REPORT OF THE DEVELOPMENT MANAGEMENT TEAM LEADER ON APPEALS

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

NP/15/0310/FUL	Eco-smallholding, including one dwelling - One Planet Development Land Adjacent to Castle Hill, Newport, Pembrokeshire, SA420QE
Type	Hearing
Current Position	The Hearing took place on 1st November 2016. We await the Inspectors Decision.

NP/15/0031/OUT	Residential development - 27 dwelling units (outline seeking approval of Access & Layout) Land off Trewarren Road, St Ishmaels, Haverfordwest, Pembrokeshire, SA62 3SZ
Type	Inquiry
Current Position	The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.

NP/15/0649/CLE	Certificate of lawfulness for seasonal use as camping with car park Slate Mill Lodge, Dale
Type	Hearing
Current Position	The Hearing took place on 22nd November 2016. We await the Inspectors Decision.

NP/16/0440/FUL	Retrospective application for yurt, platform and washroom, and interpretation panel – Felin Isaf, Feidr Treginnis, St Davids
Type	Hearing
Current Position	A Hearing has been arranged and will take place on 25th April 2017.

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 27 & 28/10/16
Ymweliad â safle a wnaed ar 28/10/16

gan Clive Sproule BSc MSc MSc MRTPI MIEnvSci CEnv

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04.01.2017

Appeal Decision

Inquiry held on 27 & 28/10/16
Site visit made on 28/10/16

by Clive Sproule BSc MSc MSc MRTPI MIEnvSci CEnv

an Inspector appointed by the Welsh Ministers

Date: 04.01.2017

Appeal Ref: APP/L9503/A/16/3149101

Site address: Land off Trewarren Road, St Ishmaels, Haverfordwest, Pembrokeshire SA62 3SZ

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Messrs Warren Marshall & David Warren Davis against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/15/0031/OUT, dated 19/01/2015, was refused by notice dated 11/11/15.
- The development proposed is residential development – 27 dwelling units.

Decision

1. For the reasons that follow, the appeal is dismissed.

Application for Costs

2. At the Inquiry an application for costs was made by Messrs Warren Marshall & David Warren Davis against Pembrokeshire Coast National Park Authority ('the NPA'). This application will be the subject of a separate Decision.

Procedural matter

3. Application documents and submissions to the inquiry confirmed the proposal to have been made in outline with details regarding access and layout provided for determination at this stage. Appearance, landscaping and scale are matters reserved to a later date.

Main Issue

4. With reference to the NPA's reason for refusal and the representations in this case, the main issue is considered to be whether the appeal scheme would provide a suitable approach to the provision of affordable housing and planning obligations.

Reasons

Affordable housing

5. The NPA's reason for refusal states that: the proposal would fail to provide a suitable mechanism to allow the reappraisal of affordable housing and planning obligations at reserved matters and commencement stages; and, this would be necessary to allow full consideration of options available to deliver affordable housing on site.

6. Policy 6 of the Pembrokeshire Coast National Park Local Development Plan (end date 2021) ('the LDP') deals with the Rural Centres in, or partly within, the National Park. St Ishmaels is one of the Rural Centres listed in the policy as being within the National Park. LDP Policy 6 criterion a) notes the land use priorities for Rural Centres includes the aim to meet housing and in particular affordable housing needs.

7. Supporting text to the policy confirms the strategy for Rural Centres to seek: some additional development, in particular affordable housing, that by 2021 helps to sustain local facilities and reduce the need for travel to larger centres; along with by 2021 improvements to water supply and sewage infrastructure and accessibility to larger centres.

8. Overall housing provision is the subject of LDP Policy 44 *Housing (Strategy Policy)*. It states that over the plan period land will be released for the provision of approximately 962 dwellings.

9. LDP Policy 45 is entitled *Affordable Housing (Strategy Policy)*. To deliver affordable housing as part of the overall housing provision it states that the NPA will, amongst other things, seek to negotiate 50% affordable housing to meet the identified need in all centres (except those centres identified for a higher rate) or seek a commuted sum to help with the delivery of affordable units. Although the policy clearly seeks 50% affordable housing on the appeal site, it is equally clear that figure would be achieved by negotiation and consequently, the negotiated figure could be anything up to 50% dependent on the circumstances of the site and the proposal.

10. LDP Policy 45 also states that where financial viability would prevent a proposal delivering LDP policy requirements, in negotiations priority will be given to affordable housing over other policy requirements (such as sustainable design standards). There is nothing in the policy that expressly releases a site from contributing to affordable housing provision on the basis of lack of viability.

11. LDP Policy 20 *Scale of Growth (Strategy Policy)* states that it is to provide for development which aims to meet the needs of the local population with priority being given to affordable housing needs where this is compatible with the National Park designation.[1] The NPA is unambiguous that there is a need for affordable homes in the locality which includes the appeal site.

12. LDP allocation MA733 includes the appeal site. The allocation is listed within LDP Table 8, which deals with the *Phasing of Housing & Mixed Use Sites*. The allocation wraps around the site of St Ishmaels County Primary School and also could provide additional land for school. Nevertheless, it has been confirmed that land within the allocation will not be needed for the expansion of the school site.

[1] Inquiry Document (ID) 1

13. Supporting text to LDP Policy 45 states that *Planning guidance on affordable housing prepared jointly with Pembrokeshire County Council will require updating.*[2] The LDP was adopted in September 2010. Subsequently in November 2014, the NPA adopted *Affordable Housing: Supplementary Planning Guidance* ('the SPG'). Paragraph 1.3 of the SPG notes that, in accordance with *Technical Advice Note 2: Planning and Affordable Housing* ('TAN 2'), it provides detailed guidance on affordable housing. For LDP allocation MA733,[3] the SPG states that the 'Old' percentage for affordable housing provision of 50% in LDP Policy (42 and) 45 is now 30%.[4]

14. As such, the link between the SPG and adopted development plan policy is clear and its production was foreseen by the LDP. It is not apparent that the LDP foresaw the need to lower the percentage of affordable housing sought through adopted policy, but evidence in this case notes that the LDP Examination Inspector recognised the LDP affordable housing objectives to have been ambitious.

15. The wording of LDP Policy 45 recognises that many factors can affect the deliverability of a site and the level of affordable homes sought by adopted planning policy.[5] The 50% objective has been found to be overly ambitious. There has been no formal review of the LDP and the principle of negotiating a suitable level of affordable housing remains within adopted development plan policy, which continues to carry the full weight of its statutory priority.

16. The NPA's case is clear that the LDP enables market housing to come forward to subsidise the provision, and increase the proportion, of affordable housing. Paragraph 4.10 of the SPG states that, where a scheme is demonstrated to be unviable with the policy level of affordable housing, the alternative options to deliver affordable housing include *Mechanisms to reappraise schemes at commencement.*

17. The economic downturn and the uncertainties associated with it were present during the period that also saw the adoption of the LDP, and the SPG was produced soon afterwards. It is not known to what extent similar economic and market fluctuations are likely to reoccur, but if they were to, the SPG would enable LDP affordable housing objectives to be delivered by '*alternative options*' that include reappraisal mechanisms.

18. The reduction of the LDP Policy 45 objective of 50% affordable housing provision to 30% is only one element of the SPG. Overall, the SPG provides the '*...Planning guidance on affordable housing...*' sought by the LDP. Paragraph 1.6 of the SPG states the objectives for the document. These include providing clear guidance on how LDP policies will be implemented by the NPA. Consequently, the SPG attracts significant weight as a consideration in the determination of this appeal.

19. Within the context of the housing market in the locality and the wider area, the proposed dwellings may be considered 'reasonably priced'. However, they would not be 'affordable' homes as set out within paragraph 9.2.14 of Planning Policy Wales - 9th

[2] LDP paragraph 4.208
[3] Which the SPG refers to as 'MA773'
[4] Appendix 4 of the SPG indicates the 'New percentage' to assume 55% Acceptable Cost Guidance rate, updated for sprinklers and 20% profit and 5% intervals viability testing. The applicability of the 'New percentage' of 30% to this case was highlighted within the opening statement of behalf of the NPA.
[5] With paragraph 4.3 of the SPG highlighting a need for negotiation where viability is an issue and the flexible implementation of LDP policies

edition ('PPW'), which seeks mechanisms to be in place to ensure the dwellings would be affordable in perpetuity to those who cannot afford market housing.

20. On grounds of viability, the appeal scheme would not provide affordable homes within the development on the appeal site, nor would the proposal provide a commuted sum for the provision of affordable homes elsewhere. Consequently, the appellants accept that the appeal proposal conflicts with affordable homes policies as stated within the LDP and SPG. The appeal proposal conflicts with both LDP Policy 45 and the SPG by failing to make provision for affordable housing as part of the overall scheme. In addition, the appellants are unwilling to enter into a planning obligation that would reassess the viability of the scheme at a future date, which also conflicts with the SPG.

21. Regulation 122 of the Community Infrastructure Levy ('CIL') Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission if it is: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development.

22. Guidance from the Welsh Assembly Government, entitled *Delivering affordable housing using section 106 agreements: A Guidance Update September 2009* ('the 2009 Guidance Update') provides a clear context for the review mechanism included within the SPG. Paragraph 5.1 of the 2009 Guidance Update notes that 'mechanisms' may enhance scheme viability and maintain momentum, while guarding against the developer/landowner 'pocketing' an advantageous planning permission that is subsequently implemented when the market picks up.

23. The NPA has sought a 'suitable mechanism' to reassess viability at the reserved matters stage and at commencement of the development. *Alternative options to deliver affordable housing* listed in paragraph 4.10 of the SPG only refer to the reappraisal of schemes at commencement. In addition, paragraphs 5.21-5.23 of the 2009 Guidance Update deal with *Reviewing obligations through the life of a permission* at defined stages of a scheme's development, noting this would only be expected to be relevant to larger sites.

24. The 2009 Guidance Update resulted from a need to maintain the delivery of affordable homes following the impact of the economic downturn on the housing market.[6] Measures within the 2009 Guidance Update include reduced obligations requirement in combination with short-life planning permissions.[7] In this appeal, suggested conditions would not provide reduced timescales for commencement for the proposal to be a 'short-life' planning permission.

25. It is understood that the appellants had offered a shorter implementation period in this case, but the NPA did not accept the offer due to the potential for a scheme to be commenced and then delayed. Although the appellants believe that a significant change in the viability of this site would take a change in the local economy 'that is nigh on impossible', that seems overly pessimistic given the potential for there to be significant change in property markets. Such change informed the 2009 Guidance Update.

26. The appellants are unambiguous that the reappraisal mechanism is preventing developers and investors taking an interest in the appeal site. It is the NPA's view

[6] Paragraph 1.1 of the 2009 Guidance Update
[7] For example, pages 25 & 26 of the 2009 Guidance Update

that the appeal scheme would not come forward except with a very significant upturn in market conditions, and that supports the use of a review mechanism as the extent of such an upturn cannot be known.

27. Within the context of the 2009 Guidance Update, scheme reappraisal is noted to be relevant to larger sites. The appeal proposal may not be of sufficient scale to be considered a 'larger' site, but the contribution that it could make to the delivery of affordable homes would be locally significant in the National Park.

28. The SPG followed the 2009 Guidance Update and the simplified approach to reappraisal within paragraph 4.10 of the SPG reflects the scale of development planned for within the National Park. The appeal proposal would not be a short-life planning permission where the appropriateness of the lack of affordable housing provision could be reappraised before planning permission is renewed. This highlights the appropriateness of any planning permission resulting from this appeal being subject to a mechanism to reappraise the scheme prior to commencement. However, no mechanism is put forward for consideration.

29. The NPA has no policy support for including reappraisal at reserved matters stage, and that stage could come very quickly after any grant of outline planning permission.

30. The appellants are landowners and would be selling the site on to developers to build the dwellings. The viability of the scheme has been tested twice. A Three Dragon's Viability Study, dated 19 September 2014 and produced by the NPA's Appraisal Officer, concluded that due to the weak property market in St Ishmaels the appeal scheme and the alternatives tested were found to be unviable both with and without the provision of affordable housing. Subsequent testing had the same outcome. The appellant's case, using the Three Dragons toolkit, indicates the site to have a residual land value of minus £1.89 million with no affordable homes provision. In current market conditions, this evidence suggests that no developer would return a profit from developing the appeal scheme.

31. A local developer may accept a smaller return from the development, or be able to reduce their costs in building out the site. A reappraisal mechanism may result in a perception of risk or reduced potential profit for a developer or investor. However, a reappraisal would only be expected to seek a contribution towards affordable housing where it could be done viably. A viable scheme would include an element of profit and if a scheme could contribute to affordable housing provision, adopted planning policy for the National Park confirms that it should do so.

32. The appeal scheme would provide additional market homes in St Ishmaels. However, development plan policy prioritises the delivery of affordable homes,[8] which the NPA has confirmed to be the housing need as population is declining.

33. Market house prices in St Ishmaels are lower than elsewhere in the National Park. This confirms the highest pressures for market housing to be in other National Park locations, and in particular those nearest to the coast and within certain coastal settlements. The LDP does not seek to reinforce this variation nor does it expressly plan for 'reasonably priced homes' in particular parts of the National Park.

[8] Within the context of PPW paragraph 9.2.14

34. There has been a slow delivery of market housing under the LDP. Even so, the clear strategic priority within the LDP is to deliver affordable homes and the rate of market housing delivery must be set against that.

35. If the appeal scheme were to be developed, there would be no guarantee that the proposed market dwellings would remain within their current price band and accessible to those who could buy them within existing market conditions. As noted above, the proposed dwellings would not be 'affordable' homes and the benefits of additional market homes in St Ishmaels does not outweigh the conflict with adopted planning policy that results from the failure to provide for affordable homes through a reappraisal mechanism.

36. The appeal site forms part of an allocation for development within the National Park. Its development would be expected to contribute to the economic and social well-being of local communities, but social well-being is expressed within adopted planning policies that include those with which the proposal conflicts.

37. Paragraph 2.3 of the SPG confirms that: between 2007 and 2013, only 21 of the 289 dwellings built within the National Park were affordable homes; and, this represents a rate of 3 affordable dwellings per year, whereas the plan seeks to develop 35 affordable dwellings per year between 2006 and 2021. The identified need, and LDP priority,[9] for the delivery of affordable homes is not being met. Use of a mechanism to reappraise schemes at commencement is adopted NPA planning policy. It would ensure that, if possible, the appeal scheme provides for affordable homes in a manner that within the context of viability, for the reasons set out above, would be fair to developers and compliant with the development plan.

38. Provision of a mechanism for reappraisal is therefore necessary to make the development acceptable in planning terms (and such a planning obligation would meet the other parts of CIL Regulation 122).

39. The conclusion of the NPA Officer's report on the application, dated 11/11/15, recommended that planning permission be refused due to the necessity for, and absence of, a planning obligation and resulting conflict with LDP policies. It followed a report, dated 30/09/15, that had concluded the development would be 'acceptable in principle' subject to planning conditions and a planning obligation for the reappraisal of viability at reserved matters and construction phases.

40. The NPA Officer's reports on the proposal have not explicitly addressed CIL Regulation 122. However, in making its decision the NPA had a report that dealt with the tests within Welsh Office Circular 13/97, which are the matters that are the subject of CIL Regulation 122. The scheme would only have been acceptable with a mechanism for reappraisal to establish if the development could, at that point, make provision for affordable homes.

41. In this regard, I note that the NPA refers to Inquiry Document 5. It concerns a proposal for 84 houses where the appeal decision took into account (as compliant with CIL Regulation 122 and therefore lawful) a planning obligation that enabled viability reappraisal following 50% completion to address the potential for affordable homes provision in an area with known under delivery.

[9] Including as expressed within LDP Policy 20

42. The appellants refer to a decision in relation to an appeal made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.[10] In that case the Inspector's decision and the reasoning within the decision letter are set within the context of the guidance that applied in that case. That guidance and its context differs from the 2009 Guidance Update and the national and locally adopted planning policies that are relevant to this case. For the reasons above, I have found the use of a reappraisal mechanism, if done so in accordance with adopted planning policy, to be appropriate in this case.

43. My attention has been drawn to evidence being prepared for a replacement LDP, which appears to confirm themes within the evidence in this case. However, within the context of the current LDP, including its evidence base, strategy, priorities and the plan period, a convincing case has not been made for the flexible application of existing LDP policies (beyond that provided by the LDP and SPG) prior to their replacement (or review).

44. For the reasons above, appeal scheme conflicts with LDP Policy 45 and the SPG. It would not provide a suitable approach to the provision of affordable housing and planning obligations.

Other matters

Layout

45. The layout would set the proposed dwellings back from the new junction with the existing highway. Retaining the vegetated area around the site entrance would ensure that the developed allocation would continue to contribute to the rural character of the settlement. The proposed layout would be within the context of the changing levels across the appeal site. It would reflect existing patterns of development within St Ishmaels and protect local living conditions, while making efficient use of the land to comply with the relevant parts of the LDP, which include Policies 8, 29 and 30.

Access

46. The Highway Authority has raised no objection to the proposal, which would create a highway access with visibility splays suitable for the observed conditions. Given the nature of Trewarren Road and the traffic movements at the proposed access onto the existing highway, the new junction would provide a safe and suitable access to the development. As such it would comply with the relevant parts of the LDP, which include Policies 29, 52 and 53.

Water

47. Concerns have been raised regarding the capacity of St Ishmaels Waste Water Treatment Works (WwTW) to cope with the additional waste water that would be produced from the development. Dŵr Cymru/Welsh Water (DC/WW) objected to the proposal on the basis that it would overload the WwTW and no improvements are planned within DC/WW's Capital Investment Programme.[11] However, it is not a reason for refusal nor did the NPA suggest that it should be.

[10] Appeal Ref: APP/Q1255/S/15/3005876 for Land to the rear of 14-24 Langley Road, Poole BH14 9AD at Appendix E of Mr Anderson's proof of evidence

[11] Currently AMP 6 for the period 2015-2020

48. The appeal proposal is on an LDP allocated site where development can be expected to occur. DC/WW has confirmed its position to be that a temporary solution would be inappropriate and the per capita domestic water consumption figure used for its Developer Impact Assessment to be appropriate. However, whether the appeal scheme would require works to the WwTW is dependent on the order in which developments on the LDP allocation come forward. In addition, the suggested conditions before the inquiry include conditions that would seek to address this issue. As such, no conflict has been identified with LDP policy.

Conclusion

49. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching my decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.

50. In the absence of a planning obligation that provides a mechanism for reappraising the scheme at commencement, the appeal scheme conflicts with adopted planning policy objectives for the provision of affordable homes within LDP Policy 45 and the SPG.

51. For the reasons above no considerations, including the scope of possible planning conditions, have been found to outweigh the policy conflict to indicate that a decision should be made other than in accordance with the LDP. Consequently, the appeal should be dismissed.

Clive Sproule

INSPECTOR

APPEARANCES

FOR THE NATIONAL PARK AUTHORITY:

Luke Wilcox	Of Counsel,
	Instructed by Ms Jane Gibson
He called	
Jane Gibson	Director of Park Direction and Planning, Pembrokeshire Coast National Park Authority

FOR THE APPELLANTS:

Sarah Clover	Of Counsel,
	Instructed by Mr Roger Anderson
She called	
Christopher Hunter FRCIS	Director, RK Lucas & Son Chartered Surveyors
Ian Osborne BA DipTP	Associate, Roger Anderson & Associates
Roger Anderson MRTPI	Principal, Roger Anderson & Associates
John S Cooper CSci CChem CWEM MRSC FCIWEM DipWEM	Consultant

INTERESTED PERSONS:

Revd. Mike Cottam

INQUIRY DOCUMENTS (ID)

1 LP Policy 20 – Scale of Growth (Strategy Policy)

2 LP pages 70-79 '*Priority E: Affordable Housing and Housing*'

3 Suggested conditions from the appellants

4 Diagrams of the St Ishmaels STW

5 Appeal and Costs decisions in relation to appeal ref: APP/W3710/A/12/2176750 – Midland Road, Nuneaton, Warwickshire

6 Costs decision in relation to appeal ref: APP/Q1255/S/15/3005876 – Land to the rear of 14-24 Langley Road, Poole BH14 9AD

7 A *Skeleton Argument on Costs* from the appellants

8 An e-mail, dated 09:35hrs 04-Oct-16, from the NPA to The Planning Inspectorate noting that appellants' proofs of evidence had yet to be received, the NPA would not be signing the SoCG, and the NPA would be relying on its Statement of case

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar gostau

Ymchwiliad a gynhaliwyd ar 27 & 28/10/16
Ymweliad â safle a wnaed ar 28/10/16

gan Clive Sproule BSc MSc MSc MRTPI MIEnvSci CEnv

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17.01.2017

Costs Decision

Inquiry held on 27 & 28/10/16
Site visit made on 28/10/16

by Clive Sproule BSc MSc MSc MRTPI MIEnvSci CEnv

an Inspector appointed by the Welsh Ministers

Date: 17.01.2017

Costs application in relation to Appeal Ref: APP/L9503/A/16/3149101
Site address: Land off Trewarren Road, St Ishmaels, Haverfordwest, Pembrokeshire SA62 3SZ

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 Messrs Warren Marshall & David Warren Davis for a full or partial award of costs against Pembrokeshire Coast National Park Authority.
- The inquiry was in connection with an appeal against the refusal of planning permission for residential development – 27 dwelling units.

Decision

1. For the reasons that follow, the application for a full or partial award of costs is refused.

The submissions for Messrs Warren Marshall & David Warren Davis

2. A *Skeleton Argument on Costs* (ID7) sets out the background to the application and the relevant principles contained within Welsh Office Circular 23/93 – *Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings* ('the Circular'). The application is made on four grounds.

3. Ground 1 – With reference to Annex 3 paragraph 7 of the Circular, the NPA's refusal of planning permission was unreasonable as it prevented or delayed development that could reasonably be permitted as proposed in the LDP. Viability in this location is dictated by entrenched market conditions that are very unlikely to change over long periods of time, and that must be known to the NPA. Repeated review mechanisms would fundamentally undermine the marketability of the site, and national policy does not mention review mechanisms for viability testing. This appeal concerns an allocated site that is acceptable in planning terms and as such, a planning obligation for a review mechanism would not be necessary to be in accordance with CIL Regulation 122.

4. Ground 2 – The appellants felt hampered by the NPA's approach to the case and the brevity of the evidence presented on its behalf. The NPA did not wish to proceed by way of an inquiry and refused to produce evidence to substantiate the reason for

refusal. This led to four witnesses being called by the appellants to address any matters that might arise from the NPA's Statement of Case.

5. The inquiry procedure rules are clear and the NPA's approach does not comprise the production of evidence.[1] Contrary to the procedure rules, the Statement of Case does not indicate who the author is or who would be presenting evidence. In addition, the Statement of Case is contradictory stating that there is a single reason for refusal, but elsewhere indicating another matter on which the appeal might be decided,[2] and it does not address possible planning conditions.

6. It is not the Planning Inspectorate's role to exempt a party from the approach set down when a costs application could follow. The NPA's case at inquiry was much more fulsome than the Statement of Case envisaged, which was a case of 'keeping the powder dry' as evidenced by the time taken to cross-examine.

7. Ground 3 – Sewage treatment capacity looked like a new reason for refusal, even if it does not clearly say that it is a point that would be relied on. Having raised the matter, the NPA has taken responsibility for it and Mr Cooper had to attend to address it.

8. DC/WW are not empowered to operate a veto on development which is otherwise required, or desirable in the public interest. It is DC/WW's statutory duty to make adequate sewage treatment provision within a reasonable timescale for development proposed in an adopted development plan.

9. Ground 4 – Reference is made to paragraphs in section E.8 of Annex E of the *Procedural Guidance Planning Appeals and Called-in Planning Applications – Wales June 2016* ('the procedural guidance'). There has been an unreasonable lack of co-operation with the appellants by the NPA refusing to sign a Statement of Common Ground ('SoCG'). The draft was presented three times and discussed at a meeting specifically arranged for the purpose of considering the first draft. The current approach is to highlight what is agreed and what is not. The NPA has simply refused to co-operate, which constitutes unreasonable behaviour with reference to Annex 3 of the Circular.

The response by Pembrokeshire Coast National Park Authority

10. Ground 1 – The use of a review mechanism is necessary to make the proposal acceptable in planning terms. It is clear from page 18 of the NPA Officer's second planning report that necessity was advanced as a planning consideration because affordable housing is the principle planning consideration in this case. Even if the NPA's case is unsuccessful on this point, it does not follow that it has been unreasonable. The situation was materially different for appeal ref: APP/Q1255/S/15/3005876, where national policy in England expressly pointed against future retesting.[3] Substantive points have been addressed in closing submissions.

11. Ground 2 – Ms Gibson confirmed in Evidence in Chief that the only difference between the Statement of Case and a Proof of Evidence would have been the title of the

[1] Reference is made to paragraphs 1.2.2, 1.2.3, 1.2.4, 1.3.1, 1.3.2 and Annex E – Inquiries Procedure of the *Procedural Guidance Planning Appeals and Called-in Planning Applications – Wales June 2016*

[2] In regard to a sewage treatment upgrade at paragraph 2.4 of the NPA Statement of Case

[3] As noted in paragraph 8 of ID6

document. Ms Gibson's authorship was clearly identified and every document she referred to in evidence was already before the inquiry, and that was the basis on which she was heard. Given the circumstances, the e-mail between the NPA and the Planning Inspectorate indicates clearly that there is no real prejudice.

12. This amounts to an attack on the evidence the NPA chose to present, and that is an attack on the NPA. The evidence amply supports the evidence the NPA has advanced. It is clear from the Statement of Case what the NPA's case would be and that has been borne out by the case that emerged from the NPA. It may be that the Statement of Case could have been better, but that would be true of any Statement of Case. The appellants' Statement of Case does not raise CIL Regulation 122 compliance. The NPA does not seek to place a Counsel of perfection on them, but demonstrate that the NPA standard of drafting is reasonable in the circumstances.

13. Ground 3 – It is clear that affordable housing was and always has been the NPA's reason for refusal. It is not disputed that the appellants have been put to expense on the water issue but the fault, if any, lies with DC/WW. The company 'set the hare running' and failed to attend. If the NPA is informed of concerns by a statutory body, the NPA could hardly fail to inform the inquiry of them as the Inspector has to reach a decision having taken all factors into account.

14. Ground 4 – Negotiations did take place and reached a point where the NPA prepared and sent a draft SoCG to the appellants, but the appellants indicated that they would be focussing on preparing proofs of evidence. The NPA, reasonably, took that as an indication of the appellants not wishing to engage further, but instead the appellants sent an unagreed version of the SoCG to the Planning Inspectorate. There has been a breakdown in negotiations and the relationship. It is clearly 'six of one and half a dozen of the other', and certainly not worthy of an award.

Reasons

15. The Circular confirms that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

Ground 1

16. Policy is not supportive of reappraisal at reserved matters stage, but the NPA has shown that the use of a review mechanism is appropriate for this site at commencement. The presence of a planning obligation with a review mechanism may deter some potential investors or developers, but NPA's case provided clarity regarding the current context of the site and the likely effect of reappraisal. It would facilitate the delivery of policy objectives and the background to its inclusion within the SPG has been demonstrated. The NPA has shown that its approach to the identified policy conflict and determination of the application was reasonable, and that the reappraisal mechanism was necessary to make the proposal acceptable in planning terms.

Ground 2

17. In calling four witnesses the appellants addressed the range of matters that were relevant to the appeal. It is not unusual for an appellant to have a greater number of witnesses than the local planning authority to deal with all representations, and the breadth of objections, that might carry weight in the determination of the appeal.

18. The appellants' disapproval of the NPA's approach to the case was evident during the inquiry. However, the NPA's reliance on the Statement of Case had been discussed with the Planning Inspectorate within the procedures followed during the period leading up to the inquiry. This brevity reflected the case being made in response to the appeal and the NPA was unambiguous regarding the conciseness of its case. It was not apparent that the NPA had been 'keeping its powder dry', which would have been unreasonable.

19. Nor would it have been appropriate for the NPA to stay silent on matters regarding the capacity of the sewage treatment plant if that could have a bearing on the acceptability of the proposal, even if the matter was not being put forward as a reason for refusal. Planning policies and other documents referred to by the NPA were included in the NPA's appeal Questionnaire response. Also within this bundle of information is the NPA Officer's report, dated 30/09/15, which included possible planning conditions. These were all before the inquiry in accordance with procedure, and were referred to by parties during it.

20. The NPA presented evidence to the inquiry and was cross-examined on it. The purpose of the NPA's cross-examination was to test the opposing witnesses' evidence. There was nothing unusual in the length of the NPA's cross-examination given the length and nature of the evidence set against the reason for refusal. No procedural matters in relation to Ground 2 have been shown to disadvantage another party, or to have been unreasonable behaviour that led to unnecessary or wasted expense being incurred.

Ground 3

21. Given the sequence of events described in relation to the sewage treatment capacity issue, the appellants' frustration is fully understandable. However, the NPA has been explicit regarding both the reason for refusal in this case and the need to ensure that my decision is appropriately informed. To address the protection of the environment and local living conditions it was necessary for the inquiry to be made aware of the sewage treatment capacity issue and hear evidence in relation to it. Accordingly, the NPA was not unreasonable in bringing the matter to the attention of the inquiry and the expense incurred by the appellants in addressing the matter was necessary.

Ground 4

22. Rule 15 is unambiguous that:

*"...**15**. - (1) The local planning authority and the appellant must -*

(a) together prepare an agreed statement of common ground; and

(b) ensure that the National Assembly and any statutory party receive a copy of it, not less than 4 weeks before the date fixed for the holding of the inquiry...". [4]

23. In this case there clearly has been a breakdown in the relationship between the two main parties that led to the absence of an agreed SoCG. Paragraph E.8.2 of the procedural guidance highlights how a SoCG can be expected to benefit the running of an inquiry. Due to the tightly defined nature of the issues addressed by this appeal, it

[4] Statutory Instrument 2003 No. 1267 - *The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003*

is not evident that the absence of a SoCG caused proceedings to be materially longer than they otherwise would have been.

24. Both main parties made efforts to produce a SoCG, which will have resulted in associated costs being incurred. However, it is not apparent that the responsibility for failing to reach agreement on the uncontested and other matters can be attributed to one party. In regard to Ground 4, it has not been shown that there was unreasonable behaviour, including that described by Annex 3 of the Circular, which led to unnecessary or wasted expense being incurred.

Conclusions

25. For the reasons above, a full or partial award of costs is not justified.

Clive Sproule

INSPECTOR