

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/16/0603/CLE Slurry lagoon & silage clamps – Trewern, Felindre Farchog.
Type Inquiry
Current Position The appeal has been allowed and an award of costs made. The Inspectors decisions are attached for your information.

NP/17/0178/FUL Change of use from A1 (retail) to A3 (hot food takeaway) – Units
1 – 3 South Parade, Tenby
Type Hearing
Current Position The appeal has been allowed and a copy of the Inspectors decision is attached for your information.

NP/17/0395/FUL Erection of replacement two storey dwelling – Roberts Chalet,
Swanswell, Broad Haven
Type Written Representations
Current Position The initial paperwork has been submitted to the Planning Inspectorate.

EC16/0044 Alterations to a listed building – Medical Hall, Tenby
Type Written Reps
Current Position The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.



Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 3-4/10/17
Ymweliad â safle a wnaed ar 3/10/17

**gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 26 Chwefror 2018

Appeal Decision

Inquiry Held on 3-4/10/17
Site visit made on 3/10/17

**by Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

an Inspector appointed by the Welsh Ministers
Date: 26 February 2018

Appeal Ref: APP/L9503/X/17/3174868

**Site address: Trewern Farm, Felindre Farchog, Crymych, Pembrokeshire, SA41
3XE**

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

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Watkins against Pembrokeshire Coast National Park Authority.
 - The application Ref. 16/0603/CLE is dated 14 November 2016.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is 'slurry lagoon and silage clamps'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the development that is considered to be lawful. A plan that identifies the land, edged in red, is attached to the LDC.

Applications for Costs

2. An application for costs has been made by the Appellant against the Authority, and by the Authority against the Appellant. These are the subject of separate Decisions.

Procedural and Background Matters

3. The address for the site varies between that given on the LDC form and that given in the main parties statements/proofs of evidence; it was agreed at the Inquiry that the latter description, as copied into the banner heading above, is more concise and it is on this basis that I have determined the appeal.
 4. The submitted LDC form is dated 11 November 2016, whereas the main parties in their evidence refer to the submission date of the application as being 15 November 2016. I discussed the matter with the parties at the Inquiry and it was confirmed and accepted by both that the application was actually made electronically on the 14 November 2016; it is on this basis that I have determined the appeal.
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5. The appeal arises from the failure of Pembrokeshire Coast National Park Authority ("the Authority") to give notice within the prescribed period of a decision on an application for a LDC as described above; the relevant time limit for the determination of the application would be 8 weeks from when the application was submitted.
6. The development subject to this appeal i.e. the slurry lagoon and clamps are located to the east of the main farm complex at Trewern Farm. The slurry lagoon subject to the appeal comprises a plastic lined pit with a concrete floor and a slurry receptor, whilst the silage clamps comprise two open air bays defined by earthen banks on three sides and an open side to the west.
7. The unauthorised development subject to this appeal is adjacent to a number of other unauthorised developments at the Trewern farm complex including cattle housing structures¹ in addition to a number of residential static caravans. A planning application² seeking permission for much of the unauthorised development, including that subject to this appeal was submitted in July 2015; it therefore predates the LDC application and remains undetermined by the Authority pending further information related to the submission of an accompanying Environmental Statement (ES).
8. On 2 February 2017 the Authority served an enforcement notice (EN) for a number of unauthorised structures including those subject to this appeal. An appeal³ lodged in regards to the EN is being held in abeyance pending the outcome of this appeal.
9. The submitted Statement of Common Ground (SoCG) as agreed by the main parties stated, inter alia, the relevant test to be applied to the submitted evidence is on the "balance of probability", and that in terms of a breach of planning control relating to building operations, or any other operational development, no enforcement action could be taken after the end of four years beginning with the date on which operations were substantially complete. The reference to the four year period in the SoCG reflects S171B (1) of the Act which sets out a four year limitation period for enforcement action in respect of operational development beginning with the date on which the operations were substantially completed, with the Act also stating that "operations" are lawful at any time if "no enforcement action may then be taken in respect of them".
10. At the inquiry all oral evidence was taken on oath or affirmation. The onus of proof rests on the Appellant.

Main Issue

11. This is whether, the development subject to appeal was lawful on the date on which the application was made.

Reasons

Four year immunity period

12. During the course of the Inquiry the Authority accepted that on the balance of probabilities that the slurry lagoon was substantially completed by the relevant date i.e. 14 November 2012. This leaves only the silage clamps in contention; in this respect the Authority argue the evidence does not prove when the works to the silage clamps was substantially completed.

¹ A detailed list of these structures is included in N Gandy's proof of evidence

² NP/15/0417/FUL submitted in 2015

³ Planning Inspectorate Ref. APP/L9503/C/17/3170804

13. The Authority state that the only evidence submitted in regards to the silage clamps related to a photograph dated 20 June 2012 showing the early stages of construction and a single invoice⁴ from a contractor relating to the preparation and laying of concrete, and that there is no other evidence, such as invoices pertaining to the construction vehicles involved in the works to the silage clamps, despite photographs showing these vehicles being involved in such works, or other invoices⁵ presented which Mr Watkins stated in oral evidence existed, and which could have assisted in proving his case. In terms of the Appellant's evidence being precise and unambiguous, the Authority consider it significant that only through cross examination did it come to light that works to the silage clamps were actually carried out by two contractors, with no evidence given of the other contractors involvement. The Authority maintain the Appellant has not discharged the burden of proof as there are significant evidential 'gaps' to substantiate when and who carried out works to the silage clamps and inconsistency in the evidence given.
14. The Courts have held in *Gabbitas*⁶ that, "If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability"."
15. Mr Watkins confirmed at the Inquiry that the works to the silage clamps basically involved four stages in their construction: marking out; use of earth moving machinery to move topsoil; the creation of a stone hard base; and, the laying of the concrete 'pads'. Contrary to the view of the Authority I consider the photograph of the 20 June 2012 shows the construction works to the silage clamps were well under way, with a significant amount of work having being carried out on the second stage as identified above.
16. In cross examination Mr Watkins explained that the invoice⁷ from G & A Parkes labelled 'slurry lagoon', although not specifically referred to, also related to works carried out on the silage clamps in terms of the costs associated with the construction vehicles, and he drew attention to the fact that the same excavation vehicles could be seen in the submitted photographs relating to the two operations. Mr Watkins further explained that due to a degree of overlap between the operations related to both jobs, they could not always be disaggregated and attributed specifically to one set of works; in the sequence of works the silage clamps followed the works to the lagoon.
17. The invoice from Guy Croft dated 15 August 2012 confirms that at least half of the concrete was laid to the silage clamp by this date. The Appellant in oral evidence stated this was the second of the two concrete silage pads completed; in the sequence of works identified above this would indicate the works to the silage clamps in all likelihood had been substantially completed by 15 August 2012. The Authority provided no substantive evidence to indicate that the Appellant's version of events was not correct.
18. The Appellant in cross examination referred to 'additional' evidence that could prove his case in terms of works to the silage clamps by G & A Parkes and RB Farm Service Ltd, although these were not before the Inquiry; Mr Watkins believed he had submitted sufficient evidence with the LDC application to substantiate his case.

⁴ Guy Croft General Builder and contractor dated 15th August 2012

⁵ Such as further G & A Parkes and RB Farm Services Ltd invoices relating to silage clamps or VAT records to HMRC

⁶ *F W Gabbitas v Secretary of State for the Environment and Newham LBC* [1985] JPL 630

⁷ G & A Parkes Invoice No. 5498

Although that additional evidence referred to by Mr Watkins was not before the Inquiry, nonetheless, I attribute modest weight to it in favour of his position bearing in mind his testimony was given under oath, by someone who had an intimate knowledge of the site during the period when works were being carried out, and who's evidence either orally or in writing by and large appeared to corroborate his version of events in terms of overall development and the timing of works subject to the LDC application, and previous written submission, notwithstanding any evidential 'gaps'.

19. The Authority draw attention to an invoice⁸ referred to in documentation from RB Farm Service dated 20 September 2012, which the Appellant stated during oral evidence had no relationship to the lagoon works; this it is argued is contrary to the supporting statement submitted by the Appellant with the LDC documentation which indicated the invoice related to works in connection with the lagoon. It is argued this inconsistency suggests that works pertinent to the lagoon occurred later than that claimed, with the knock on effect being that this would introduce a delay to the silage clamps which it is alleged were completed sequentially to the slurry lagoon; I disagree.
20. The Appellant confirmed that whilst the statement covered two invoices, however only one related to works subject to the LDC and that was further documented in full as Ref. L188; to my mind this oral explanation does not appear particularly at odds with the submitted supporting statement. The Authority's witness accepted in oral evidence that there was no basis to conclude that the Appellant was giving untrue evidence, although it was argued his memory of matters may have been flawed. In the absence of any substantive evidence to the contrary there is no reason why I should discount Mr Watkins explanation in terms of the second invoice being unrelated to the LDC works or the timing of when various works were carried out in regards to both operations.
21. The photographic evidence indicates the same excavation machinery was used on both operations; a point confirmed by the Appellant in oral evidence. Whilst I note the Authority's concerns in regards to lack of specific reference to the excavation works for the silage clamps in the invoice from G & A Parkes, nonetheless, the photographic evidence along with Mr Watkins testimony indicates it is highly likely the same machinery was used for both operations, and bearing in mind the sequence of works as reportedly carried out, and the nature of those works, the Appellant's explanation given under oath that the works had not been disaggregated and attributed specifically to one or the other operation in terms of the G & A Parkes invoice, appears, on balance, plausible.
22. Drawing the threads of the above together, the works to the silage clamps were well underway by 20 June 2012 as indicated on the submitted photograph, and the evidence in the form of the invoice from Guy Croft indicates that at least one of the concrete pads was constructed by 15 August 2012. The Authority question the reliability and consistency of elements of the Appellant's evidence in terms of the silage clamps, however, whilst there were evidential gaps, I found the Appellant's evidence when considered in its entirety, and in the absence of any evidence of the Authority or others to contradict or otherwise make his version of events less than probable, had on the balance of probability, discharged the burden of proof that was upon him in this appeal in terms of the works subject to LDC application being substantially completed by the relevant date.

⁸ Invoice Ref. L189

Concrete Panels

23. During the course of the Inquiry it came to light that the internal earth bund that separated one silage clamp from another had in fact been replaced with concrete panels around May 2016. The Authority argue that even if the silage clamps were deemed to be substantially complete prior to 14 November 2012, then the additional works in the form of the concrete panels represents further operational development meaning the operative date for when the silage clamps were substantially completed was a later date. The Appellant maintains that these structures have never formed part of the submitted LDC application, and as a matter of principle if the development as indicated on the application details is substantially completed so as to start the clock running for immunity then it does not become "incomplete" because works are done to repair or improve it at a later date; in addition, it is argued in any event the concrete panels do not constitute development.
24. The starting point for assessing the LDC application is from the basis of what had been applied for and when was it substantially completed. I have previously found that the operations subject to the LDC application were substantially completed more than 4 years before the application was submitted and were therefore lawful in terms of the Act; the concrete panels have never formed part of the development sought within the LDC application.
25. Any subsequent alterations to the silage clamps such as the removal of the internal earth bund separating the two clamps and its replacement with concrete panels can be considered as part and parcel of the on-going operational activities, improvements and adjustments that can occur on an agricultural holding. The Appellant's alterations of the silage clamps after gaining immunity to improve the quality of the partition separating the clamps is therefore not necessarily to be regarded as development in its own right; this is an evaluative judgment based on fact and degree although the case law would appear to lend support to the contention that the panels are not development. In light of the above, the presence of the concrete panels has no bearing on the immunity period applicable to the silage clamps as the clamps were already substantially completed and therefore lawful within the relevant period.

Overall development and the four year immunity period

26. As referred to above, the Authority has accepted at the Inquiry that the slurry lagoon was substantially complete before 14 November 2012. The Authority argue that even if it is accepted that the silage clamps were also substantially completed before the relevant date, as I have found, the development still forms part of wider operational development that should be viewed as one single operation, as opposed to a series of isolated and divisible operational developments as argued by the Appellant. In this respect it is maintained the works do not benefit from the four year immunity period as a number of other structures forming part of the wider operational development do not benefit from the immunity period; the Authority cite caselaw⁹ in support of their stance.
27. The Act is the starting point for assessing this matter and it states, that a person may apply for a certificate of lawful development to ascertain whether *any operations* which have been carried out in, on, over or under land are lawful, and in the case of building, engineering operations or other operations that no enforcement action may be taken after the end of the period of four years beginning with the date on which the

⁹ Sage v Secretary of State for the Environment, Transport and the Regions [2003] UKHL22

operations were *substantially completed* (my emphasis). In this case I have previously found that the silage clamps were substantially completed four years before the application for the LDC was made and before any enforcement was served.

28. The Sage case does not assist the Authority in arguments in terms of linking the appeal development to the wider unauthorised development on the farmstead when applying the four year rule and test of substantial completion; in that case, to my mind, the holistic view as advocated in Sage was directed at a single building operation i.e. a dwelling, it made no comment about multiple and physically distinct operations on a single site such as that subject to this appeal. The Howes Case referred to in Sage equally does not lend support to the Authority's arguments for linking the appeal development to the wider unauthorised development. The specific circumstances of the Howes case was that the removal of a hedge and the creation of an access was clearly one operation with the works integral to each other; the same can't be said for the development subject to this appeal, which contrary to the views of the Authority are not so integral as to be viewed as a single operation, but are two physically separate operations, as are all the other unauthorised operations on the overall farmstead. Both the above cases cited by the Authority, in addition to others cited were not a reasonable legal basis for the proposition that a "holistic" approach needs to be taken for multiple, physically distinct operations when applying the test of substantial completion.
29. Despite legal submissions to the contrary, the Authority's planning witness accepted in oral evidence that 'use' was the link between all the unauthorised development on the overall farmstead; this to my mind confirmed her previous written evidence that the operations subject to the LDC application should be considered in connection with the use of other unauthorised structures on the site, and that it is necessary to consider all structures on the site such that no one structure can be deemed substantially complete until the most recent can satisfy the 'four year rule'. This approach runs contrary to the Breckland¹⁰ case which made it clear that there was nothing in s. 191 of the Act to support the argument that use was a relevant consideration to be taken into account in a LDC application in respect of operational development. There is no legal basis for the Authority taking this position.
30. The Authority cites the fact that the Appellant had always historically treated the various unauthorised structures on the site as a single development as evidenced by their inclusion in the 2015 planning application, and reference to such works in the required ES that is needed to accompany that application. To my mind the submission of the 2015 application or any indication by the Appellant that he intended to submit a related ES does necessarily mean it was always the Appellant's intention that the structures subject to that application should be treated as a single development; it simply indicates he wanted to regularise matters, in addition to obtaining planning permission for other works.
31. In light of the above, I do not accept the Authority's view that the development subject to this appeal forms part of wider development that should be viewed as one single operation on the overall farmstead.

Conclusions

32. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence available, that the Council's deemed refusal to grant the LDC

¹⁰ R. (on the application of Waters) v Breckland DC [2016] EWHC 951 (Admin)

application was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act as amended.

Declan Beggan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

G Lewis	Barrister instructed Kevin Jones of Morgan La Roche Solicitors
He called	
M Watkins	Appellant
I Irvine PG Cert TP MRTPI	Appellant's Planning Consultant

FOR THE NATIONAL PARK AUTHORITY:

K Garvey	Instructed by Nicola Gandy
He called	
N Gandy Masters Degree Planning, Practice & Research MRTPI	Planning Officer with Pembrokeshire National Park Authority

INTERESTED PARTIES

R Rees	Member of Nevern Community Council
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DOCUMENTS SUBMITTED AT THE INQUIRY

1. Authority's notification of the inquiry and list of those notified
 2. Appellant's opening and closing submissions in writing
 3. Authority's closing submission in writing
 4. Authority's written cost claim
 5. Printed copies of various case law referred to by the Authority and the Appellant
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Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 14 November 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of the relevant section of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations were substantially completed and therefore accrued lawfulness by 14 November 2012.

Signed

Declan Beggan

INSPECTOR

Date: 26/02/2018

Reference: APP/L9503/X/17/3174868

First Schedule

Slurry lagoon and silage clamps.

Second Schedule

Land at Trewern Farm, Felindre Farchog, Crymych, Pembrokeshire, SA41 3XE shown edged red on the plan attached to this certificate.

NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
 2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.
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3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. **Any operation** which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
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Plan

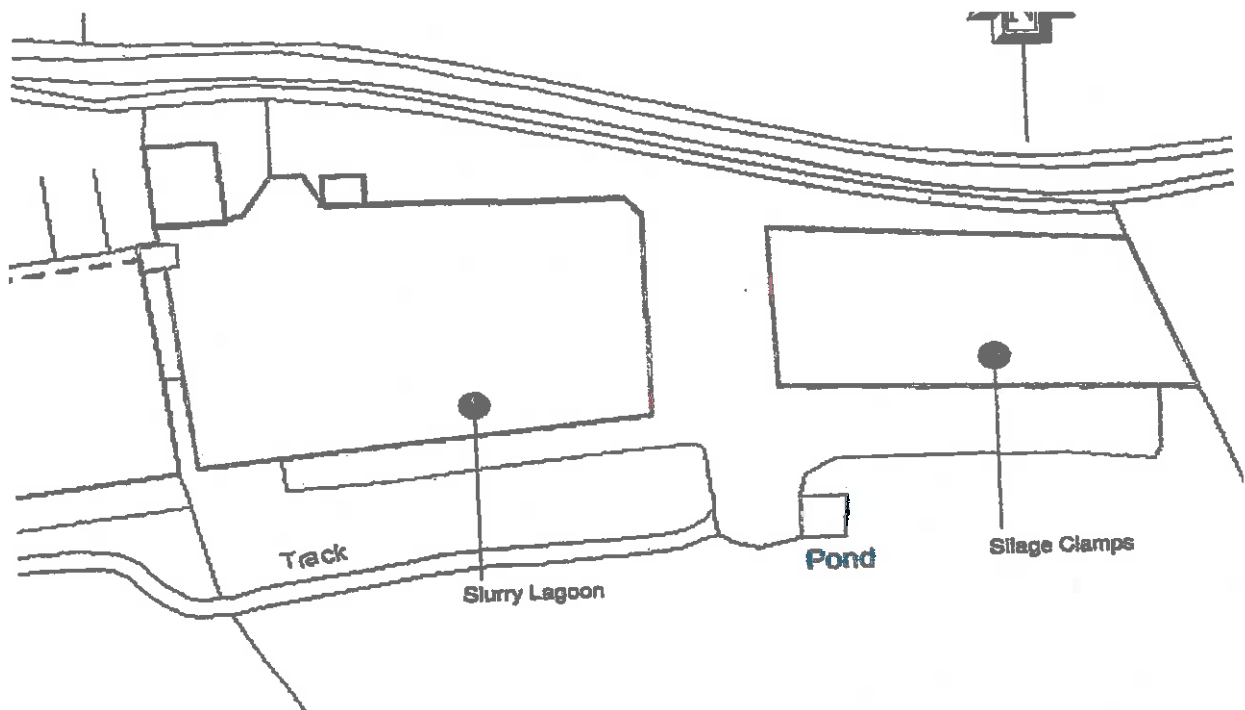
This is the plan referred to in the Lawful Development Certificate dated: 26/02/2018

by Declan Beggan BSc (Hons) MSc DipTP DipMan MRTPI

Land at: Trewern Farm, Felindre Farchog, Crymych, Pembrokeshire, SA41 3XE

Reference: APP/L9503/X/17/3174868

Scale: **Not to Scale due to the scanning process**



BLOCK PLAN
SCALE 1:500

Rev.	Comments	Date



Penderfyniad ar gostau

Ymchwiliad a gynhaliwyd ar 3-4/10/17
Ymweliad â safle a wnaed ar 3/10/17

gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26 Chwefror 2018

Costs Decision

Inquiry Held on 3-4/10/17
Site visit made on 3/10/17

by Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

an Inspector appointed by the Welsh Ministers

Date: 26 February 2018

Costs application in relation to Appeal Ref: APP/L9503/X/17/3174868

Site address: Trewern Farm, Felindre Farchog, Crymych, Pembrokeshire, SA41 3XE

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 195, 322C and Schedule 6.
 - The applications are made by Mr M Watkins for a full or partial award of costs against Pembrokeshire Coast National Park Authority.
 - The appeal was in connection with a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC) relating to a 'slurry lagoon and silage clamps'.
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Decision

1. I allow the application for an award of costs in full.

The submissions for Mr M Watkins

2. A full costs application was submitted in writing prior to the opening of the Inquiry; this was supplemented orally at the Inquiry. A partial costs application was made orally during the Inquiry and relates to the Authority's acceptance that the Applicant had demonstrated during the Inquiry that the slurry lagoon that formed part of the development subject to the LDC application was substantially completed by the relevant date. The Applicant maintains that this late concession resulted in the Inquiry going into a second day thereby incurring unnecessary or wasted expense in the appeal process.

The response by Pembrokeshire Coast National Park Authority

3. The response to both of the Applicant's costs applications were made orally at the Inquiry. In terms of the partial award the Authority argues that in reality very little Inquiry time was spent discussing the slurry lagoon with the Authority's witness making the concession at the outset of her oral evidence; it is maintained the making of that concession was reasonable in light of oral evidence that had been presented by the Applicant. It is maintained that most of the Applicant's time was spent giving evidence in regards to the silage clamps and not the slurry lagoon and the Inquiry would always have gone into a second day.
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4. In terms of the full award it is maintained that the Authority had due regard to established law in terms of its stance that the operational development subject to the LDC application was part of wider operational development on the farmstead, particularly having regard to the 2015 planning application¹ and the subsequent need for an Environmental Statement; it is maintained the Authority's stance was not inconsistent in law with the Sage² judgment which advocated taking a holistic approach to consideration of such matters in terms of the period when operations were substantially complete, and that these considerations were matters of fact and degree. The Authority state that during the course of the Inquiry it came to light that a dividing earth bund separating the two silage clamps had in fact been replaced some 16 months previously with concrete panels. The Authority maintains it was entitled to take the view that the concrete panels constituted further development which would have resulted in the period for substantial completion of the silage clamps not being met; this was a further judgement based on new facts that came to light during the Inquiry and which are matters of fact and degree.
5. It is maintained there is no legal error in the Authority's case in terms of applying the "balance of probabilities test"; it is referred to in the written evidence of the Authority's witness. In terms of the factual issue as to whether the Applicant satisfied the four year period in terms of the silage clamps, it is not unreasonable that the Authority did not supply evidence of its own, rather it is down to the Applicant to prove his case, which the Authority maintain, was limited and gave rise to uncertainties. It is maintained that lack of precision in terms of the evidence gave rise to further uncertainty; it is maintained the Inquiry had the benefit of more substantial evidence given orally, whereas the Authority prior to the event only had very limited information. The cost applications whether in full or part should be dismissed.

Reasons

6. The 'Development Management Manual' at Section 12 Annex: Award of Costs ('the Annex') advises that, an appellant or applicant is not awarded costs simply because their appeal succeeds irrespective of the outcome of the appeal; costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. Consideration of planning applications and appeals involves matters of judgment that are at times finely balanced. In terms of the advice as contained within the Annex, unreasonable behaviour can be procedural and it cites by way of example, the failure to determine an application within the statutory time limits, where it is clear that there was no substantive reason to justify delaying the determination of the application. The Annex states unreasonable behaviour can also be substantive i.e. relating to issues of substance arising from the merits of an appeal or application; the Annex cites examples of this type of behaviour as: failure to produce evidence to substantiate the impact of the proposal, or each reason, or proposed reason for refusal; acting contrary to, or not following, well established case law; and, where an enforcement appeal could have been avoided due to inadequate investigation or insufficient communication on the part of the local planning authority.
8. The Authority's reasons for failing to determine the LDC application in a timely manner due to its perceived complexity or the need to gain a legal opinion on the matter

¹ Application Ref. NP/15/0417/FUL

² Sage v Secretary of State for the Environment, Transport and the Regions [2003] UKHL22

lacked substance or justification; in particular no legal opinion was actually obtained during the period when the Authority could have determined the application. To my mind the Authority's failure to deal with the application in a timely manner without reasonable justification was tantamount to unreasonable behaviour.

9. The Applicant argues the Authority failed to produce any evidence of its own to contradict his version of events; this in itself does not constitute unreasonable behaviour. The Authority argue that as the Applicant's evidence was limited in nature, lacked sufficient precision and gave rise to uncertainty before and during the Inquiry, the stance it took in the appeal was reasonable; I disagree.
10. The Authority accepted during the course of the Inquiry the evidence on the balance of probabilities indicated that the slurry lagoon was substantially completed by the relevant date i.e. 14 November 2012. Whilst the Authority state this concession was made in light of oral evidence given by the Applicant, the precise nature of this evidence was not identified. To my mind the oral evidence given by the Applicant relating to the slurry lagoon did not materially differ from his written submissions; there was no new material evidence presented. The vast bulk of the evidence that had been presented on this issue had been before the Authority for a considerable period of time.
11. As regards the silage clamps, the Authority argued the evidence did not prove when the works to the silage clamps was substantially completed, and oral evidence given at the Inquiry gave rise to further uncertainties, e.g. the replacement of the earth bund with concrete panels, which cast further doubt on the relevant date for the substantial completion of the operations. Whilst there were evidential 'gaps' in regards to the silage clamps, I found the Appellant's evidence when considered in its entirety, and in the absence of any evidence of the Authority or others to contradict or otherwise make his version of events less than probable, on the balance of probability, discharged the burden of proof that was upon him in the appeal in terms of the works subject to LDC application being substantially completed by the relevant date. To my mind the evidence presented in terms of the silage clamps was not limited, and whilst I did have the benefit of further oral evidence, this was not particularly substantial in nature. Overall, the arguments put forward by the Authority that I had the benefit of much more substantial evidence given orally at the Inquiry lacked substance. In addition, any reference to concrete panels that came to light during the course of the Inquiry was not a determining factor regarding the lawfulness of operations on the appeal site.
12. Central to legal arguments put forward by both parties, was whether the silage clamps and slurry lagoon must be seen in isolation when determining the four year immunity period, or whether they can be considered as ancillary to, or part of wider development. Both parties cited established case law³ in support of their stance, most notably Sage.
13. The Sage case did not assist the Authority in its arguments in terms of linking the appeal development to the wider unauthorised development on the farmstead when applying the four year rule and test of substantial completion; in that case, to my mind, the holistic view as advocated in Sage was directed at a single building operation i.e. a dwelling, it made no comment about multiple and physically distinct

³ Sage v Secretary of State for the Environment, Transport and the Regions [2003] UKHL22, R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin), & Richard Brown, Paula Brown v Secretary of State, Chelmsford Local Planning Authority [2003] EWHC 2800 (Admin), and

operations on a site such as that subject to this appeal. Another case referred to by the Authority, *Howes*⁴, equally did not lend support to the Authority's arguments for linking the appeal development to the wider unauthorised development. The specific circumstances of the *Howes* case was that the removal of a hedge and the creation of an access was clearly one operation with the works integral to each other; the same can't be said for the development subject to the appeal, which contrary to the views of the Authority were not so integral as to be viewed as a single operation, but were two physically separate operations, as were all the other unauthorised operations on the overall farmstead. Both the above cases cited by the Authority, in addition to any others cited were not a legal basis for the proposition that a "holistic" approach needs to be taken for multiple, physically distinct operations when applying the test of substantial completion.

14. Despite legal submissions to the contrary the Authority's planning witness accepted in her oral evidence that 'use' was the link between all the unauthorised development on the overall farmstead; the oral evidence supported her previous written evidence that the operations subject to the LDC application should be considered in connection with the use of other unauthorised structures on the site, and that it was necessary to consider all structures on the site such that no one structure can be deemed substantially complete until the most recent can satisfy the 'four year rule'. This approach ran contrary to the *Breckland*⁵ case which made it clear that there was nothing in s. 191 of the Act to support the argument that use was a relevant consideration to be taken into account in a LDC application in respect of operational development. There was no legal basis for the Authority taking the position as advocated in written and oral evidence.
15. To my mind the Authority had little regard to established case law, and its interpretation in terms of the "holistic" approach and reference to "use" linking all the unauthorised development on the wider site, were erroneous and provided no reasonable legal basis for the approach pursued; this amounted to unreasonable behaviour.
16. Drawing the threads of the above together, the Authority failed to determine the LDC application in a timely manner without reasonable justification; in addition the stance taken by the Authority during the course of the Inquiry paid little regard to established case law which even when cited provided no reasonable legal basis for the approach taken. In addition, the argument put forward by the Authority that the Inquiry had the benefit of much more substantial oral evidence lacked substance. On the whole, in light of the evidence presented, the Authority's stance taken in consideration of the LDC application was unreasonable, and there was no good reason for their deemed refusal which resulted in an appeal that could otherwise have been avoided. Unreasonable behaviour resulting in unnecessary expense as described in the Annex has been demonstrated and a full award of costs is justified. Bearing in mind my conclusions on the full award, I do not need to address the Applicant's alternative partial claim.

Costs Decision

17. 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

⁴ *Howes v Secretary of State for the Environment* [1984] JPL 439

⁵ *R. (on the application of Waters) v Breckland DC* [2016] EWHC 951 (Admin)

enabling powers in that behalf, IT IS HEREBY ORDERED that Pembrokeshire National Park Authority shall pay to Mr M Watkins, the costs of the appeal proceedings described in the heading of this decision.

18. The Applicant is now invited to submit to Pembrokeshire Coast National Park Authority, to whom 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.

Declan Beggan

INSPECTOR



Penderfyniad ar gostau

Ymchwiliad a gynhaliwyd ar 3-4/10/17
Ymweliad â safle a wnaed ar 3/10/17

gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 26 Chwefror 2018

Costs Decision

Inquiry Held on 3-4/10/17
Site visit made on 3/10/17

by Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

an Inspector appointed by the Welsh Ministers
Date: 26 February 2018

Costs application in relation to Appeal Ref: APP/L9503/X/17/3174868

Site address: Trewern Farm, Felindre Farchog, Crymych, Pembrokeshire, SA41 3XE

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 195, 322C and Schedule 6.
- The application is made by Pembrokeshire Coast National Park Authority for a full or partial award of costs against Mr M Watkins.
- The appeal was in connection with a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC) relating to a 'slurry lagoon and silage clamps'.

Decision

1. The application for an award of costs in either full or part is refused.

The submissions for Pembrokeshire Coast National Park Authority

2. The cost application was submitted in writing.

The response by Mr M Watkins

3. The response was made orally at the Inquiry. The Appellant states that as regards paragraph 3.7 (c) of the 'Development Management Manual' at Section 12 Annex: Award of Costs ('the Annex'), the Authority have not stated what advice was given and which the Appellant had failed to adhere to as part of pre-application discussions that would have caused the avoidance of an appeal or the narrowing down of issues being considered as part of any appeal. It is argued no such advice was given. The Appellant availed of his legal right to submit an LDC application and seek confirmation of immunity for works not enforced against. Any reference to the lack of submission of an Environmental Statement (ES) related to a separate planning application¹ does negate the rights of the Appellant to apply for a LDC. Any allegation that the Appellant or his agent was party to actual deceit or engaged in misleading the authority is not borne out by the evidence; the Authority were perfectly aware that matters needed to be regularised and failed to pursue enforcement action in a timely fashion.

¹ NP/15/0417/FUL submitted In 2015

Reasons

4. The Annex advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. In terms of paragraph 3.7 (c) of the Annex, I am not aware of any specific pre-application advice given to the Appellant in terms of the LDC application. Irrespective of any other application before the Authority or discussions such as a requirement to submit an ES in connection with that application, the Appellant was perfectly entitled to avail of an application under S. 191 of the Act²; his submission of the LDC subject to this appeal can therefore not be regarded as unreasonable behaviour.
6. As regards the allegation that the Appellant's agent was party to actual deceit in terms of the submitted planning application and the LDC application, this was not raised in evidence during the Authority's written appeal submissions, nor during Inquiry itself; I therefore give it no weight in terms of my consideration of this cost claim.
7. The thread running through the Authority's cost claim is the allegation that the Appellant misled them or deliberately attempted to delay matters in order to allow sufficient time to elapse to gain a successful outcome to his LDC application; this is at odds with the submitted evidence. The Authority were perfectly aware that matters needed to be regularised and failed to pursue enforcement action in a timely fashion; the Appellant cannot be penalised for the Authority's failure in instigating enforcement action at the appropriate time. Whilst there may have been some gaps in the Appellant's oral evidence that primarily came to light during the Inquiry, nonetheless the evidence presented on the whole was credible, was corroborated with written evidence, and crucially, the Authority were not able to present any evidence of their own or from others to contradict or otherwise make the Appellant's version of events less than probable; the Appellant's stance in this regard cannot be construed as deliberately misleading or in any way unreasonable.
8. Drawing the threads of the above together, there is no substance to the Authority's cost claim. The Appellant's behaviour cannot be regarded as unreasonable in terms of his submission of the LDC application or during the course of the appeal. The Appellant merely exercised his right under the provisions of the Act in a case where the Authority had failed to give notice within the prescribed period of a decision on the LDC application; I fail to see how that constitutes unreasonable behaviour and has resulted in the Authority incurring unnecessary and wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Annex, has not been demonstrated and that a full or partial ward of costs is not justified.

Formal Decision

9. I refuse the Applicant's application for an award of costs in full or part.

Declan Beggan

INSPECTOR

² Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 11/12/17

gan Janine Townsley LLB (Hons)
Cyfreithiwr (Nad yw'n ymarfer)

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07/02/18

Appeal Decision

Site visit made on 11/12/17

by Janine Townsley LLB (Hons) Solicitor
(Non-practising)

an Inspector appointed by the Welsh Ministers

Date: 07/02/18

Appeal Ref: APP/L9503/F/17/3180030

Site address: Medical Hall, 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 Mr Barry Walters against a listed building enforcement notice issued by Pembrokeshire Coast National Park Authority.
- The enforcement notice, numbered EC16/0044, was issued on 9 June 2017.
- The contravention of listed building control alleged in the notice is the following works ("the works") to the ground floor of the building without listed building consent: 1. The replacement of the shop door from paired doors to a single door as showed on photograph A; 2. The alteration of the fixtures to the rear wall of the shop interior noted in the list description as "three-bay feature with doorways left and right and broad centre with carved wood frame and glazed lettered panels "James' Pharmaceutical Chemist" under scrolled pediment" and shown on photograph B. The alterations include the application of white gloss paint and the application of vinyl overlays on the lettered panels; 3. The loss of the drawers to the rear wall of the shop as shown on Photograph C; 4. The alteration of the fixtures to the right-hand wall within the shop, noted in the list description as having "drawers with names of chemicals, and pilaster framing for shelves" and shown on photograph D; 5. The alteration of internal walls of the shop by the application of laminate panelling and illuminated panels as shown on Photograph E; 6. The alteration of the door threshold comprising a panel of steel tread-plate as shown on photograph F; 7. The removal of the historic raised fascia lettering to shopfront as shown on photograph G.
- The requirements of the notice are: a. The reinstatement of the paired shop doors as shown on Photograph A; b. The reinstatement of the former finish of fixtures to the rear wall of the shop interior noted in photograph B and the list description as "three-bay feature with doorways left and right and broad centre with carved wood frame and glazed lettered panels "James' Pharmaceutical Chemist" under scrolled pediment", namely the reinstatement of the stained finish, and removal of the vinyl overlays from the glazed panels; c. The reinstatement of the drawers to the rear wall of the shop as shown on photograph C; d. The reinstatement of the fixtures to the right-hand wall within the shop, noted in the list description as having "drawers with names of chemicals, and pilaster framing for shelves" and shown on photograph D; e. The removal of the alteration of the laminate panelling and illuminated panels from the internal walls of the shop as shown on photograph E; f. The removal of the steel tread-plate from the shop door threshold as shown on photograph F; g. The reinstatement of the raised fascia lettering as shown on photograph G; h. make good any damage caused to the building by carrying out the above.
- The period for compliance with the requirements is six months.
- The appeal is made on the grounds set out in section 39(1)(d) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) as amended.

Background and Procedural Matters

2. The appeal building is listed grade II as an early 19th Century house, with good Victorian shop front and surviving chemist shop fittings. It is situated in the centre of Tenby Conservation Area. The appeal has been made on ground (d) only.
3. The appellant states that the drawers referred to at paragraph 3(3) of the listed building enforcement notice (LBEN) were not located to the rear of the shop but to the right hand side. The appellant has drawn my attention to this but it is clear he has understood the matters considered to constitute a breach of planning control and what steps are required to remedy this. I am satisfied that the variation of the notice to make clear that the drawers were originally to side of the shop floor as opposed to the rear would not have an impact on the overall construction of the LBEN and I shall vary the notice accordingly.

Reasons

The Appeal under Ground (d)

4. This ground of appeal related to whether the works that have been carried out were urgently necessary on the grounds of public safety and were the minimum necessary to achieve that aim.
5. The appellant states that the walls within the shop have been clad in order that they have a wipeable surface in order to comply with health and safety requirements. The National Park Authority (NPA) do not dispute this, but this does not mean to say that this equates to urgent works on the grounds of public safety. Whilst the appellant may have misdirected himself as to the nature of his health and safety objective, this does not establish that the works were an appropriate response to the condition of the building.
6. The appellant also states that the frame of the glazed letter panelling was in a poor state of repair and was restored on site as removal could have caused more damage. It is stated that wood work was filled and painted to cover the filler. There is no evidence to state that this was the only or most appropriate means of treating any damage. No evidence has been submitted detailing the condition of the frame prior to the works, nor have I been supplied with any information to state that the works were the minimum necessary to remedy the damage. Furthermore, whilst the framework may have been painted to match other items within the shop, this would have been an aesthetic choice rather than being necessary to secure repair.
7. In relation to the treadplate door threshold, the appellant states that he has not yet complied with this element of the LBEN as he is yet to source a non slip brass treadplate. However, the LBEN, at paragraph 5(f) requires the removal of a steel treadplate and does not request its replacement with a brass version. In any event, the appellant has not stated why the original treadplate was removed nor why it is not possible to comply with the step in the LBEN.
8. In relation to the drawers which the appellant has clarified would have been to the right hand side of the shop, he states that these were removed by the previous owner

but have since been returned to him. Despite this, the appellant states that the framework for them is beyond repair. Be that as it may, I have seen no evidence to confirm this is the case.

9. In relation to the glass lettering to the front of the shop, the appellant states that this was removed approximately 20 years ago, prior to his ownership and that this issue has never been raised by the NPA in that time. Similarly he states that the double doors had been changed many years ago and that these were not referred to in the listing.
10. Dealing with the drawers, glass lettering and double entrance doors, other than in specific circumstances, which do not apply in this case, there is no limitation period for the taking of enforcement action against a breach of planning control in relation to a listed building. As set out in s. 43 of the LBCA, the responsibility to comply with the notice rests with the person who is the owner at the end of the compliance period. This is the case when the unauthorised works may have been carried out by a previous owner.
11. Overall, therefore, I am not satisfied that the appellant has provided any evidence to support his position that the works carried out were urgently necessary in the interests of health and safety or for the preservation of the building or that the works were limited to the minimum necessary. The works carried out do not appear to have been a response to the unsafe condition of the building as no evidence has been supplied as to the condition of the building prior to the works being carried out. Consequently, I conclude that the works were not urgently necessary for health and safety or the preservation of the building and thus the appeal on ground (d) fails.

Formal Decision

12. Pursuant to paragraph 3 of this decision I direct that the EN be varied by the removal of reference to "rear wall" and replacement with "side wall" at paragraphs 3(3) and 5(c). Subject thereto, I dismiss the appeal and uphold the listed building enforcement notice as varied. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) as amended.
13. 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 WCFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WCFG 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 as required by section 8 of the WCFG Act.

Janine Townsley

Inspector



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 05/12/17
Ymweliad â safle a wnaed ar 05/12/17

gan Nicola Gulley MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 29.01.2018

Appeal Decision

Hearing Held on 05/12/17
Site visit made on 05/12/17

by Nicola Gulley MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 29.01.2018

Appeal Ref: APP/L9503/A/17/3183081

Site address: Units 1-3, South Parade, Tenby, Pembrokeshire, SA70 7DG

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Domino's UK & Ireland Ltd against the decision of Pembrokeshire Coast National Park Authority.
 - The application Ref, NP/17/0178/FUL, dated 13 March 2017, was refused by notice dated 9 August 2017.
 - The development proposed is the change of use from Class A1 (Retail) Use to Class A3 (Hot Food Takeaway) Use - including ancillary seating and the installation of extraction and ventilation equipment.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use from Class A1 (Retail) Use to Class A3 (Hot Food Takeaway) Use - including ancillary seating and the installation of extraction and ventilation equipment at Units 1-3, South Parade, Tenby, Pembrokeshire, SA70 7DG in accordance with the terms of the application, NP/17/0178/FUL, dated 13 March 2017, and the conditions set out below.
 - 1) The development shall begin no later than five years from the date of this decision.
 - 2) The development shall be carried out in accordance with the following plans and documents: Existing elevations (sheets 1 and 2); proposed elevations (sheets 1 and 2); Existing GA and Proposed GA; Annex B, C and Purified Air Specifications and DEFRA Report (January 2017); Plant Noise Assessment (ref 16/0750) (January 2017); Transport Statement (January 2017); and the Predicted Trips Technical Note (August 2017).
 - 3) The ventilation / extraction equipment shall be operated and maintained in accordance with the manufacturers' instructions for as long as the proposed use continues.
 - 4) Collection of waste shall only be permitted between the hours of 07:00 and 19:00 Monday to Friday, and at no other times.
-

- 5) The store shall be closed to members of the public at 22:00 hours Sunday to Thursday, and 23:00 on a Friday and Saturday. Orders for delivery placed by either telephone or the internet only, will be permitted between 22:00 and 00:00 Sunday to Thursday, and between 23:00 and 00:00 on a Friday and Saturday.
- 6) Prior to the commencement of development, full details of a scheme for the sound insulation of the ceiling shall be submitted to, and approved by, the Local Planning Authority. The scheme shall then be implemented in accordance with the approved details prior to the commencement of the proposed use and maintained as installed for as long as the use operates.
- 7) The noise mitigation measures set out within the Plant Noise Assessment, prepared by Cole Jarman (ref. 16/0750/R1) (27th January 2017), shall be implemented in full prior to the commencement of the use, and retained in accordance with the manufacturer's instruction for as long as the use operates.
- 8) Prior to the development being brought into beneficial use a Service Management Plan, which includes details of a code of conduct for delivery drivers, shall be submitted to and agreed in writing by the Local Planning Authority. The use shall operate in accordance with provisions of the Service Management Plan for as long as the proposed use operates.

Main Issues

2. The main issues are the impact of the proposed development on the living conditions of nearby residents by virtue of litter, smell/odour, noise and disturbance and on highway safety.

Reasons

Site and Surroundings

3. The appeal site comprises a modern, three storey building with a single storey extension located at the junction of South Parade and Upper Park Road, Tenby. The ground floor of the building is currently unoccupied and has planning permission for A1 (Retail) use, whilst the upper floors are occupied and provide residential accommodation. The site is located within close proximity to a number of residential properties located along Trafalgar Road and Upper Park Road, the Town Walls, Memorial Gardens and a number of retail units including two hot food takeaways. On street parking is provided along the lower part of South Parade and off street parking, both long and short stay, is provided nearby in car parks located at Upper Park Road and White Lion Street.

Planning Policy

4. The development plan for the area is the Adopted Pembrokeshire Coast National Park Authority Local Development Plan (LDP) (2010). Policy 50 identifies the appeal site and surrounding area as being within the town shopping centre of Tenby. Whilst Policies 30 and 53 of the LDP seek, amongst other things, to ensure that new development would not have a significant adverse impact on amenity by virtues of an increase in traffic, noise, disturbance and odour or have an unacceptable impact on highway safety.

Living conditions

5. The Authority contends that the proposed development would be an inappropriate and incompatible use that would by virtue of litter, smell/odour, noise and disturbance have an adverse impact on the living conditions of the occupiers of nearby properties. These views are supported by a number of local residents. Conversely the appellant asserts that: issues in relation smell/odour would be effectively addressed by the installation of internal ventilation /extraction equipment; noise levels within the appeal premises would be reduced by an acoustic ceiling; there would be no significant increase in the noise levels in the area surrounding the appeal site; the presence of internal seating and the reduced hours of operation would assist in managing the potential for noise and disturbance; and any litter arising would be managed through the municipal domestic and commercial waste streams.
6. The proposed ventilation /extraction equipment would, primarily, be contained within the appeal premises, with only a small louvered grille on the exterior of the building. The use of the system proposed is supported by the findings of the Annex B, C and Purified Air Specifications and DEFRA Report (January 2017). I am content that the nature of the extraction system coupled with the siting of the grille, which would be on the ground floor of the western elevation of the appeal premises and approximately 8 metres on a horizontal plane away from the nearest residential window, would satisfactorily address any emissions and ensure that the living conditions of nearby residents would not be adversely effected.
7. In order to mitigate any internal noise arising from the use of the premises, the appellant is proposing to undertake sound insulation works to the existing ceiling / concrete floor of the premises in accordance with 'Detail 2' contained on the specification for the works submitted to the Authority on the 7th July 2017. Based on the submitted information and evidence presented at the hearing, I am content that, subject to a condition requiring the approval of the specification, any noise arising from the internal use of the premises could be managed through these mitigation measures.
8. With regard to external noise and disturbance, I consider that these are likely to be generated, primarily, by customers and employees accessing and egressing the appeal premises and by delivery vehicles travelling along South Parade and Upper Park Road. In support of the proposal the appellant has submitted a Noise Assessment (November 2017), which takes account of the design of the store, including a seating area, the hours of operation, traffic noise and the anticipated pattern and frequency of deliveries and customer collections from the premises. The findings of the assessment indicate that the increase in noise levels generated by customer and delivery driver activity within close proximity of the appeal premises would be minor. In terms of potential disturbance, the assessment indicates that, based on previous experience of similar developments, the nature of the service provided, which is largely dependent on home deliveries, and the opening hours of the store would ensure that any disruption associated with customer activity would be minimal.
9. No substantive evidence has been presented by the Authority which indicates that the findings of the Noise Assessment are incorrect or to demonstrate that the proposal would give rise to unacceptable levels of noise or disturbance. In the absence of evidence to the contrary, I am content that the proposed development would not, subject to a condition relating to opening hours, materially alter the level of noise or disturbance experienced within the immediate vicinity of the appeal site.
10. In respect of waste management, I note that the appellant's contention that material associated with the goods to be sold at the appeal premises would be disposed of using domestic or commercial waste collections and, as a consequence, would not

result in a significant increase in litter in the locality. This is not disputed by the Authority and I agree there is no compelling evidence which suggests that the proposed development would give rise to additional litter.

11. In light of the above, I conclude that the proposed development would not have an adverse impact on the living conditions of nearby residents by virtue of litter, smell/odour, noise and disturbance and as such would comply with Policy 30 of the LDP.

Highway safety

12. The Authority has expressed concern that the proposed development would give rise to short-term illegal and indiscriminate on street parking which would have an adverse effect on highway safety and the free flow of traffic and that the appellant has failed to provide a traffic management plan. Conversely the appellant contends that: the submitted Transport Statement (January 2017) and the Predicted Trips Technical Note (August 2017) provide detailed proposals for the management of traffic associated with the proposed use of site; and all traffic movements to and from the appeal site by their employees would be subject to a service management plan. With regard to customer parking the appellant explained that: 80% of the goods sold from the appeal premises would be delivered by their drivers; the remainder of the sales would be sold to 'walk in' customers some of which would be using vehicles; and there is sufficient parking in the locality to meet the needs of these 'walk in' customers.
13. The Transport Statement and the Predicted Trips Technical Note provide details of vehicle delivery data based on existing Domino's stores in Colwyn Bay, Rhyl and Carmarthen. The appellant maintains that the range data for the Rhyl store is likely to be more reflective of the proposed development and that the Carmarthen data provides a 'worst case' scenario. This is disputed by the Authority who contends that the thriving nature of the tourist economy in Tenby is likely to generate a higher level of demand than that in Rhyl. I share this view. Based on the evidence presented, I consider that the number of journeys generated by the Carmarthen store, some 427 journeys per day with an average of 37 journeys, equating to 74 arrivals and departures, between the peak hours of 19:00 and 20:00, would be a more realistic estimate of the likely traffic generation from the proposed development.
14. Delivery vehicles would operate from the short stay section of the multi-storey car park which is located in close proximity to the appeal premises in Upper Park Road. It is anticipated that a minimum of 2 delivery vehicles increasing to 8 vehicles during peak hours, would be operational during opening hours. Based on the figures provided it is likely that delivery vehicles would make on average between 4 and 5 journeys during peak hours. To facilitate ease of access the appellant has indicated that up to 8 season tickets for the car park would be purchased. I am mindful that the car park is located in a central position in the Town and likely to be busy during summer and holiday periods and that being in receipt of a season ticket would not guarantee a parking space. Nevertheless, I consider that the 2 hour time restriction placed on vehicles parking in the short stay section of the facility together with the scale of the car park, which provides parking for 721 vehicles, would ensure that there was a regular turnover of spaces and that there would be sufficient opportunity for delivery drivers to park. Furthermore, I consider that the peak times for the deliveries would be likely to coincide with the time that demand for short stay spaces from visitors to the Town would be starting to decline, which would increase the availability of parking spaces.
15. In addition, to ensure that the delivery drivers comply with the proposed parking arrangements the appellant is proposing, through the use of a serviced management

plan, to introduce a code of conduct for drivers requiring that they park in the multi-storey car park at all times. This approach would in my view assist in ensuring the effective management of delivery vehicles.

16. With regard to customer parking, although I note the Authority's concerns I am mindful that the appeal premises is within short walking distance of a number of public car parks, including those at Upper Park Street and White Lion Street, and on-street parking provision in South Parade. In view of this I consider that adequate opportunity exists for customer parking and that the proposal would not give rise to short-term illegal and indiscriminate on street parking.
17. As such, I consider that the proposed development would not give rise to short-term illegal and indiscriminate on street parking or the free flow of traffic and would comply with Policy 53 of the LDP.

Other Matters

18. Concern has been expressed by local residents that: the proposed development would have an unacceptable impact on the adjacent War Memorial; and increase the risk of fire. Whilst I note these concerns the appeal premises already benefits from planning permission for a retail unit and that the area surrounding the Memorial includes a number of hot food takeaways. In light of this, I do not consider that the proposal would materially alter the character or appearance of the Memorial. In terms of the risk of fire, the proposed development would be assessed to ensure that it complies with the requirements of the Building Regulations (2010). This process would in my view ensure that all the necessary fire safety measures would be implemented.
19. During the course of the hearing concern was expressed by the owner of the appeal building, who opposes the proposal, that the appellant would be unable to implement a condition relating to the installation of ventilation / extraction equipment at the appeal premises, a point which was disputed by the appellant. Both parties have subsequently submitted written evidence, dated the 7th and 13th December respectively, to support their assertions. The main point of disagreement between the parties relates to whether or not the activity required to install the equipment would constitute structural works and therefore whether the prior consent of the owner would be required before the work could be undertaken. The requirements of Welsh Government Circular 16/2014 – The Use of Planning Conditions for Development Management, allows for conditions to be imposed, where third party approval is required, provided there is a reasonable prospect of the condition being implemented within the consent period. In this instance, I am mindful that no definitive legal judgement has been made about the nature of the works or whether prior agreement is needed. On this basis, I consider that there remains a reasonable prospect that a condition requiring the installation of ventilation / extraction equipment could be implemented.

Conditions and Conclusions

20. Insofar as conditions are concerned, I have had regard to the guidance contained in Welsh Government Circular 16/2014 – The Use of Planning Conditions for Development Management. A condition is necessary which requires that the proposed development be carried out in accordance with the approved plans. Conditions in relation to the management of the ventilation / extraction equipment, noise mitigation measures and hours of operation are necessary in the interests of residential amenity. A condition in relation to waste management is required in the interests of visual and

residential amenity and a condition in relation to the submission and implementation of a serviced management plan is necessary in the interests of highway safety.

21. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.
22. For the reasons given above, I conclude that the appeal should be allowed.

Nicola Gulley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Osian Roberts

Consultant, Appellant

Mr Neil Jarman

Consultant, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Claire Stephenson

Consultant, Pembrokeshire Coast National
Park Authority (PCNPA)

Mrs D Clements

Member of PCNPA

Mr P Kidney

Member of PCNPA

INTERESTED PERSONS:

Cai Parry

Consultant, Pembrokeshire Coast Housing
Association

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Authority's Notification of Hearing.
2. List of application and appeal submission documents.