on grounds (c), (f) and (g).
5. Since service of the EN's a second static caravan has been brought onto the site and a porch type structure has been added to one of the static caravans. These items are included in a plan attached to the appellant's evidence but they are not dealt with in any detail in the evidence. Whilst at the hearing the appellant indicated a desire that the porch structure be considered as part of the operational development covered by EN B, there is no ground (a) appeal in relation to EN B.
6. The written evidence submitted by the Pembrokeshire Coast National Park Authority (NPA) intimated some doubt whether the appellant should be afforded gypsy status as defined at paragraph 3 of Welsh Assembly Government Circular (WAGC) 30/2007 "*Planning for Gypsy and Traveller Sites*". However, during the hearing, officers of the NPA stated that gypsy status of the appellant was not disputed. I have

considered the evidence given, in particular relating to the appellant's previous marriage to a gypsy and her continuation of an itinerant lifestyle by regularly attending traveller fairs. Furthermore, I heard that her eldest son spends time with his father and travels with him for the purposes of a trade and that all of her children identify themselves as gypsies. I am satisfied in the circumstances that the appellant and her children fall within the definition of a gypsy for the purposes of WAGC 30/2007 and that accordingly, policy 46 of the Pembrokeshire Coast National Park Local Development Plan (LDP) which relates to Gypsy Sites is of relevance to this appeal.

EN A

The appeal on ground (c)

7. This ground of appeal is that there has not been a breach of planning control. The appellant's grounds of appeal state that the use of the land for grazing of horses is an agricultural activity and thus does not constitute development requiring planning permission. In evidence, the appellant confirmed that there are three horses on the site, one of which is used to drive the cart to gypsy fairs. The appellant also confirmed that the horses are kept on the site and that there is no alternative stabling provision for them. From this information it is clear that the land is used for the keeping of horses and so the appellant has failed to substantiate the ground (c) appeal insofar as it relates to the horses.
8. The grounds of appeal also state that the trailer has been removed from the land. There is no dispute between the parties that this element of EN A has been complied with, however, this is not to state that there was not a breach of planning control when the trailer was present on the land. There is no evidence before me to state that there was no breach of planning control in relation to the siting of the trailer and for this reason I conclude that the ground (c) appeal should fail insofar as it relates to the trailer.
9. Overall, taking the above matters into account, I conclude the appeal made on ground (c) in relation to EN A fails.

EN B

The appeal on ground (c)

10. The appellant argues that the rearing of chickens is an agricultural activity and that the chicken shed is required to provide a safe environment for the livestock. For the purposes of clarity, EN A does not contain any reference to the keeping of chickens. The NPA consider the chicken shed to be operational development and this is not challenged by the appellant. The appellant has not stated upon what legal basis she considers the construction of the chicken shed would not require planning permission. Section 55 (2)(e) of the Town and Country Planning Act 1990 (as amended) provides that the use of land for the purpose of agriculture does not amount to development, however, this relates to the use of land as opposed to the construction of structures. On this basis, the appeal on ground (c) made in relation to EN B fails.

EN A

The appeal on ground (a)

Main Issues

11. I have identified the main issues to be:

- The effect of the development on the character and appearance of the area, in particular, the extent to which the development complies with local and national policies designed to protect the qualities of the Pembrokeshire Coast National Park and the effect on the setting of the Scheduled Ancient Monument.
- The extent to which the development would comply with development plan policy related to Gypsy sites, particularly the location of the site in relation to local services and highways access.
- The general need for, and supply of gypsy and traveller sites in the area and the personal circumstances of the appellant and her family.

The Effect on the Character and Appearance on the area, the National Park (NP) and the impact on the Scheduled Ancient Monument (SAM)

12. The appeal site is situated within the NP and comprises a field adjacent to the highway known as the Ridgeway. The topography of the area is such that the land slopes steadily away from the highway. Whilst there is evidence of development within the wider area, this is sporadic and generally appears to be agricultural in nature and in this regard visually relates to the rural character of the area.
13. WAGC 30/2007 recognises that gypsy caravan sites can be located in rural settings where not subject to specific planning or other constraints¹, however, any statutory duties associated with a designation must be complied with². The issue, therefore, is whether the development would cause harm to the character and appearance of the area. Policy 46 of the LDP provides that proposals for gypsy and traveller sites will be permitted where, amongst other things, the proposal does not cause significant visual intrusion, are sensitively sited in the landscape and satisfactory landscaping is provided.
14. National Parks have a statutory purpose; to conserve and enhance their natural beauty, wildlife and cultural heritage and to promote opportunities for public understanding and enjoyment of their special qualities³. Further guidance is set out within Planning Policy Wales, Edition 7, which states that National Parks must be afforded the highest status of protection from inappropriate developments⁴.
15. In terms of the use of the land, the change from a vacant field to a caravan site would result in a complete change of character. Visually, the creation of an earth bund between the highway and the gypsy site means that the development is not readily visible from the road. There are, however, other public vantage points from

¹ Paragraph 26.

² Paragraph 34.

³ S 61 Environment Act 1995.

⁴ Paragraph 5.3.6.

where the development can be seen including a public footpath which runs through an adjacent field, close to its boundary with the appeal site. The land slopes steadily from the highway to the south of the site where the caravans and other features are located. This assists in the screening of the site. Nevertheless, whilst the bund provides some screening, the bund itself is visible as a conspicuous and alien feature in the landscape. The combination of the caravans, and structures erected for chickens and dogs together with other items associated with a residential use of the site and parked cars appear at odds with the rural character of the area. Therefore, I consider the development would have an unacceptable harmful effect on the character and appearance of the area and I give this matter substantial weight.

16. The appeal site falls within a landscape characterised by open farmland with distant views towards the sea in the south. The construction of the earth bund results in a division of the appeal site and thereby causes a disturbance to the existing field pattern in this part of the NP. Furthermore, the creation of a gypsy site at this location would introduce a residential use together with the visible features of that use including static caravans, structures for the keeping of animals and other domestic type items which would be incompatible with the conservation of the natural beauty of the area. In this regard, the development would fail to accord with policy 15 of the LDP and strategic policy 1 which states that development within the NP must be compatible with the conservation or enhancement of the natural beauty, wildlife and cultural heritage of the park. Consequently, I conclude that criterion (f) of Policy 46 of the LDP would not be met in this case.
17. In relation to the SAM, the tumulus is located in the northern part of the appeal site, close to the boundary with the highway. The tumulus, when viewed on site, appears as an area of slightly raised ground. The guidance as set out within Planning Policy Wales, Edition 7 – July 2014 provides that the desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application⁵.
18. Whilst there is nothing to suggest the current use of the land would cause damage to the tumulus, for the aforementioned reasons, it is clear the development has a significant impact on the setting. I note the comments made by Cadw that the wider location within which the SAM is situated is characterised by an ancient strip field system which is detrimentally affected by the earth bund which serves to sub-divide the field which comprises the appeal site. I consider the construction of the earth bund results in a harmful impact on its setting and therefore detracts from the SAM. Consequently, the development fails to accord with Policy 8 of the LDP which requires that the historic environment is protected and where possible enhanced.

Access to Local Services and Highway Safety

19. Policy 46 of the LDP, states that proposals for Gypsy and Traveller sites will be permitted where, inter alia, the site is well located to serve the needs of Gypsies and Travellers including the need to access local services, and the site has good access to a public road which is safe and direct.
20. In relation to access to local services, I understand that the nearest shops are located in the villages of Lamphey and Jameston, 2.6 and 2.5 km away from the appeal site respectively. The nearest bus route is approximately 2.6 km away from

⁵ Paragraph 6.5.1

the site. Whilst I note the appellant's argument put forward at the hearing that much of the NP is rural and therefore it is not unusual for access to facilities and services to be required by car, the location of the appeal site is such that access to all services would be reliant on a private car. Whilst it may be possible for the appellant to walk a distance of 2.5 km, factors such as the lack of pedestrian footways would make it less likely that she would do so. Taking into account the rural and remote location of the site, I conclude that the development fails to accord with criterion (b) of Policy 46 of the LDP.

21. Turning to highway safety, the NPA's evidence contains representations from Pembrokeshire County Council's Highways Department that visibility when leaving the site is unacceptable due to an inadequate visibility splay. The concern is that visibility to the right for cars leaving the appeal site falls short of the standards as set out in Technical Advice Note 18: Transport (March 2007) (TAN 18) Table A. I note the evidence presented which includes data from a traffic survey carried out which indicated an 85th percentile speed of 45 mph for vehicles traveling towards the site from the east. Whilst the NPA's evidence is that according to Table A of TAN 18, the recommended stopping sight distance (SSD) should be 160 metres, this would equate to a speed of 53mph. An 85th percentile speed of 44mph would require a SSD of 120 metres to accord with the recommendations in table A. Whilst I accept that the available SSD of 70 metres would fall short of the recommendation, I have no diagrammatic evidence before me as to how the 70 meters was calculated, nor do I have any analysis of how the proposed use of the access would compare to the existing agricultural use in terms of the number of anticipated trips. As a result of this, it is not possible for me to make any assessment as to whether a relaxation of the standards would be appropriate in this case. I note the NPA's position that to meet the recommended SSD of 120 metres as set out in Table A it may be necessary to move the boundary hedge and this would require works to the SAM. However, I consider that improvements could be made to visibility such as trimming the hedge, however, these have not been explored.
22. Overall, there is insufficient evidence before me to persuade me that the development would have a harmful impact on highway safety and that the development would fail to comply with criterion (c) of Policy 46 of the LDP. This, however, does not detract from my findings that the development would fail to accord with other development plan policies as set out within this decision.

The Need for Additional Sites

23. PCNPA is not a Housing Authority. Statutory obligations relating to the carrying out of accommodation needs assessments for gypsy and travellers are carried out by Pembrokeshire County Council. These obligations reflect wider duties to promote equal opportunities and to prevent unlawful discrimination on the grounds of race.
24. The NPA's evidence refers to a 2013 Gypsy Traveller Accommodation Need Assessment as providing the most recent statistics. This identified an unmet need for 49 pitches throughout Pembrokeshire by the end of 2018. Accordingly, the NPA acknowledges that there is a shortage of gypsy and traveller sites within the area. No evidence has been presented as to what steps have been taken to address this need nor have I seen anything to indicate to what timescales the County Council are working in terms of site delivery. For this reason, I can only conclude that the need will not be addressed within the foreseeable future. This is a factor to which I attach substantial weight.

Balancing

25. As I have found that the proposed gypsy caravan site at this location would not meet some of the criteria in the relevant development plan policies, it is necessary to weigh other material considerations against this failure to comply with policy. I have found there is an unmet need for gypsy accommodation and this is a material factor and needs to be given weight in dealing with proposals for gypsy accommodation. I acknowledge the lack of alternative accommodation, however, I have also taken into account the appellant's motivation for living on the appeal site and the family's background of living in bricks and mortar accommodation. To this end, there is nothing before me to suggest that suitable alternative accommodation would be limited to caravan pitches and this would allow greater scope for identifying alternative accommodation. The family are concerned that accommodation would not be readily available due to the size of the family and the number of animals they have. I note concerns that this could mean a prolonged period in hostel accommodation which is not considered suitable.
26. I have seen correspondence that the appellant was offered a pitch at the Merlins Bridge site in Haverfordwest, however, this was not accepted since it was a single pitch so was not considered able to accommodate the whole family. This demonstrates attempts by the NPA to assist in finding suitable alternative accommodation, and whilst I accept that the identification of suitable accommodation will not be straightforward in this case due to the size of the family, this does not mean that no accommodation could be found. In this regard I note that the family have not placed themselves on a gypsy site waiting list. Whilst I accept that compliance with the EN's would effectively render the appellant and her family homeless, I consider that alternative accommodation could be secured within a reasonable time frame.
27. Overall I consider that the harm to the character and appearance of this part of the NP, the impact on the setting of a SAM and consequent conflict with adopted development plan policy for the provision of gypsy caravan sites is so significant, it is not outweighed by the unmet need for gypsy accommodation in the area or the particular needs of the appellant and her family. I do not consider there are conditions that can be imposed that would avoid or mitigate the harm I have identified to a degree that would make the development acceptable. I have considered whether a temporary permission would be appropriate in this case, however, I consider the harm to the character and appearance of the NP would be so great that it could not be justified, even for a temporary period. In any event, no temporary consent was sought by the appellant.

Conclusion on the ground (a) appeal

28. For the aforementioned reasons, I conclude that the appeal on ground (a) and the deemed application for planning permission should fail.

The appeals on ground (f) – EN A & B

29. This ground is that the steps required by the notices are excessive. The lesser steps promoted by the appellant are to re-site the caravans and structures to the south western corner of the site, however this is the current location of the caravans and the area closest to the public footpath. For the aforementioned reasons, I have concluded this to be an inappropriate location for the development. In the absence

of any further suggestions by the appellant, I consider the ground (f) appeals should fail.

The appeals on ground (g)

30. This ground is that the time given for compliance should be extended. I am conscious that in upholding the EN's, at the point when the period for compliance expires, the appellant and her family's occupation of the site will be in breach of EN A and the NPA will be able to enforce both EN's, however, if at that point it is clear there is a genuine reason for the continued occupation of the site, the NPA will have a discretion to delay action.
31. I understand that in the circumstances it may not be easy for alternative accommodation for the family to be found, particularly due to the size of the family and the number of animals they have. I also acknowledge that their ownership of the site may be taken into account as an asset which may preclude access to certain benefits, notwithstanding the fact that the land was purchased with the assistance of a loan. It may take some time to sell the land and it is for this reason that I have concluded that the appeal under ground (g) in relation to both EN's should be allowed to the maximum period I consider I can reasonably justify to allow sufficient time for compliance. In so doing, I have balanced the need to allow time for alternative accommodation against the need to ensure the unauthorised use and operational development should not be allowed to continue for longer than is necessary. This is in view of the harmful impact I have identified on the character and appearance of the open countryside, the impact on the special qualities of the NP and the effect on the setting of the SAM. This is a legitimate concern in the public interest. A period of 12 months would strike the appropriate balance between these two conflicting interests. To this limited extent, the appeals on ground (g) succeed.

Human rights and the best interests of the Child – EN A and B

32. As the steps required under EN A require the cessation of the residential use of the site, this would result in an interference with the family's rights as set out in article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act. Compliance with EN A would effectively render the appellant, her partner and the resident children homeless. For the reasons stated above, I am satisfied that alternative accommodation could be secured within a period of 12 months. For this reason I am satisfied that any interference with the family's convention rights would be proportionate to the need to adhere to planning law and policy so that there is no violation of human rights.
33. I am aware that incorporated into my obligations under Article 8 are the obligations under the United Nations Convention on the Rights of the Child including Article 3. The needs of the children affected by the ENs is a primary consideration and the Children's Act 2004 requires that in discharging my functions I must have regard to safeguarding and promoting the welfare and well-being of the children. I am aware that all but one of the children are in full time education, the youngest being below school age. The best interests of the children are to have consistent care and no lasting interference with their development. There would be no disturbance in the care available to the children since their parents would move with them. I am satisfied that the best interests of the children would not be compromised in this case.

Conclusion – Appeal A

34. For the reasons given above, I consider the appeal should succeed in part only, insofar as it relates to the appeal made under ground (g). Otherwise, I will uphold the EN and refuse to grant planning permission on the deemed application.

Conclusion – Appeal B

35. For the reasons given above, I consider the appeal should succeed in part only, insofar as it relates to the appeal made under ground (g). Otherwise, I will uphold the EN.

Formal Decision

EN A

36. I direct that the EN be varied in paragraph 5 as follows:

37. "Time for Compliance: 12 months beginning with the day on which this notice takes effect"

38. Subject to the above variation, I dismiss the appeal and uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the Town and Country Planning Act 1990 (as amended).

EN B

39. I direct that the EN be varied in paragraph 5 as follows:

40. "Time for Compliance: 12 months beginning with the day on which this notice takes effect"

41. Subject to the above variation, I dismiss the appeal and uphold the enforcement notice.

Janine Townsley

Inspector

APPEARANCES

FOR THE APPELLANT:

Andrew Vaughan-Harries	Hayston Developments and Planning Ltd
Bsc (Hons) Dip TP MRTPI	
Mrs Ceri Boswell	Appellant
Mr Richard Scarfe	Appellant's partner

**FOR THE NATIONAL PARK
AUTHORITY:**

Karen Bolton LLB(Hons) MSc	Enforcement Officer PCNPA
Alan Southerby	Temporary Head of Development Management
Dip TP MRTPI	
Perry Bowen	Pembrokeshire County Council

INTERESTED PERSONS:

Mr and Mrs Minchin	
P Kidney	County Councillor Manorbier Newton
P Groom	Cadw
J Long	Community Councillor Manorbier Newton

DOCUMENTS

Copy letters notifying appeal Hearing date



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 12/04/16

gan **Janine Townsley LLB (Hons)**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 20/05/16

Appeal Decision

Site visit made on 12/04/16

by **Janine Townsley LLB (Hons)**

an Inspector appointed by the Welsh Ministers

Date: 20/05/16

Appeal Ref: APP/L9503/F/15/3138397

Site address: Cadwaladers Coffee Shop, 1 Cheltenham House, Tudor Square, Tenby, SA70 7AD.

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

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Cadwaladers (Cardiff) Ltd against a listed building enforcement notice issued by Pembrokeshire Coast National Park Authority.
 - The Authority's reference is EC15/0104.
 - The notice was issued on 15 October 2015.
 - The contravention of listed building control alleged in the notice is the following works ("the works") have been executed to the ground floor of the building without listed building consent: (i) removal of the traditional timber shop front comprising a central opening with door and two clear fixed panes as shown in the attached photograph entitled "Exhibit A"; (ii) installation of a new shop front with an enlarged entrance as shown in the attached photograph entitled "Exhibit B".
 - The requirements of the notice are to (i) remove the new shop front installed in the front elevation of the ground floor of the building; (ii) reinstate a traditional shop front in the building to match the former design as set out in Exhibit A and in accordance with NP/401/85 and NP/402/85 being the planning permission and listed building consent granted for the removed shop front to the building on 20th January 1986 (Exhibit C). The re-instated shop front to the building shall be constructed of timber, comprising two fixed clear panes flanking a central doorway, set flush with the windows. Windows shall have plain sills, these running level from the uppermost point of the street gradient, with plain-tiled flush plinths. Central door to be of single leaf design with two plainly glazed panes, the lock-rail set slightly below midway; plain over-light. Existing fascia signage to remain; (iii) make good any damage caused to the building by carrying out the above.
 - The period for compliance with the requirements is four months.
 - The appeal is made on the grounds set out in section 39(1)(e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is allowed and the listed building enforcement notice is quashed. Listed building consent is granted for the retention of a new shop front with an enlarged entrance at Cadwaladers Coffee Shop, 1 Cheltenham House, Tudor Square, Tenby, SA70 7AD as set out in the formal decision.
-

Main Issue

2. The appeal is proceeding on ground (e) which asserts that listed building consent ought to be granted for the works. In this regard, I have identified the main issue to be the effect of the alleged unauthorised works on the character of the listed building as a building of special architectural or historic interest.

Reasons

Background

3. The appeal building is a Grade II listed building which forms part of the Cheltenham Houses which are located on the north side and west end of St Julian's Street at the junction with Tudor Square.
4. The building was listed in 1977 and the description amended following re-survey in 2002. The list description notes the shop fronts had been altered since 1977; "no longer with doorways in centre". The Pembrokeshire Coast National Park Authority (NPA) accepts that the design of the shop front in 1977 is unknown; albeit the list description makes reference to old photographs showing No.s 1-2 Cheltenham House "with paired doors in centre and different shop fronts." I understand that these photographs are not available. In 1986, listed building and planning consents were granted for a new shop front, sunblind and fascia sign¹. These consents were implemented. There is no evidence to suggest any changes to the shop front from implementation of the 1986 permission until the removal of the said shop front which gave rise to these enforcement proceedings.
5. The building was listed for "group value as part of the sequence of commercial properties along the north side of this important street".
6. The site falls within the Tenby Conservation Area (CA).

The effect of the alleged unauthorised works on the character of the listed building as a building of special architectural or historic interest.

7. I am required to take account of section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states that, in considering whether to grant listed building consent for any works, special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. There is no statutory requirement for me to have regard to the provisions of the development plan in listed building cases. However, where these policies express the NPA's stance on such matters, I have taken them into account as a consideration.
8. I have been provided with a photograph of the removed shop front which had a single central door with two full height fixed glazed panels either side, a configuration which paid little reference to the information within the original listing. This is an important material consideration in this case. Furthermore, the removed shop front, as approved in 1986, was not of any particular merit. I also note that the listing description makes reference to paired buildings, the adjacent building being now occupied at ground floor level by John Francis. This building which also forms part of the Cheltenham Houses, has a shop front with a single side door, a large central fixed

¹ NP/401/85 and NP/402/85

pane and a void on the other side which gives access to a door which does not appear to serve the commercial area. This shop front therefore differs from the appeal building and from the original which would have had paired central doors. For these reasons, I consider the significance of the building does not lie in the design of the shop front.

9. I note the NPA's concerns that the replacement door is designed in such a way that it opens back creating a more open frontage. The NPA feels this is out of keeping with other shop fronts in the area. As I observed on site, however, there are a variety of shop front styles in the area. I acknowledge that when fully open, there is increased access into the building than previously, however, the solid to void ratio to the ground floor remains unchanged. Furthermore, the reference within the listing description to original paired doors would also have afforded a opportunity for a wider than single opening.
10. When closed, the replacement design differs insofar as there is a central mullion in the right hand side glazed panel. Due to the variance of the removed shop front with the original shop front and the alternative design of the neighbouring building, I conclude that this in itself does not detract from the character of the listed building.
11. Overall, taking all of this into account, I consider that the replacement shop front has no detrimental effect on the character of the listed building.

Other matters

12. I note reference within the NPA's evidence that the development is harmful to the character and appearance of the CA, since the increased area of opening provided by the bi-folding door has the effect of creating the appearance of a servery. However, I have not been referred to any internal changes which would suggest this to be the case. From my own observations on site, the counter is set some distance within the premises and therefore there is no justification for the suggestion that the increased opening would result in this effect. I acknowledge the NPA's assertions that this is an area where traditional shop fronts form the strong grain of the heart, however, as I have already identified, there are a wide variety of shop fronts evident and for this reason I conclude that there is no adverse effect on the character and appearance of the conservation area.
13. As part of the determination of this appeal, I have given consideration as to whether any conditions are necessary. No conditions have been suggested by the NPA and I do not consider it reasonable or necessary to impose any conditions on the development before me.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the works undertaken do not have a detrimental impact on the character of the listed building as a building of special architectural or historic interest and for this reason, the appeal under ground (e) succeeds.

Formal Decision

15. I allow the appeal, and direct that the listed building enforcement notice be quashed. I grant listed building consent for the removal of the traditional timber shop front comprising a central opening door and two clear fixed panes as shown in the photograph entitled "Exhibit A" and the installation of a new shop front with an

enlarged entrance as shown on the photograph entitled "Exhibit B" at Cadwaladers Coffee Shop, 1 Cheltenham House, Tudor Square, Tenby, SA70 7AD.

Janine Townsley

Inspector