REPORT OF THE DEVELOPMENT MANAGEMENT MANAGER
ON APPEALS

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

EC21/0145	Construction of new access and access track; erection of timber cabin for residential use; storing of touring caravan; storing of converted van type vehicle; erection of solar panels & erection of tented canopy - Land OS Parcel No. 1050, known as Pwllau Clau, Crosswell, Crymych, Pembrokeshire, SA41 3SA
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW

EC21/0201	Alleged unauthorised residential caravan in field - Nettie's Lodge, Happy Acre, Lydstep, Tenby, Pembrokeshire, SA70 7SG
Type	Written Reps
Current Position	The appeal has been dismissed and a copy of the Inspectors decision is attached for your information.

EC22/0038	Siting of Camping Pod and associated drainage work - Land to the north of Pentop, Abercastle, Haverfordwest, Pembrokeshire, SA62 5HJ
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW

EC23/0124	Siting of touring caravan on land for residential use - Penygraig Uchaf, Cippyn, St. Dogmaels, Pembrokeshire, SA43 3LZ
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW

NP/24/0440/FUL	Design amendment to approval NP/21/0133/FUL & NP/22/0701/NMA with alternative front Steps / ramp, new rear disabled lift & position of roof lights (In Retrospect)Sands Café, Newgale Hill, Newgale SA62 6AS
Type	Written Reps
Current Position	The initial documentation has been sent to PEDW

NP/24/0472/FUL	Partially retrospective application for the siting of pod (caravan), hot tub, pergola, decking, solar panels and drainage system associated with holiday use of the site, as replacement of former cabin - Land East of Bryntirion Lodge, Cippyn, St Dogmaels, Pembrokeshire, SA43 3LS
Type	Written Reps
Current Position	The initial documentation has been sent to PEDW

NP/25/0066/FUL	Existing shed replaced with summerhouse for holiday let accommodation - 19a, Wesley Road, Little Haven, Haverfordwest, Pembrokeshire, SA62 3UJ
Type	Written Reps
Current Position	The initial documentation has been sent to PEDW

Other Matters

The Old Bus Depot, Moylegrove

In October 2024 the Authority determined an application relating to The Old Bus Depot, Moylegrove for use as an outdoor adventure centre with associated storage facilities. That decision was challenged legally by a third sector organisation called Wild Justice, with the support of members of the local community. Permission was given for a judicial review of the decision, which was heard in Haverfordwest on 20th and 21st June. The decision was challenged on 5 grounds.

A decision was handed down by the Court on 5th September. The Judge found against the National Park Authority on two grounds, while dismissing the other three grounds. Judicial Review challenges do not consider the merits of a planning decision itself, but rather the process by which a decision was reached. However, as a result of the Judge finding against the National Park on two grounds the planning permission was quashed and the planning decision will need to be retaken by the Authority at a future date.

The three grounds which the court dismissed were as follows :

Ground 3 – Claimant argued that the planning conditions imposed did not sufficiently achieve mitigation measures on the Marine Special Area of Conservation

Ground 4 – Claimant argued that PCNPA took an unacceptable approach to the Habitats Regulations Assessment of the risk of adverse effects to the integrity of the SAC (particularly in relation to grey seals);

Ground 5 – Claimant argued that PCNPA had undertaken a balancing exercise of risk to SAC against the benefits of increased public enjoyment of the environment.

The two grounds which were upheld by the Court were as follows:
Ground 1: Claimant argued that a number of documents which should have been published on the Authority website were not. Documents – National Trust Concordat, 'Lobby documents' from Planning Agent and National Resources Wales (NRW) Ceibwr Breeding Bird Survey 2024 (this was partially upheld). The Judge agreed with PCNPA that Concordat was not a background paper and nor were the late 'lobby documents' sent to Members. PCNPA had published an approved 'summary' of the NRW bird nesting survey as NRW had not agreed to publish the draft survey. The Judge found the NRW nesting bird survey was relied on in Officer report and debate and that full report should have been published.

Ground 2 – failure to have regard to the potential effect of the development on the Aberath-Carreg Wylan Sites of Special Scientific Interest (upheld). PCNPA argued that Members were shown a slide of the SSSI location and Officer report referred to r elevant LDP2 Policy (Policy 11). That protected birds were discussed and 'biodiversity impacts' assessed using the draft bird survey, planning condition controls and deemed acceptable on the basis that there would be "no harm" to the SSSI. The Judge found PCNPA should have included explicit reference to Planning Policy Wales protection to SSSIs within Officer report.

Officers will respond to the points raised by the Judicial Review when the application is reconsidered by Development Management Committee. The Judge made it clear in considering whether to make a quashing order that the case and the decision does not consider the planning merits of the application. He said "*in neither case can it be said that the refusal of the permission would be an inevitable consequence of applying the correct approach*", however he identified that there could potentially have been a different outcome and therefore quashed the decision.

The decision should not be considered a judgement on the acceptability of the wider activity of coasteering, nor should it be considered a judgement on what activities can or cannot take place in SSSIs or SACs.

The reconsideration of the application will take place at a future date by the Development Management Committee.

Neutral Citation Number: [2025] EWHC 2249 (Admin)

Case No: AC-2024-CDF-00018

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Haverfordwest County Court and Family Court
Penffynnon, Hawthorn Rise
Haverfordwest, SA61 2AX

Date: 05/09/2025

Before:

MR JUSTICE EYRE

- -

Between:

THE KING **on the application of** **WILD JUSTICE**	**Claimant**
- and -	
PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY	**Defendant**
- and –	
ADVENTURE BEYOND LIMITED	**Interested Party**

- -
- -

David Wolfe KC and **Barney McCay** (instructed by **Leigh Day**) for the **Claimant**
Emyr Jones (instructed by **Geldards LLP**) for the **Defendant**

Hearing dates: 18th & 19th June 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 5th September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE EYRE

Mr Justice Eyre :

1. By the decision of its Development Management Committee ("the Committee") on 16th October 2024 ("the Decision") the Defendant granted the Interested Party planning permission for the change of the use of The Old Bus Depot, Moylegrove, Pembrokeshire ("the Site") to use as an outdoor adventure centre with associated storage facilities. The Claimant applies for judicial review of the Decision on five grounds. Permission was given on paper for two of those grounds by HH Judge Jarman KC and I gave permission for the remaining grounds by an order of 18th March 2025.

2. The grounds allege a number of failings in the procedure leading to the Decision and also challenge the rationality and lawfulness of the Decision. The Defendant denies that there were any procedural failings and contends that the Decision was rational and lawful. As a fallback position it invokes section 31(2A) of the Senior Courts Act 1981 saying that relief should be refused because to the extent that any public law failing is established it remains highly likely that the outcome would have been the same even if the failing had not occurred.

3. The Interested Party took no part in the proceedings other than by way of a representative who attended the hearing as an observer.

The Factual Background.

4. The Site has been disused for a number of years. The Interested Party currently operates its coasteering and kayaking business from premises approximately ½ mile to the north of the Site. The Interested Party is concerned that the lease of its current premises might not be renewed and is looking to the Site to provide replacement premises.

5. Coasteering is an omnibus term covering a range of activities which can take place on the coastline. Such activities include wild swimming; the exploration of coastal caves; low-level traversing (using partially submerged rocks to cross a small section of deep water); and jumping from cliffs into deep water. It is said to be suitable for those who regard themselves as intrepid adventurers who like to "get up close and personal with nature" and to "explore areas of coastline that most people would find it difficult to reach". The Interested Party's business involves the organisation of such activities together with kayaking and similar water-based sporting activity. One of the places in which the Interested Party organizes coasteering and kayaking is Ceibwr Bay, which is 1.6 miles by road and approximately 1 mile on foot from the Site.

6. In support of its application for planning permission the Interested Party contended that the effect of granting permission would be to enable an existing activity to continue. The business which it operated from the former premises would continue at the Site and the activity in Ceibwr Bay would not be new but would be a continuation of the coasteering which was already taking place (it appears that the Pembrokeshire Coast was one of the first places in the United Kingdom where coasteering took place). In reaching the Decision the Defendant took account of the fact that the Interested Party's operation was an existing local business. However, it also had regard to the fact that the move to the Site had the potential to lead to an increase in the volume of coasteering activity. This was because of the improvement in the facilities which would be available to the Interested Party and to its customers. The premises from which the Interested Party was operating were a working farm and the Interested Party's training and

educational activities were taking place in disused former farm buildings. The Interested Party's equipment was also stored in such buildings and the premises had limited parking and changing facilities. The proposed use of the Site would provide the Interested Party and its customers with improved storage and changing facilities together with increased car parking space and improved facilities for its educational work. As was explained on behalf of the Interested Party at the meeting of the Committee, the biggest constraint on the growth of the Interested Party's business was the weather. The proposed development would increase the prospect of engagement in the Interested Party's activities outside the peak season by providing facilities for changing in wet weather.

7. Although the Site itself is not in any environmentally protected area, Ceibwr Bay is in a number of such areas. Those are the Cardigan Bay Special Area of Conservation, the West Wales Marine Special Area of Conservation, and the Aberath-Carreg Wylan Site of Special Scientific Interest ("ACW SSSI"). In addition, members of species associated with the Skomer, Skokholm and Seas off Pembrokeshire Special Protection Area may be present in Ceibwr Bay at times. It follows that the activities organised from the Site will take place in an environmentally protected area. It also follows that any increase in the number of those taking part in the Interested Party's coasteering activities will increase the volume of activity in that protected area.

8. Sections of the coastline of Ceibwr Bay are owned by the National Trust. That body only permits the Interested Party to use its land at Ceibwr Bay at certain times of the year and on certain conditions. Those restrictions are set out in the National Trust's Pembrokeshire Coasteering Concordat ("the Concordat"). Although a copy of the Concordat was provided to the Defendant's Planning Ecologist, Rebecca Blackman, and although she referred to it in her assessment, it is not a published document and its terms were not and have not been disclosed.

9. The Pembrokeshire Coastal Forum's Marine Code ("the Marine Code") is made up of a number of voluntary codes of conduct. These explain the ways in which those engaging in activity around the coast should behave in order to avoid disturbing the local fauna. The codes include codes of the behaviour needed to avoid disturbing seals and seabirds.

The Grounds of Challenge and the Parties' Cases in Summary.

10. The claim is in very large part based on criticism of the approach taken in the report to the Committee ("the Officers' Report") and in the Habitats Regulation Assessment ("the Appropriate Assessment") of 2nd September 2024. The Appropriate Assessment was undertaken by Miss Blackman, in purported performance of the Defendant's obligations under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). It will be seen that a number of the grounds turn on questions of the proper reading of those documents and of Miss Blackman's further note of 15th October 2024. It will be necessary to analyse those documents and the proceedings at the meeting of the Committee in some detail. In doing so, however, it is important not to lose sight of the way in which such reports are to be considered by the court. The principles were summarized by Lindblom LJ in *R (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314, [2019] [PTSR] 1452 at [42], to which summary is to be added the warning of Sir Geoffrey Vos at [62]. Reports are "not to be read with undue rigour but with reasonable benevolence" and with a view

to a "fair reading of the report as a whole" and the court should not engage in a "legalistic analysis of the different formulations adopted in a planning officer's report". Each of the challenges which turn on the terms of the Officers' Report and of the Appropriate Assessment will have to be approached against the background of those principles.

11. In ground 1 the Claimant contends that a number of documents which should have been published were not. Those were documents which the Claimant says were relied upon in formulating the Officers' Report and the Appropriate Assessment. Accordingly, they should have been published pursuant either to the requirement that the Defendant act fairly towards those who were objecting to the application or to the Defendant's obligations under section 100D of the Local Government Act 1972. The documents in question were the Concordat, the draft of the September 2024 National Resources Wales Ceibwr Breeding Bird Survey 2024 ("the NRW Draft Report"), and various documents submitted by the Interested Party in support of the application ("the Lobby Documents"). The NRW Draft Report derived from a survey which had also formed the basis for a position statement ("the NRW Position Statement") which had been published on 30th August 2024. In the course of the hearing it became apparent that only two of the Lobby Documents were relevant. The first was an email of 10th July 2024 from the Interested Party's architect to the Defendant's Development Management Manager, Kate Attrill, taking the form of a series of questions and answers ("the Q & A Document"). The second was a letter from the Interested Party's agent which was sent on 15th October 2024 and uploaded to the Defendant's website the same day. The Defendant says that there was no breach either of the requirements of fairness or of its obligations under section 100D. It does not accept that either the Concordat or the NRW Draft Report were background documents within the meaning section 100D. Fairness did not, the Defendant says, require those documents to be published in the circumstances here. As to the Lobby Documents the Defendant says that the 15th October 2024 letter was published the day it arrived and neither fairness nor the section 100D duty required more. The Defendant accepts that the Q & A Document was not published but says that the information contained in it was all apparent from other documents which had been published with the consequence that it was not properly to be seen as a background document for the purposes of section 100D nor did fairness require its publication.

12. Ground 2 asserts an unlawful failure to have regard to the potential effect of the development on the ACW SSSI. By paragraph 6.4.26 of Planning Policy Wales there is a presumption against development which is not within a SSSI but which is likely to damage the SSSI. The Claimant says that the development had the potential to damage the nesting birds which were a feature of the ACW SSSI. It says that this potential effect was, by reason of the presumption in paragraph 6.4.26, a mandatory relevant consideration. It says that the Defendant should have had regard to this but failed to do so. The Defendant says that the issue was considered in substance because there was consideration of the potential impact on nesting birds.

13. In ground 3 the Claimant says that, by virtue of the Habitats Regulations, the Defendant was required to impose such conditions on the grant of permission as were adequate to achieve the mitigation measures which the Defendant regarded as necessary. The Claimant then says that the conditions which were imposed were not, in fact, sufficient to achieve that purpose. The Defendant says that when read properly the conditions

imposed were sufficient to achieve the necessary mitigation of any adverse impact of the development. As the arguments developed the dispute in respect of this ground became in large part a question of identifying the objective which the Defendant was seeking to achieve and of the extent to which the Transport and Access Management Plan ("the TAMP") required by condition 20 would be effective to achieve that objective.

14. The Claimant's contentions in ground 4 were that the Defendant's approach to the assessment of the risk of adverse effects flowing from the development was wrong in law, alternatively, that the conclusion reached was irrational. The Claimant says that the Defendant was obliged to ensure that the integrity of the SAC was not adversely affected by the development. In order to ensure this it was necessary to eliminate the risk of such an adverse effect. The Claimant says that, instead, the Defendant's approach was to proceed on the basis that a degree of risk to a qualifying feature, namely the local grey seal population was permissible and that it was sufficient to reduce that risk. This was developed to include the contention that the Defendant wrongly failed to have adequate regard to the local grey seal population in Cardigan Bay and instead approached the matter on the footing that it was sufficient if there was no harm to the wider grey seal population across South West England and Wales. The Defendant says that this ground is based on a misunderstanding of the approach which was in fact taken in the Officers' Report and, in particular, in the Appropriate Assessment. It says that those documents had proper regard to the risk to the integrity of the SAC and that the view that the risk of the disturbance of individual seals was not a risk to the integrity of the SAC was properly open to the Defendant.

15. In ground 5 the Claimant says that the Defendant approached the matter on an unlawful or irrational basis by proceeding on the footing that the adverse effects of increased coasteering activity could be balanced by the long-term benefits of increased public appreciation of the special features of the SAC. This ground is founded on criticism of a passage in Miss Blackman's further note of 15th October 2024. The Defendant says that the ground fails because the effect of that report has been misunderstood. It says that the Committee was neither advised to engage in such a balancing exercise nor did it do so.

16. Finally, to the extent that any of the grounds succeed the Defendant invokes section 31(2A) of the Senior Courts Act 1981. It says that relief should be refused because the court can be satisfied that the outcome would not have been substantially different even if the failings had not occurred.

The Legislative and Policy Framework.

17. The Defendant is a competent authority for the purposes of the Habitats Regulations.

18. By regulation 8 a European Site was defined as including a special area of conservation.

19. Regulation 63(1(a)), (5), and (6) provided that:

> 1) "A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
>
> (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) ...

> ...must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.
>
> (5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).
>
> (6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given."

20. The meaning of the conservation status of a species and of a special area of conservation are defined thus in article 1 of the 1992 Habitats Directive:

> (i) "*conservation status of a species* means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;
>
> The conservation status will be taken as 'favourable' when:
>
> — population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
>
> — the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
>
> — there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;"
>
> l) *special area of conservation* means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated;

21. The approach to be taken when considering development which could adversely affect an SSSI is set out in these terms in paragraphs 6.4.24 – 6.4.28 of Planning Policy Wales (12th edition) ("PPW 12"):

> "Sites of Special Scientific Interest
>
> 6.4.24 SSSIs are of national importance. The Wildlife and Countryside Act 1981 as amended by the Countryside and Rights of Way Act 2000, places a duty on all public bodies, including planning authorities, to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features by reason of which a SSSI is of special interest. SSSIs can be damaged by developments within or adjacent to their boundaries, and in some cases, by development some distance away.
>
> 6.4.25 Development in a SSSI which is not necessary for the management of the site must be avoided. This is a matter of principle to ensure that these sites can continue to fulfil their role at the heart of resilient ecological networks. What may be necessary for the management of a site will need to be considered on a case by case basis but it is likely to be limited to activities needed to meet its conservation objectives, including restoration and nature recovery, as well as site management infrastructure, natural flood management and other appropriate nature based solutions. There may be desirable interventions in SSSIs relating to public access, active travel, educational projects and other minor development necessary to secure its role as a living landscape. This may include

agricultural development, such as new barns, slurry stores required to reduce pollution, barn conversions to support tourism or other alterations or extensions to existing houses or buildings on existing employment sites where effects on the features for which a site has been designated can be considered to be acceptable.

6.4.26 There is a presumption against all other forms of development in a SSSI as a matter of principle and this presumption should be appropriately reflected in development plans and development management decisions. There is also a presumption against development not within a SSSI but likely to damage a SSSI. In such cases, proposals must be carefully assessed to ensure that effects on those nature conservation interests which the designation is intended to protect are clearly understood and development should be refused where there are adverse impacts on the features for which a site has been designated. International and national responsibilities and obligations for conservation should be fully met, and, consistent with the objectives of the designation, statutorily designated sites should be protected from damage and deterioration, with their important features conserved and enhanced and the capacity for restoration demonstrated by and through appropriate management.

6.4.27 In wholly exceptional circumstances and only where development is considered to be appropriate and is not likely to damage a SSSI and there is broad and clear agreement for mitigation and enhancement as part of a development plan should development be proposed. This means that development will be considered unacceptable in the absence of an agreed position in a development plan which indicates that it is acceptable in terms of its effect on the notified features of a SSSI.

6.4.28 Before authorising development outside of a SSSI but likely to damage any of the notified features of a SSSI, planning authorities must give notice of the proposed operations to NRW, and must take its advice into account in deciding whether to grant planning permission and in attaching planning conditions. Where local planning authorities are minded to grant planning permission against the advice of NRW they must notify Welsh Ministers. For the purposes of land use planning proposed SSSIs will be treated in the same way as notified SSSIs."

22. The applicable Local Development Plan is the Pembrokeshire Coast National Park Development Plan and policy 11 of that provides that:

"Nationally Protected Sites and Species

(1) Development likely to have an adverse effect either directly or indirectly on the conservation value of nationally protected sites will only be permitted where it is demonstrated that:

a) There is no suitable alternative to the proposed development; and

b) It can be demonstrated that the benefits from the development clearly outweigh the special interest of the site; and

c)Appropriate compensatory measures are secured; or

d) The proposal contributes to the protection, enhancement or positive management of the site.

(2) Development likely to have an adverse effect on nationally protected species will only be permitted where it is demonstrated that:

a) The population range and distribution of the species will not be adversely impacted;

b) There is no suitable alternative to the proposed development;

c) The benefits of the development clearly outweigh the adverse impacts on the protected species; and

d) Appropriate avoidance, mitigation and compensation measures are provided."

The SACs and the SSSI.

23. The description of the site area of the ACW SSSI in the Countryside Council for Wales citation said that "the sea cliffs provide roosts and nest sites for nationally important populations of chough *Pyrrhocorax pyrrhocorax,* kittiwake *Rissa tridactyla,* and less black-headed gull *Larus fuscus"*. The section on the biology of the site included the following:

> "The site is of special interest because it supports over 3% of the national population of both breeding and non-breeding chough. Chough nest in crevices on cliffs between south Ceredigion and north Pembrokeshire. A rocky stretch of coastline at Craig yr Adar near New Quay supports an important seabird population including the only known breeding colony of kittiwakes in Ceredigion. The grassland plateau on Cardigan Island supports a significant breeding population of the lesser black-backed gull. Since the early 1990s, this species has been in decline from many other sites making this colony one of national importance."

24. Consistent with that citation the NRW management statement for the ACW SSSI identified those three bird species as being among the features of special scientific interest and said as follows in respect of choughs:

> **"Chough**
>
> **Disturbance of breeding and roosting sites**
>
> Sheltered crevices and recesses on the cliff faces in some areas are used for breeding and roosting and it is important that these specific locations remain undisturbed, particularly during the breeding season from March to July and at dusk during the autumn and winter months.
>
> **Maintenance of suitable feeding habitat**
>
> Chough feed on invertebrates living in short unimproved turf and bare ground. Appropriate grazing of coastal grassland areas is therefore important to maintain these areas. In addition, invertebrates associated with dung, particularly of cattle and horses, can be an important food source so the use of 'ivermectins', should be avoided in key areas. The outwintering of stock is beneficial."

The Reports and the Proceedings at the Committee Meeting

25. The Officers' Report explained that the application was being presented to the Committee because of opposition from the Community Council. In the opening summary it was said that the application had been subject to an assessment for the purposes of the Habitats Regulations and, subject to the imposition of conditions, was "considered acceptable in terms of the Cardigan Bay Special Area of Conservation". In that regard the report said "the assessment of potential impacts on biodiversity has been informed by a draft survey undertaken by Natural Resources Wales which has been shared with the PCNPA Ecologist". The summary went on to record the officers' view that the proposed development accorded with the relevant national and local planning policies.

26. The Officers' Report listed the relevant Local Development Plan policies and included LDP policy 11 and PPW 12 in that list. The terms of those policies were not set out

there or elsewhere in the Officers' Report. The report did say that the policies could be viewed on the relevant page of the Defendant's website though it is not clear whether that was a reference just to the LDP policies or also included PPW 12.

27. The report then described the Site and the proposal. It identified issues raised by the application including the policy and principle of development and "biodiversity and landscaping". The terms of various policies were recited or paraphrased and at paragraph 4.3 the report said:

> "4.3 Policy 1 of the Pembrokeshire Coast National Park Local Development Plan 2 (LDP2) sets out the National Park's purposes and duty, in order to ensure that development within the Park is compatible with these. Proposals within a countryside location need to demonstrate that they are essential in order to evidence that they comply with the conservation element of the National Park's purposes. Matters of ecology and potential biodiversity impacts are also critical in understanding whether or not a proposal complies with the National Park purposes. Biodiversity matters are assessed in greater detail below."

28. At paragraph 4.9 and following, the report noted that the approval of the development would allow the continued operation of an existing business.

29. Paragraph 8 of the report addressed "Biodiversity & Landscaping/Green Infrastructure". At paragraph 8.1 and 8.2 it said:

> "8.1 PPW, TAN5 and LDP Policy 11 require biodiversity considerations to be taken into account in determining individual applications. The presence of a species protected under UK or European legislation is a material consideration when dealing with applications that are likely to result in disturbance or harm to the species or its habitat.
>
> 8.2 In order to comply with Planning Policy Wales (2024) and the Environment (Wales) Act 2016, planning authorities are expected to ensure every development positively contributes to biodiversity. Indeed, Planning Policy Wales 12 states that all development must result in a net benefit for biodiversity. Edition 12 of PPW also required that all application must be accompanied by a Green Infrastructure Statement and that this must show the step-wise approach has been followed."

30. At paragraph 8.5 the public concern was noted in these terms:

> "8.5 Considerable public concern has been raised in terms of the potential for this application to contribute to a perceived level of disturbance at Ceibwr which borders the Cardigan Bay Special Area of Conservation."

31. The report addressed the Appropriate Assessment and the approach to be taken to the Habitats Regulations at paragraphs 8.6 to 8.15 in these terms:

> 8.6 "Habitats Regulation Assessment is a separate stage of assessment triggered by the potential for impacts on a designated Special Area of Conservation, as required by the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") The Habitats Regulations require that an appropriate assessment is made where a proposal is likely to have a significant effect on a European site.
>
> 8.7 The Local Authority are responsible for carrying out the initial assessment of whether a proposal is likely to have a significant effect and, where appropriate assessment is necessary, this is then consulted on with NRW. The appropriate assessment must consider:
>
> - The conservation objectives for the relevant European site
> - The existing databases relating to these sites

- Impacts that are direct, temporary and permanent The proposal may only proceed where the appropriate assessment concludes that there will be no impact on the integrity of the European Site

8.8 In this case, the Habitats regulations assessment process has been followed and after carrying out appropriate assessment the LPA has concluded that there would be no impact on the integrity of a European site. NRW have been consulted and agree with the conclusions.

8.9 Objectors make the point that the appropriate assessment has not considered the impact on nesting Auks. Nesting birds are however not a designated feature of the SAC under consideration.

8.10 The Cardigan Bay Special Area of Conservation was designated in December 2004 and the habitats and species for which it was designated, which are considered in the appropriate assessment are:

- grey seal
- river lamprey
- sea lamprey
- reefs
- subtidal sandbanks
- sea caves
- bottlenose dolphin

8.11 Whilst there is a statutory duty to consult NRW on the appropriate assessment, there is no general duty to consult the public unless the LPA considers it appropriate. In this case, the LPA did not consider it appropriate to consult the public but nevertheless the LPA published the appropriate assessment on-line prior to the previously scheduled Committee date and the LPA has received and considered the responses to the published draft received. The LPA has updated the appropriate assessment to make it more legible to members of the public unfamiliar with the process and re-consulted NRW, sending both the updated appropriate assessment and the relevant responses from third parties in order that NRW could fully consider the appropriate assessment.

8.12 As part of the appropriate assessment a recommendation regarding necessary planning conditions, which include a condition which ensures provision of an Access Management Plan being provided to the LPA for approval on an annual basis is identified as an appropriate mitigation measure. The provision of this Plan allows for the inclusion of best practice approaches encompassing codes such as the Pembrokeshire Marine Code and National Trust coast steering concordat to be formalised in a mechanism that is enforceable under planning legislation. This condition, alongside others recommended by the appropriate assessment, are therefore recommended to be included in any permission.

8.13 Having submitted the updated appropriate assessment to NRW, NRW responded on the 19th September 2024 and stated: ‘in consideration of the mitigation measures detailed we agree with your conclusion that the development is unlikely to have an adverse effect upon the integrity of the SAC site’.

8.14 As such, the LPA are assured that there will be no impact on the integrity of any European site as a result of this development proposal.

8.15 Members of the Development Management Committee have also had circulated the Habitats Regulation appropriate assessment and the relevant objections to the appropriate assessment received prior to the previously scheduled Committee meeting. Members will be updated in the event that further comments are received on the updated appropriate assessment.”

32. The report then addressed the Defendant's duty under section 6 of the Environment (Wales) Act 2016 and set out the officers' conclusions in respect of that and the Habitats Regulations at paragraphs 8.16 – 8.18 as follows:

> "8.16 In addition to the Habitats Regulation requirements the Local Planning Authority is separately required to consider its duty under the Environment (Wales) Act 2016. Section 6 of this Act states that public authorities that exercise their functions in relation to Wales have a duty to maintain and enhance biodiversity and promote the resilience of ecosystems. The Authority still has a duty to consider potential impacts on nesting Auks habitat through the Environment (Wales) Act. There has been a recent study by an accredited Ecological surveyor commissioned by NRW on the disturbance levels experienced as a result of the coasteering activities at Ceibwr Bay. A copy of the draft report has been considered and informs the conclusion on potential impacts of the proposal, whilst the formal report has not yet been released by NRW. This recent study focused on the potential harm to nesting birds and concluded that there was not a significant risk from coasteering to the species studied who are increasing in number at other known sites.
>
> 8.17 Officers in discussion with the PCNPA Ecologist are content that the conditions, including that requiring an Access Management Plan to be submitted annually, alongside the other specific onsite measures relating to biodiversity provide a suitable mechanism to ensure that wider biodiversity is maintained and enhanced.
>
> 8.18 Subject to appropriate conditions to ensure that the biodiversity enhancements proposed with the scheme are delivered and maintained appropriately; that an appropriate access management plan is put in place and that any future external lighting is controlled, overall, the proposed development is considered acceptable in terms of its impact on biodiversity and as such is considered to comply with Policy 11 of the LDP, the requirements of the Habitats Regulations and the Environment (Wales) Act 2016."

33. At paragraph 10.3 the report concluded with the officers' assessment that subject to the imposition of conditions the proposed development was considered to "comply with relevant national and local planning policies".

34. It is to be noted that there was no reference in the Officers' Report to the ACW SSSI and that, although reference was made to PPW 12, the attention of members was not drawn to the terms of paragraphs 6.4.24 and following of that policy.

35. In the Appropriate Assessment Miss Blackman adopted the two-stage process required by the Habitats Regulations. The first stage was to screen the proposed development to see if it had the potential to cause a significant effect on a European Site. Having concluded that the development had such potential Miss Blackman went on to make an appropriate assessment.

36. Miss Blackman identified the relevant European Sites as being the Cardigan Bay SAC, the West Wales Marine SAC, and the Skomer, Skokholm and Seas off Pembrokeshire SPA. In the body of the report Miss Blackman also considered the potential impact on the Ramsey and St David's Peninsula Coast SPA. She made no reference to the ACW SSSI. Miss Blackman proceeded on the precautionary basis that there would be a significant increase in activity if the development were to proceed. However, she regarded the fact that there was an existing level of activity as a relevant consideration.

37. Addressing the Cardigan Bay SAC, Miss Blackman identified the grey seal population as a qualifying feature upon which the development had the potential for a significant effect. She said that increased coasteering activity might result in "an increase in

disturbance to known seal pupping beaches" including those at Ceibwr Bay. She then said:

> "Both the range (in terms of viable seal pupping locations free from disturbance) and populations (where disturbed seals and pups could be put at risk if disturbed) could therefore be impacted if measures are not put in place to reduce this risk."

38. Miss Blackman identified the chough populations as qualifying features of both the Skomer, Skokholm and Seas off Pembrokeshire SPA and of the Ramsey and St David's Peninsula Coast SPA. Her assessment in relation to those populations was in identical terms, namely that there was no potential for a significant effect, saying, in respect of the former SPA:

> "Although species may be present in close proximity to activities associated with the planning application, as the SPA is almost 50km away, it is not considered that individual Chough or their nests close to Ceibwr bay would be connected to or fundamental to the population size of the Skomer, Skokholm and Seas off Pembrokeshire SPA. For the above reason, impacts upon the SPA for this feature can be screened out and will not proceed to Appropriate Assessment."

39. Miss Blackman identified the population of a combined assemblage of sea birds as a qualifying feature of the Skomer, Skokholm and Seas off Pembrokeshire SPA. She said that because the SPA was 50km away the colony of auks close to Ceibwr Bay could not be regarded as "connected to or fundamental to the population size of the [SPA] assemblage". Miss Blackman then referred to the NRW Position Statement. She said that the position statement explained that a survey had been carried out. Miss Blackman then noted that:

> "The survey concluded that no evidence was found to suggest that the breeding success of seabirds was affected by coasteering group activities, although some actions observed that had the potential to be detrimental."

40. Miss Blackman concluded the first stage of the assessment by saying that "there are no other European Sites within the wider vicinity of the development with features relevant to this location and planning application". She then proceeded to the second stage of making an appropriate assessment of the impact of the development on the conservation objectives of the Cardigan Bay SAC. At stage 2a of that assessment Miss Blackman said that the relevant feature of the SAC was the grey seal population and its range. Miss Blackman identified the potential impact as being increased levels of disturbance through greater use of Ceibwr Bay. She set out mitigation measures and then said that as a result of the mitigation measures there would be no significant effect on the conservation objectives subject to conditions. That passage was as follows:

> "The existing operation must cross National Trust land in order to undertake their None – disturbance as a result of coasteering activities. The National Trust restrict access for such activity unless subject to Range the hub building providing the business is signed up to adherence to their Concordat. The Concordat was conditions written to safeguard the long-term use of National Trust land in Pembrokeshire increased opportunity for and balance the use with the wider environment by outdoor group activities. The more groups able to use Concordat applies to commercial coasteering activity providers and sets out a Ceibwr bay for outdoor code of conduct expected by all providers which includes measures to protect the activities. natural environment through the avoidance of wildlife disturbance (details are within the Concordat which is not a publicly available document). The Concordat includes specific measures associated with Ceibwr bay and the relevant operator to this application has agreed that they will not use the areas outlined within the relevant

document (confidential) between 1st August and 30th November each year to prevent impact on seals and their pups.

The operator is currently signed up to the concordat and must remain so in order to access through National Trust land. If the Concordat is breached the following course of action is taken by the National Trust:

1st breach – Verbal response to remind operators of obligations under the code and ask them to modify conduct accordingly

2nd breach – written warning

3rd breach – if no action taken by provider access under the concordat is revoked.

Once the Concordat has been revoked the operator will lose rights to access via the land and therefore would be unable to operate form the area. This helps to provide confidence that impacts from the development will be kept to minimum and the National Trust as the owner of the Concordat are responsible for ensuring compliance and will otherwise revoke access. It is acknowledged that the Authority has no control under the Concordat and that it only applies to coasteering activity and not other outdoor activities including kayaking, climbing etc. The Authority therefore recommends imposing a condition to agree an access plan with the applicant to seek to manage access for all outdoor activities in a way that minimises impact on pupping seals, including restrictions on and requirements as to how access may be undertaken if pupping seals are present in Ceibwr bay while access is taken.

In addition to the Coasteering Concordat, Pembrokeshire also operates a voluntary Marine Code which highlights Agreed Access Restrictions drawn up by conservation experts and coastal users. This Marine Code would be particularly applicable for kayaking. This includes limits on landing times on pupping beaches and keeping a minimum distance of 50 metres from seals in the water unless they approach an individual. As with the Concordat, this could be implemented by including appropriate elements in an Access Plan required by a planning condition. The Pembrokeshire Marine Code is available here: Pembrokeshire Marine Code.

In order to ensure there is no large increase in the number of operators able to operate out of Ceibwr above existing levels, the new hub must only be available for use by the relevant operator associated this planning application. An appropriate condition will be added to any consent to secure this.

To ensure customers are aware of the marine code and potential impacts upon wildlife as a result of coasteering activities, information boards must be erected on the front elevation of the main hub building. The information boards must include details of the Pembrokeshire Marine Code, details the Cardigan Bay SAC, information on wildlife likely to be encountered during outdoor activities in the area and what is considered disturbance to these species and details. Again, this will be secured via condition of any consent and will provide further confidence that disturbance impacts from the operations associated with the building will be kept to a minimum as far as possible.

The above mitigation measures will ensure that NRW's Conservation Objectives and vision for the Cardigan Bay Special Area of Conservation (SAC) are able to be delivered."

41. Miss Blackman then turned to stage 2b which she began with a rehearsal of the definition of a site's integrity as set out in the HRA Handbook namely:

> "the coherence of its ecological structure and function across its whole area, that enables it to sustain the habitat, complex of habitats and/or levels of population of the species for which the site is (or will be) designated for."

42. Miss Blackman listed existing risks to the conservation feature (namely the grey seal population) and included "disturbance causing reduction in pupping success" as one

such risk. She then considered whether, following the mitigation measures already discussed, the proposed development would exacerbate or contribute to the identified risks. She concluded that it would not. Miss Blackman set out her reasoning thus:

> "Following mitigation discussed in Section 2a, would the proposal exacerbate or contribute to the identified threats and risks?
>
> Only disturbance has been identified as having the potential to impact grey seal in association with this application as all other existing known threats and risks to grey seal are not relevant...
>
> ...Disturbance can include: displacement, collision and noise & visual disturbance.
>
> Education awareness and activity surveillance are indicated as the most likely required actions.
>
> There is no suggestion in NRW's package of information published under section 37 of the Habitats Regulations that these activities can cause a reduction in pupping success, but it remains a possibility. It should be noted that most the important pupping beeches, caves and Haul-out sites occur in Pembrokeshire, grey seals are known to range throughout Cardigan Bay and there are a significant number of pupping sites in south western Ceredigion. The population associated with the Cardigan bay SAC is not isolated a nd due to the known movements of grey seals in Pembrokeshire and Ceredigion is considered that the individuals within the Cardigan bay SAC are park of the South West Wales and England wider population. In a more local context, the population size in South West Wales is estimated to be approximately 5000 individuals. Pup production within the Cardigan Bay site therefore represent only a small proportion of the South-west Wales production. With the above in mind when considering 'the coherence of its ecological structure and function across its whole area, that enables it to sustain the habitat, complex of habitats and/or levels of population of the species for which the site is (or will be) designated for', although some disturbance to individual seals cannot be completely ruled out, the significance of the impact of this at a population scale and the ability of the feature to continue to function at a sustainable level, it is not considered that the outcome would be significant to either of these factors.
>
> Notwithstanding the above and the baseline situation, because of the potential for increased levels of outdoor activity and the potential for disturbance impacts upon individual seals, measures must be put in place to reduce these impacts from outdoor activity groups associated with the proposal, including through the Concordat and via relevant conditions. With such measures it is considered, on a site specific basis taking into account the likely levels of activity to Ceibwr bay through the proposal that the activity can be managed in such a way that there will be no possible effects on the site's conservation objectives, accordingly the proposal will not adversely affect the integrity of the coherence of the sites ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified In short, these measures will ensure that there is no impact on the integrity of the SAC.
>
> Following the above assessment, is it considered necessary to undertake an in combination assessment to determine if potential effects arising from the current proposal will have in combination effects with other plans or projects."

43. On 11th October 2024 the Claimant's solicitors wrote to the Defendant objecting to the application and criticizing the approach taken in the Appropriate Assessment. The letter annexed a report of 6th October 2024 from Ian Carter. The report and the letter made reference to the ACW SSSI. In respect of the Appropriate Assessment's conclusions about the grey seal population, the Claimant said that the mitigation measures proposed were flawed because they were intended only to reduce the risk of an impact on the seal

range and population rather than to eliminate that risk. It was also said that the measures proposed were inadequate even to reduce the risk. In the report this was said to be because of their reliance on the Concordat and in the letter because there was no mechanism for limiting the level of activity. Reference was also made to the relevance of peregrines and choughs. That was expressed by reference to the ACW SSSI and this was said at paragraph 16 of the letter:

> "It is noted that peregrine and chough do not currently breed at the site, but do breed nearby and suitable breeding habitat exists within Ceibwr Bay where the increased activities are proposed to take place. It is noted that chough are also a feature of the SSSI, and according to the SSSI management statement the chough population `should contribute towards maintaining the West Wales chough population'. PCNPA should take steps now to factor in the potential for these species to nest at the site as part of its decision-making. If these birds do choose to nest at the site, or where the activities will take place, access to these areas should be strictly restricted and provisions to enforce these restrictions should be in place as part of any permission decision."

44. In response to those criticisms Miss Blackman prepared a further note dated 15th October 2024. This was read out at the Committee meeting where Miss Blackman also responded to comments from members of the Committee.

45. In that note Miss Blackman noted that the grey seals present in Cardigan Bay did not form a discrete population but were part of the wider population of South-West England and Wales. She then said:

> "When considering the objectives of the FCS and in particular the requirement for … "data on the species concerned indicates that it is maintaining itself on a long term basis as a viable component of its natural habitat(s)" in relation to this application, the question must be asked whether or not this proposal will adversely affect the ability of the SAC feature to meet its FCS and the aforementioned objective. It is acknowledged that an individual seals may pup on the beach at Ceibwr and nearby bays used by the activity provider, however the potential to disturbance is limited to these individuals alone. Taking into account the population as a whole and the level at which this potential disturbance would impact it, it cannot be concluded that the ability for the population to maintain itself will be compromised based on disturbance to a very few individuals. In short, individual disturbance does not equate to an adverse impact upon FCS or an adverse impact on integrity of the SAC."

46. Having said that Miss Blackman added:

> "That being said, as discussed within the HRA and the subsequent planning condition recommendations, measures can be put in place to reduce the possibility of disturbance impacts upon individual seals using the area and these will eliminate possibility of impact on the FCS of grey seal and eliminate any possibility of impact on the integrity of the SAC."

47. Addressing choughs and peregrines Miss Blackman said that those were not "features of the SAC at Ceibwr" but that there was a duty under the Environment (Wales) Act 2016 to consider impacts. She said that those birds were not currently present in the areas potentially affected by the coasteering activities but accepted that there was a possibility that they could nest there in the future. She said that if that were to happen the provision for annual revision of the TAMP could be used to introduce any necessary protection measures.

48. Miss Blackman pointed out that the TAMP would allow numbers engaged in the activities to be controlled and as such would give scope for better management of the activities than was currently the position.

49. Miss Blackman concluded her further note with the following "other points to note":

> "It should be noted that both the HRA and my responses to comments are made using my local expert knowledge and where necessary, in consultation with a network of experts who also have local knowledge of the relevant protected sites and species. I am in no doubt as to the extent of potential impacts and the ability to maintain FCS of the SAC Species, or the ability to comply with Environment (Wales) Act duties. Much has been made of the precautionary principle in representations which applies in circumstances of scientific doubt, but that is not the case here.
>
> I would also like to make the point of the overarching benefits of wildlife tourism for nature and biodiversity. For biodiversity to remain high on the agenda of importance, the general population must continue to be engaged with nature and enthused about Pembrokeshire's special qualities and unique ecology. Interactions with nature can come in many forms, but for many, particularly those who do not have prior experience or indeed, the opportunity, to be in and close to nature, the connections arising from outdoor activities such as coasteering can be invaluable and for some, the start of a meaningful interest. It is acknowledged that this must be managed in an appropriate way to ensure no adverse impacts upon the SAC, however the benefits of this interaction where impacts on individual species are minimised should not go unmentioned. Through appropriate management plans, education and engagement with activity providers, knowledge and important messages about nature conservation can be passed on to those taking part in activities and subsequently create an ongoing interest in nature conservation. Paradoxically, these type of activities, managed in an appropriate way, can help to maintain FCS in an SAC even if there are individual disturbances.
>
> As an expert, a balanced approach to assessment of impacts is required and that is essentially an exercise of judgement. My assessment is not as simple as addressing all risks to individuals, but significant risks on a population conservation objective level. I have identified all such reasonably foreseeable risks and am satisfied that the mechanisms proposed for preventing them from arising are legally enforceable. I am in no doubt that in exercising judgements I have met the standards in regard to reasonable scientific doubt required for the impact assessments involved in this application."

50. At the meeting of the Committee the officers made a 64 slide Power Point presentation. This identified "ecological impacts" as one of the key issues. It included a series of maps and photographs. One slide set out the terms of section 6 of the Environment (Wales) Act. Two slides showed the area of the Cardigan Bay SAC. One slide showed the area of the ACW SSSI. A number of slides then set out the process of assessment under the Habitats Regulations and the need for maintenance of the favourable conservation status of relevant species. Three slides addressed the potential impact on grey seals associated with the Cardigan Bay SAC. These noted the potential for "disturbance to a low number seals". However, under the heading of whether the effect of the development would "undermine the FCS of the seal population associated with Cardigan Bay SAC" the slides explained that the disturbance of some seals would not "compromise the ability of the **population as a whole to maintain itself**" (original emphasis). The slide then said that when all the matters noted had been taken into account it could not be concluded that the favourable conservation status of the seal population would be compromised. The next slide addressed the duties under the Act. It said that, even aside from the Habitats Regulations, the Act required the Defendant

"to consider impacts on habitats and species regardless of whether or not it is a feature of a designated site". It addressed the position of choughs by saying: "should they become present with the areas associated with the outdoor activities, the Management Plan will ensure any necessary changes to practice are made". The reference to the management plan was to the proposed TAMP.

51. An indication of the discussion at the Committee meeting comes from the minutes of that meeting and from a transcript of part of the discussion. The minutes record that in showing the extent of the ACW SSSI and of the Cardigan Bay SAC the Development Management Manager explained that Ceibwr Bay was a "very sensitive site". Reference was made to the Appropriate Assessment's conclusion about the potential impact on the Cardigan Bay SAC and to the NRW Draft Report. In response to a request for clarification it was said that the proposed TAMP "would incorporate best practice from [the Concordat]". It was said that consultation with NRW and the annual renewal of the TAMP "would enable appropriate management should any new species such as choughs become present and require any alteration to management". Concerns were raised by members of the Committee as to the potential for harm to wildlife in Ceibwr Bay. In response to these concerns officers made further reference to the NRW Draft Report. The minutes record that:

> "Some Members remained concerned regarding the potential for damage to the wildlife in Ceibwr bay, and whether sufficient baseline information was available to determine whether populations had decreased and therefore whether visitor numbers should be controlled. Officers clarified that NRW had undertaken a survey regarding sea bird breeding and it was recommended that this was repeated every five years. …The Director added that in terms of the HRA, the critical issue was regarding the population in the SAC as a whole. However when the management plan was submitted annually, the Authority would consult with NRW and the Ecologist who would be aware of any reports of disturbance, and access to certain areas could thereby be controlled. It was concluded that there would be no impacts on the integrity of the SAC."

52. The extract from the transcript gives the fuller version of the exchanges which were summarized in that way in the minutes. This confirms the emphasis which was placed on the NRW Draft Report with Miss Blackman saying in response to questioning from members of the Committee "so obviously there has been that NRW report and it's been recommended that that survey is repeated every five years in that report". In support of ground 4 the Claimant says that the transcript also shows that attention was being focussed on the seal population of the South West Wales Coast rather than the population potentially affected by the Interested Party's activities. It will be necessary in due course to consider the proper interpretation of the exchanges on which the Claimant relies.

The Decision.

53. The Decision gave permission for the proposed change of use subject to a number of conditions. Issue is taken with the lawfulness and adequacy of the conditions and conditions 16, 17, and 20 are of note for current purposes.

> 16. "Prior to the first beneficial use of the proposed development, details of the design and information of 2 x A1 sized information boards must be submitted to and approved by the LPA in consultation with NRW. The boards must include as a minimum details of:
>
> • A summary of wildlife likely to be encountered during relevant activities

• What wildlife disturbance is and how to recognise it in species likely to be encountered during coasteering activities in Pembrokeshire

• Relevant details of the Pembrokeshire Marine code

• A summary of the Cardigan Bay Marine SAC and it's designating features In order to ensure the boards reflect the most up to date marine code, should any change to the marine code occur, the boards must be updated within 6 months of the publication of any new version of the code.

Reason: In order to ensure the protection and education of members of the public encountering wildlife on the activities at the coast and in accord with the Environment (Wales) Act 2016 and the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2017.

17.The use of the building shall be restricted to the applicants and shall not be rented/leased or occupied by any other operators unless the prior approval is first sought from the Local Planning Authority through a further application.

Reason: In order to ensure that the occupier is acting in accord with the National Trust Concordat and to ensure protection of the Cardigan Bay SAC and bird nesting site at Ceibwr.

20.Prior to commencement of the building's operational use as an adventure centre, a transport and access management plan shall be submitted to and approved by the Local Planning Authority to demonstrate how the management of activities are being implemented to limit disturbance to wildlife at Ceibwr Bay with an accompanying plan showing areas to be used seasonally. This shall be re-submitted for approval on a yearly basis no later than the 1st of February each year to ensure it is kept up to date with the most recent ecological information available. Such management plan as is agreed shall be complied and details displayed on the information boards referred to Condition 16 above.

The transport and access management plan shall include:

- The areas being used at different times of the year, for which activity, and shall also be shown on an accompanying plan,

- The maximum number of people per day being transported to Ceibwr by minibus, private car and electric bikes

- The number and type of activities taking place at Ceibwr – to include snorkelling, paddleboarding, kayaking and co-steering.

Reason: To comply with the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2017 and the Environment (Wales) Act 2016 and Policy 11 of the Pembrokeshire Coast National Park Local Development Plan."

Ground 1: Breach of the Requirements of Fairness and of the Right to Know Provisions.

54. This ground relates to three groups of documents (being a total of four documents) which the Claimant contends were background papers for the purposes of section 100D of the Local Government Act. It says that the Defendant's failure to publish the documents was a breach of the Defendant's duty under that section and also of the requirement of fairness.

The Law.

55. Section 100D of the Local Government Act requires that the "background papers" for a report or part of a report for a meeting of a principal council (which includes the Defendant for these purposes) are to be made available for inspection. By section 100D(1)(c) the Defendant as a principal council in Wales was required to publish those documents electronically unless (which is not suggested here) it was not reasonably practicable to do so.

56. Section 100D(5) defined background papers as:

> "…those documents relating to the subject matter of the report which—
>
> (a) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based, and
>
> (b) have, in his opinion, been relied on to a material extent in preparing the report, but do not include any published works."

57. In addition, the effect of article 12 of the Town and Country Planning (Development Management Procedure)(Wales) Order 2012 was that the Defendant was required to make available for inspection copies of the documents submitted in support of the Interested Party's application.

58. Whether a particular document is a background paper for the purposes of section 100D involves questions both of judgement and of law. It is a question for the judgement of the relevant officer whether the document in question disclosed facts or matters on which the report or an important part thereof was based and whether those facts or matters were relied upon to a material extent in preparing the report. The two aspects of that matter cover essentially the same ground. If the facts and matters were not relied upon to a material extent then the report is unlikely to have been based on them but if they were relied on to a material extent then the report is likely to have been based on them. Those are matters for the judgement of the officer. A conclusion as to whether the report was so based or the facts or matters were so relied upon can only be challenged on the basis of irrationality. However, those are matters where the scope for legitimate differences of opinion will be limited. In addition, the court will often be as well-placed as the relevant officer to assess whether there was such reliance. There will often be little scope for debate as to whether a report was or was not based on the facts and matters in a particular document. Accordingly, the question is one to which there will often only be one possible rational answer. When the conclusion has been reached (whether by way of the officer's assessment or the court's conclusion that it is the only rational assessment) that the report was based on the facts or matters and that they were relied on in preparing the report then the document in question is a background paper as a matter of law. There is no further or residual discretion at that stage and the document must be published.

59. The approach to be taken when considering alleged breaches of the section 100D requirement was explained thus by Lewis LJ in *R (Bradbury) v Brecon Beacons NPA* [2025] EWCA Civ 489 at [49]:

> "… There are two separate questions. The first question is whether the failure to comply with the relevant procedural requirement results in the decision being unlawful, applying the approach in *R v Soneji [*2005] UKHL 49, [2006 1 AC 340, and *A1 Properties Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27, [2024] 3 WLR 601. If so, the second question that may arise is whether a remedy should be refused pursuant to section 31(2A) of the

> 1981 Act or as a matter of discretion on the part of the court. The two questions are analytically distinct and should be considered separately. …"

60. In determining whether a breach of section 100D renders a decision unlawful the approach to be taken is, therefore, that laid down in *Soneji* which was considering in this context by Holgate J (as he then was) in *R (Worcestershire Acute Hospitals NHS Trust) v Malvern Hills DC & others* [2023] EWHC 1995 (Admin) at [140] – [142]. It is apparent from *Bradbury* at [49] that Lewis LJ regarded Holgate J's approach as applicable and I note that it also reflects the approach adopted by Lang J in *R (Kinsey) v Lewisham LBC* [2021] EWHC 1286 (Admin) at [103]. A breach of the section 100D duty does not automatically render the decision in question unlawful or invalid. Whether it will do so depends on all the circumstances. The relevant considerations include in particular whether there was or was not substantial compliance with the requirements of the section and the extent to which any non-compliance caused significant prejudice to those challenging the decision. The nature and purpose of the 2012 Order are closely analogous to those of section 100D. It follows that the same approach is to be taken to breaches of the publication requirements of the Order as to breaches of the requirements of section 100D.

61. In having regard to the circumstances and in considering the effect of any non-compliance with the publication requirements it is necessary to keep in mind the purpose and importance of those requirements. As Cranston J explained in *R (Joicey) v Northumberland CC* [2014] EWHC 3657 (Admin), [2015] PTSR 622 at [47] "the very purpose of a legal obligation conferring a right to know is to put members of the public in a position whether they can make sensible contributions to democratic decision-making". Similarly, in *Hale Bank PC v Halton BC* [2019] EWHC 2677 (Admin) at [60] Lieven J noted that "proper compliance with section 100D is an important part of maintaining a transparent planning system, in which third parties can be properly informed as to why particular recommendations are being made". As Lang J put it in *Kinsey* at [101] a breach of the section 100D requirements will be seen as significant because "access to reports and background papers not only allow the public to be informed but to participate by making written representations to councillors and officers in advance of the meeting and also assisting the preparation of oral representations".

62. A separate but closely related requirement is that a planning authority's procedure in considering an application be fair. Procedural fairness requires that those objecting to a proposal have access to the material on which the decision is to be based. This again is necessary in order to enable them to participate on a properly informed basis so that their submissions can be directed at the relevant material. The requirement is one of substance rather than form. A failure to provide documents will only amount to procedural unfairness such as to invalidate a decision if that failure caused material prejudice. As with section 100D when considering the presence or absence of material prejudice the court must keep in mind the importance both of public participation in democratic decision-making and of such participation being on an informed basis. The court must be particularly cautious before concluding that a party who can show that the representations which would have been made in response to the unpublished information would have been materially different from or additional to those which were in fact made has not suffered material prejudice.

The NRW Draft Report.

63. Reference was made to the NRW Draft Report not only in the Appropriate Assessment but also in the Officers' Report and at the Committee meeting.

64. In the Appropriate Assessment Miss Blackman summarized the report in the passage (see [39] above). It is apparent that in that passage Miss Blackman was not simply quoting the NRW Position Statement but was summarising the draft report. In the Officers' Report at [8.16] (see [32] above) it was expressly said that the NRW Draft Report "informs the conclusion on the potential impacts of the proposal". Finally, at the Committee meeting the officers made further reference to the NRW Draft Report (see [51] and [52] above) as a potent factor operating in favour of the proposal.

65. It follows that the NRW Draft Report was relied on in the advice to the members of the Committee. It formed a significant part of the rationale for the assessment that the proposed development did create a risk of harm to the integrity of the SAC. There is no indication that any officer of the Defendant applied his or her mind to the question of whether it was a background paper for the purpose of section 100D but the only rational conclusion would be that it was relied on the preparation of the Officers' Report and contained matters on which an important part of that report was based. As such it was a background paper.

66. The Defendant contended that the NRW Draft Report was not a background paper because it had been provided to Miss Blackman in confidence unlike the NRW Position Statement which was a public document. That does not advance matters. I will address the Defendant's argument in this regard more fully in my consideration of the Concordat below but the short point is that even though provided in confidence the report remained a background paper unless it fell within the exceptions in the Local Government Act which it did not.

67. In addition, Mr Jones sought to argue that the NRW Draft Report was background to the Appropriate Assessment but not to the Officers' Report with the Appropriate Assessment being a background paper for that report. That argument might have had some force but for the emphasis placed directly on the NRW Draft Report in the Officers' Report itself and in the advice given at the Committee meeting. The NRW Draft Report was being advanced as a factor which members should regard as standing in favour of the proposed development in its own right.

68. The question, therefore, becomes one of whether the failure to publish the NRW Draft Report caused significant or material prejudice to the Claimant. This runs alongside the consideration of whether there was unfairness in the failure to disclose the report and whether this vitiated the Decision. It is to be noted that the NRW Position Statement had been published and so the Claimant was in a position to comment on that. I am satisfied that there was such prejudice. In his witness statement at [37] and following Dr Mark Avery sets out a critique of the methodology of the survey and of the soundness of the conclusions drawn from it in the NRW Draft Report. He criticizes the timing and duration of the survey; he challenges the conclusion drawn from the high success of the Herring Gull population in Ceibwr Bay; and criticizes the failure to have regard to the report of Dr Thomas in respect of the potential impact on nesting seabirds. Those are points which are potentially significant. They are not necessarily "knock out blows" but they do call for answer and cast doubt on the weight which can be placed on the NRW Draft Report. Those are points which could have been made if the report

had been disclosed. The failure to disclose the report and the Claimant's consequent inability to raise those points is a material prejudice.

69. The fact that the NRW Position Statement had been published does not detract from this argument. The position statement was in short terms. It is to be noted that it does state the timing and duration of the survey but it is unrealistic to think that a critique of the kind foreshadowed by Dr Avery could have been mounted solely on the basis of the position statement.

70. Similarly, the fact that Miss Blackman summarized the NRW Draft Report in the Appropriate Assessment does not alter the position. That summary was in short terms and did not provide the information which was needed to identify those matters which the Claimant contends were flaws in the survey and report. It was necessary for the Claimant to have sight of the report in order to be able to contend that it should not bear the weight which the Defendant placed on it.

71. This element of ground 1 is, accordingly, established. I will consider below the extent to which section 31(2A) precludes relief.

The Concordat.

72. The Concordat was referred to in the Officers' Report at [8.12] and in the Appropriate Assessment in the consideration of the mitigation of the effects on the grey seal population and range.

73. The reference in the Officers' Report at [8.12] is not relevant for these purposes although it forms part of the background to the challenge to the conditions advanced in ground 3. For current purposes it suffices to say that the Concordat was only being referred to in [8.12] as an example ("such as") of the codes from which best practice could be identified.

74. The Claimant's argument that the Concordat was a background document relies on the reference made to it in the Appropriate Assessment. The Claimant's argument is based on three propositions. Mr Wolfe KC structured his submissions more holistically but the contentions amounted to the following chain of propositions. First, that it was the Committee which was making the assessment required by regulation 63 of the Habitats Regulations. Second, that the Appropriate Assessment was a report to the Committee to enable it to make that assessment. Third, that the Concordat was relied on in the preparation of the Appropriate Assessment and was the basis of important parts of that document. There are deficiencies in each of those propositions and that argument based on them cannot be sustained.

75. It is correct that the Habitats Regulations required the Committee, in deciding whether to grant permission, to ascertain the proposed development would not adversely affect the integrity of the relevant European Site and that the regulations also required the making of an appropriate assessment. It is, however, artificial to read the regulations as meaning that the Committee was itself making the assessment. The proper analysis was explained by Lewis LJ in *Bradbury* at [62]. The Committee has to reach a conclusion as to the impact of the proposed development on the integrity of the relevant protected site and will do so in light of the assessment but is not itself making the assessment. The approach taken by the defendant national park authority in *Bradbury* was similar to that taken here. In that case there was an appropriate assessment by a suitably

qualified employee of the authority and reference was then made to that assessment in the officers' report considered by the defendant (see *Bradbury* at [29]). It is apparent that Lewis LJ regarded that approach as wholly sufficient. I take account of the fact that the argument which Mr Wolfe advanced in his first proposition does not appear to have been raised in *Bradbury*. I also take account of the fact that it is a legitimate grammatical interpretation of the language of regulation 63. Despite those matters I do not accept that it is the correct interpretation of that provision. First, acceptance of Mr Wolfe's contention as to the correct approach would mean that the Court of Appeal had through inadvertence treated an impermissible approach as being acceptable. Second, it is an interpretation which is unrealistic when regard is had to the nature of the decision-making process to which regulation 63 is being applied. The correct analysis is that for which Mr Jones contended namely that the exercise in which the Committee was engaged was that of deciding whether or not to grant planning permission. In the context of that exercise the Committee had to take account of the Appropriate Assessment to have regard to the requirements of regulation 63 but it was not itself making the assessment.

76. The relevant report and that on which the Decision was based was the Officers' Report not the Appropriate Assessment. This analysis again accords with the approach in *Bradbury*. The Appropriate Assessment was a background paper to the Officers' Report and was relied upon for the formulation of section 8 of the latter. The correct analysis becomes clear when the nature of the exercise in which the Committee was engaged is considered. The Committee was not considering the Appropriate Assessment and forming its own assessment of whether the views expressed in that were correct. Instead, it was considering the question of the grant or refusal of planning permission by looking at the overall position in light of the Officers' Report and the advice set out in that document as to the issues which the officers had identified as being relevant. The summary of the effect of the Appropriate Assessment in the Officers' Report was an element in that exercise.

77. It follows that both of the first two propositions in Mr Wolfe's chain of reasoning fall away. However, even if those were to be established acceptance of the third would still be necessary for the Concordat to be a background document and I do not accept that proposition. This part of ground 1 is dependent on the contention that the Concordat was relied upon to a material extent in preparing the Appropriate Assessment and was the basis either for that document or for an important part thereof. That was not the position. It is correct that in her consideration of that relevant mitigation measures Miss Blackman does make extensive reference to the Concordat. It is also correct that Miss Blackman does say "once the Concordat has been revoked the operator will lose rights to access via the land". That is the high water mark of the Claimant's argument but the passage has to be read as a whole and in context. The context is significant because that reference is followed immediately by an acknowledgement that the Defendant has no control over the Concordat and by the proposal for the TAMP and other conditions. Miss Blackman then proceeds to set out the conditions she has in mind. It is to those conditions and not to the Concordat that Miss Blackman is referring when she says "the above mitigation measures will ensure" delivery of the conservation objectives. That part of the Appropriate Assessment could have been expressed more clearly but when it is read as a whole the effect is that Miss Blackman was relying not on the Concordat but on the conditions to be imposed by the Defendant as part of the grant of planning permission.

78. The Claimant's contention that the Appropriate Assessment was based on or relied on the Concordat is closely related to its argument in ground 3 that the conditions were not effective to achieve their objective with that objective being seen as giving effect to the Concordat. I will analyse that argument more fully below and it will be seen that in that analysis I do not accept that the object of the conditions was to give effect to the terms of the Concordat.

79. It follows that the failure to disclose the Concordat was not a breach of section 100D because the Concordat was not a background paper for the purposes of that section.

80. In addition, there was no material prejudice, and so no unfairness, to the Claimant in the failure to disclose the Concordat. The only benefit to the Claimant of being aware of the terms of the Concordat would have been that it would have been able to make submissions as to the adequacy or otherwise of those terms in protecting the favourable conservation status of the seal population and the related conservation issues. Such submissions would not have been relevant to the Committee's consideration of this matter. That is because the issue for the Committee was not whether the terms of the Concordat were sufficient to prevent harm to the integrity of the protected site. Rather the issue was whether the conditions which the Committee was to impose were sufficient for that purpose. That follows from the acknowledgement that the Defendant had no control over the Concordat and the decision, as a consequence of that lack of control, to impose, the Defendant's own TAMP. Submissions as to the adequacy of the TAMP as a way forward were potentially relevant but awareness of the terms of the Concordat would not assist in that exercise.

81. It follows that this element of ground 1 fails.

82. I make it clear that if I had concluded that the Concordat was a background paper then I would have rejected the Defendant's arguments that it was relevant that the National Trust had provided the document to Miss Blackman in confidence and that the document had not been shown to the members of the Committee. The Concordat was not within the category of exempt information for the purposes of section 100I. If it had been relied upon so as to become a background paper then it would have had to be disclosed and neither the fact that it had been disclosed in confidence nor the failure to provide it to members would have altered the position. Indeed, it will often be where a document has not been shown to members that consideration of it by others will be most valuable with a view to mounting a counter-argument as to the correct interpretation of the document or as to the conclusions flowing from it.

The Lobby Documents.

83. The Interested Party's document of 15th October 2024 was clearly not a background paper for the purposes of section 100D. The Officers' Report was prepared in advance of its receipt and it did not form the basis of the advice being given to the Committee. It follows that there was no breach of section 100D. It was published on the same day that it was received by the Defendant and it cannot be said that there was any breach of the 2012 Order. Similarly, it cannot be said that there was any unfairness or any prejudice to the Claimant in that document being put before the Committee. It amounted to advocacy in general terms and in large part replicated the Interested Party's planning statement (which had been published previously) albeit in less formal language. There would have been scope for saying that there was unfairness if the document introduced

a new factor which was taken into account and regarded as material by the Committee and upon which the Claimant had no opportunity to comment. That was not the position. It is not suggested that the Committee were advised that the document raised new issues which should be taken into account in addition to those set out in the Officers' Report. Instead, the position remained that the Committee were being told that the material issues were those addressed in that report.

84. The Q & A Document was a supporting document supplied by the Interested Party which should have been published in accordance with the 2012 Order. However, as already noted the same approach is to be adopted as that in respect of section 100D and this failure will only invalidate the Decision if it caused significant prejudice to the Claimant. That depends on whether it contained information which was materially different from that in the planning statement such as would have enabled the Claimant to advance a new argument different from those it was already advancing. The question of whether the Q & A Document was materially different from the planning statement also determines the question of whether it was a background paper. If it was not materially different from the planning statement then it cannot have added anything to the reliance on that statement for the purposes of compiling the Officers' Report. Similarly, there will only have been unfairness to the Claimant if the failure to publish the Q & A Document deprived it of a potentially relevant argument. In addressing this question it is relevant to note that the Q & A Document preceded the planning statement with the latter being the fuller and considered articulation of the Interested Party's position.

85. The Claimant says that there are two arguments which could have been advanced if it had seen the Q & A Document.

86. The first is that the Q & A Document says that the Concordat limited the numbers in any group of users to 20. It can be seen from the planning statement that there were occasions when there were more than 20 participants in the Interested Party's activities. The Claimant says that if it had known of the limit imposed by the Concordat it would have been able to argue that the Concordat was ineffective as a means of control. This argument does not advance matters and there was no prejudice to the Claimant in the fact that it was not advanced. There are a number of difficulties with the argument. The first is that the planning statement shows that there were only 13 days in a three-year period when there were more than 20 users of the Interested Party's activities. It follows that the difference is minimal. In addition, the reference in the Q & A Document is to a limit on numbers in a group, whereas the planning statement appears to be referring to the total number of users on a day. It does not, therefore, follow that there was non-compliance with the Concordat. I note, however, that the Interested Party indicated that there were occasions when there were groups of more than 20 and so it does appear that there was not strict compliance with the limit. However, the more significant point is that the argument would be misconceived. It is based on the view that the Defendant was approaching matters on the basis of relying on the Concordat and that in the terms of the conditions it was seeking to give effect to the Concordat. I have addressed that point above and will revert to it when addressing ground 3. For the reasons I have set out there it is based on a misunderstanding of the approach being taken by the Defendant.

87. The second argument which it is said that the Claimant could have raised is based on the fact that the Q & A Document says that the Interested Party ran a seven day a week

operation. The Claimant says that this could have been relied on in support of its contentions as to the degree of intensification of use which might occur if the development were to proceed. It is true that at one point the planning statement does refer to averaging figures "over working days only (250 to a year)". However, it then goes on to show figures by reference to use throughout the year without reference to working days and talks of activity "each day" in busy periods with some such periods extending up to five days continuously. It is to be remembered that the Interested Party's operation was a leisure activity and it would be unrealistic to suggest that the members of the Committee were under any doubt that in peak season it would be a seven day a week operation. The Interested Party's position as set out in the planning statement was that the operation was a full time one but that for many days there was no activity at all. The reference in the Q & A document was not a material change from that nor was it some form of "smoking gun" which would have enabled the Claimant to mount an additional argument or which would materially have altered the force of its existing arguments.

88. It follows that the Claimant suffered no material prejudice from the failure to disclose the Q & A Document and this aspect of ground 1 fails.

Ground 1: Conclusion.

89. The position, therefore, is that there was no public law failing in respect of the failure to disclose the Concordat and the Lobby Documents but the failure to disclose the NRW Draft Report was a breach of the requirements of fairness and of section 100D.

Ground 2: Failure to consider the Effect of the Development on the Aberath-Carreg Wylan SSSI

90. The Claimant contends that the potential impact on the ACW SSSI was a mandatory relevant consideration which should have been addressed but which was not. I will address below the Defendant's subsidiary argument that the duty to consider that potential impact was not engaged in the circumstances of this case. The principal argument advanced by Mr Jones was, however, that the potential impact had been considered in substance.

91. The potential impact on the ACW SSSI was a mandatory relevant consideration. There was no doubt that the activities organised by the Interested Party would take place in the area of the SSSI. As noted above paragraph 6.4.26 of PPW 12 provided that there was a presumption against development outside a SSSI but which was likely to damage it and that in such cases the proposals were to be "carefully assessed to ensure that effects on those nature conservation interests which the designation is intended to protect are clearly understood". The attention of the members of the Committee should have been drawn in terms to that requirement and should have been advised to consider the argument that there would be an adverse impact on the ACW SSSI in the light of that requirement. I remind myself that the advice given to the members has to be read in accordance with the approach laid down in *R (Mansell) v Tonbridge & Malling BC* and that the court is to look to substance not form. If in substance the members were correctly advised as to the test to be applied and the approach they were to take then the failure to inform them that the source of the requirement was PPW 12 or to set out the express words of the requirement would not be fatal. However, in light of the matters to which I will now turn it is apparent that, even when the advice given is read without undue rigour, there was no proper consideration of this issue.

92. The only reference to the ACW SSSI in the advice given to the members was one slide in the power point presentation which showed the boundaries of the SSSI. The members were not expressly referred to the special features of the ACW SSSI nor to the presumption in paragraph 6.4.26 of PPW 12 nor to the requirement there for a careful assessment. There is nothing in the advice which was given which can properly be seen as covering the same ground in substance without such express reference.

93. The references in the Appropriate Assessment to choughs are solely in the context of the potential impact on the Skomer, Skokholm and Seas off Pembrokeshire SPA and of the Ramsey and St David's Peninsula Coast SPA (see [38] above) and in each case it was said that there was no impact because those were 50km away.

94. Reference was made to birds in the Officers' Report at [8.9] and [8.16] but in each case the focus was on auks and by reference to the Cardigan Bay SAC. [8.16] concluded with the words "nesting birds are however, not a designated feature of the SAC under consideration". This came close to being advice that the members need have no regard to the potential impact on birds. Certainly, it was far from alerting them to the substance of the requirements of PPW 12 at paragraph 6.4.26.

95. As I have explained at [43] above on 11th October 2024 the Claimant wrote to the Defendant objecting to the proposal. In the letter and the accompanying report the Claimant referred in terms to the potential impact on the ACW SSSI and on the chough population. Despite that highlighting of the question the advice given at the Committee meeting did not deal with these matters directly. I have set out at [50] above the essence of the power point slide which dealt with "Environment Act duties" and which did refer to choughs. It will be seen that the reference was in general terms and informing the Committee of the duty to "consider impacts on habitats and species" was not equivalent to informing the members of the more focused requirements of PPW 12. I have set out at [47] the reference which Miss Blackman to choughs in her further note. This added little to the power point slide and by saying that choughs were not a feature of the relevant SAC it tended to suggest that they were a feature of lesser importance.

96. Proper consideration of the requirements of PPW 12 and of the ACW SSSI required the Committee to be alerted to the fact that choughs were a feature of a relevant protected site; to be informed of the presumption against development which would have an impact on such a feature; and of the need for a careful assessment of whether there was such an impact. Not only was this not done expressly but such references as there were in the advice to members did not amount to consideration of the same in substance. It follows that if the consideration was engaged it was not addressed.

97. The Defendant's subsidiary argument that the consideration was not engaged can be addressed shortly. Mr Jones contended that PPW 12 at 6.4.26 did not come into play in the circumstances here because chough were not currently nesting in the potentially affected area. That does not advance matters. There was clearly potential for nesting by chough and the relevant area was within the ACW SSSI of which they were a feature. There is force in the point which was made in the Claimant's letter of objection that account was to be taken of this. The position might have been different if a deliberate decision had been taken mindful of the terms of PPW 12 and the nature of the ACW SSSI that the policy was not engaged in the particular circumstances here. If rationally justifiable such a decision would have obviated the need for further consideration. That

was not the position and there was no proper consideration of the applicability of the approach laid down by paragraph 6.4.26 of PPW 12.

98. It follows that there was a failure to have regard to a mandatory relevant consideration and this ground is established. I will consider below the extent to which section 31(2A) precludes relief.

Ground 3: Unlawful and/or Irrational Conditions.

99. A grant of planning permission can be subject to conditions imposed with a view to addressing a particular objection to a proposed development or to securing a particular objective the achievement of which is necessary for the development to be acceptable. Such a condition must be "adequate" to the "standard of rationality" (per Sales J as he then was in *Leeds CC v Secretary of State for Communities and Local Government* [2009] EWHC 1014 (Admin) at [35]) or "reasonably suitable" (Fordham J's articulation of the same test in *R (Caffyn) v Shropshire Council* [2025] EWHC 1497 (Admin) at [33]) to achieve that objective. Where conditions are necessary to render a development acceptable then if the conditions are unlawful or not rationally sufficient to achieve that objective the permission will fall with the conditions (*Pyx Granite v Ministry of Housing and Local Government* [1958] 1 QB 554 at 579.

100. Mr Wolfe contended that the effect of the decision of the CJEU in *Holohan v An Bord Pleanála* [2019] PTSR 1054 was to impose a higher requirement in cases where the relevant objective was the protection of the integrity of a European site. He submitted that in such a case there had to be certainty that the condition or conditions in question would achieve that objective and that it was not sufficient for there to be a condition providing for significant matters to be determined later. I do not accept that this is the effect of *Holohan*. The decision there is not expressed in terms of the rationality test but amounted to a conclusion that on the facts of the particular case it was not open to the defendant authority to conclude that leaving important details to be determined later was sufficient protection. The decision was made in relation to a case where it was possible for significant matters to be "determined unilaterally by the developer and merely notified to that authority". The judgment is to be seen in the light of those facts and was not the articulation of a higher requirement in cases concerning the integrity of European sites. Nor was it a statement that as a matter of principle it can never be appropriate for there to be a requirement for details to be determined at a later stage. The crucial factor in that case was the authority's lack of control over those details.

101. The Claimant contended that condition 17 was unlawful because it was a personal condition which was not permissible in circumstances where the benefit of planning permission runs with the land. The Defendant said that the condition was lawful in circumstances where personal conditions are permissible but are discouraged. However, Mr Jones accepted that the condition could have been better worded and did not seek to place any real reliance on it.

102. I am satisfied that condition 17 was lawful. In short, it is lawful for there to be a personal condition otherwise there would be no need for the PPG Guidance on which the Claimant relied to say that such conditions would normally be inappropriate. However, the arguments about the adequacy and lawfulness of conditions 16 and 17 are peripheral and not determinative of this ground. The Defendant rightly accepted that those conditions amounted to supplements to condition 20 and that if condition 20 standing

by itself was not adequate to achieve the objective of protecting the integrity of the SAC then the presence of conditions 16 and 17 would not remedy the inadequacy. Conversely, if condition 20 standing alone was adequate to achieve the objective then any insufficiency in conditions 16 and 17 would not render it inadequate or vitiate the Decision.

103. I turn, therefore, to condition 20. The question is whether it was rationally open to the Defendant to conclude that the condition was effective to achieve its objective.

104. The Claimant's attack on the adequacy of condition 20 is based on the contention that the Defendant was proceeding on the basis that the incorporation of the provisions of the Concordat and of the Marine Code was necessary to ensure the integrity of the SAC; that the conditions were seeking to incorporate those provisions; and that they were ineffective to do so. That attack is based on a fundamental misreading of the objective which the conditions, and in particular condition 20, were seeking to achieve. It places too much weight on the reason given for condition 17 without having sufficient regard to the terms of Officers' Report and the reason given for condition 20.

105. Paragraph 8.12 of Officers' Report is significant in this regard. That is not saying that the purpose of the TAMP is to incorporate the provisions of the Concordat or the Marine Code. Instead, it is saying that the purpose is to incorporate best practices of which the Concordat and the Marine Code are illustrations. The same analysis follows from a proper reading of the Appropriate Assessment where, as I explained above, Miss Blackman's reference to the mitigation measures is to the TAMP and not to the terms of the Concordat. The point is made even more clearly when regard is had to the reason given for condition 20. That refers in terms to the legislation imposing the obligation on the Defendant to ensure that the development did not harm the integrity of the SAC.

106. The purpose of condition 20 was not the incorporation of the terms of the Concordat or the Marine Code. It follows that any failure to achieve that objective was not a deficiency in the condition. Rather the objective was to ensure that the activities carried out from the Site did not harm the integrity of the SAC by imposing a control on the way in which those activities were to be conducted. Was it rationally open to the Defendant to conclude that the condition would achieve that objective? The answer depends on whether the Defendant was entitled to conclude that the drawing up of the TAMP and requiring compliance with it would suffice. In my judgement such a conclusion was well within the range of those rationally open to the Defendant. The Marine Code was a publicly available document and the terms of the Concordat were available to the Defendant but more significant the Defendant was in a position to form a view from its own resources as to what best practice required and as to the ways in which the activity should be undertaken to ensure the integrity of the SAC was not harmed. It would be possible for the Defendant's view on what was required to differ from that of the National Trust. As Judge Jarman said in refusing permission "condition 20 enables the Defendant to enforce provisions required to maintain and enhance biodiversity whatever other bodies may or may not do". The fact that the terms of the TAMP were not known at the time of the Decision does not alter the position. The TAMP was to be submitted to the Defendant as local planning authority for its approval. The Defendant was entitled to proceed on the basis that it would not approve proposals unless they accorded with best practice and were sufficient to prevent harm to the integrity of the SAC.

107. This ground, therefore, fails.

Ground 4: Deficiencies in the Approach taken to the Risk of Adverse Effects from the Development.

108. The Claimant and the Defendant were agreed that regulation 63(5) of the Habitats Regulations required that planning permission could only be given if the Defendant was satisfied that the development would not adversely affect the integrity of the protected site.

109. It was also common ground that regulation 63(5) imposed a high standard and that the Defendant had to be certain that there would not be an adverse effect on a protected site's integrity. That was a consequence of the applicability of the approach laid down in *Sweetman v An Bord Plenála* [2014] PTSR 1092 at [40] and following and in *Smyth v Secretary of State for Communities and Local Government* [2015] EWCA Civ 174, [2015] PTSR 1417 at [61] and [83]. However, the standard of review remains that of rationality. The relevant planning authority must approach the test in the correct way and in accord with regulation 63 but providing that it does then its conclusion that there was or was not a risk of harm to the relevant site's integrity can only be challenged if it is irrational: *R (Wyatt) v Fareham BC* [2022] EWCA Civ 983, [2023] PTSR 1952 per Sir Keith Lindblom SPT at [9].

110. It follows that the issue to be considered in relation to ground 4 is whether the Defendant applied the correct approach and whether the conclusion reached was rational. In reality, the Claimant's challenge was concerned with the first of those elements with the Claimant saying that the Defendant approached matters on the wrong basis. It is said that the approach taken was flawed in two respects namely in regarding some harm to the protected site's integrity as acceptable and in failing to treat the range and population of the grey seal population of Cardigan Bay as the relevant qualifying feature harm to which must be prevented. The outcome of this ground turns, therefore, on the correct interpretation of the Officers' Report, the Appropriate Assessment, Miss Blackman's further note, and the advice given orally at the meeting of the Committee. Those must be considered as a whole and in context having regard to the approach laid down in *R (Mansell) v Tonbridge & Malling BC.*

111. When the documents are read in the correct way it is clear that the correct approach was being taken. The material made it clear that the officers, and in particular Miss Blackman, were assessing whether there was a risk to the integrity of the protected site. There were references to reducing the risk of disturbance to individual seals. This was on the basis that if the risk of such disturbance was reduced then there would be no harm to the integrity of the protected site. It was based on the view that disturbance of individual seals would not harm the range and population of the qualifying feature (the grey seal population) provided that the disturbance was minimised. The fact that the correct approach was being taken is apparent because it was implicit in the need to reduce the risk of disturbance of individual seals that if that risk was not reduced there would be harm to the range and population with a consequent harm to the protected site's integrity. The reports were not saying that harm to that integrity was acceptable provided it was at a reduced level.

112. The artificiality of the Claimant's reading of the reports is shown by the fact that it accepts that the lengthy second sentence of the paragraph beginning "notwithstanding

the above…" quoted at [42] above sets out the correct test but then says that is undermined by other parts of the Appropriate Assessment and Miss Blackman's further note. The converse is the correct position. That passage illustrates the approach which Miss Blackman was taking and sets the context in which the other remarks are to be read. That paragraph is also of note because the use of "notwithstanding" makes it clear that having referred to the seal population of South West Wales and England Miss Blackman was turning back to consider the population of the protected site and the need to protect the integrity of that site.

113. The correct approach was, therefore, applied and the conclusion reached was well within the range of conclusions rationally open to the Defendant. It was rational to say that the disturbance of individual seals was not of itself a matter impacting on the integrity of the site. It was a matter of degree and it was open to the Defendant to conclude that provided the risk of disturbance was minimised there would be no risk of harm to the relevant integrity.

114. This ground, accordingly, fails.

Ground 5: The Adoption of an Unlawful and/or Irrational Approach to the Conservation of Habitats and Species Regulations.

115. This ground is based on the passage in Miss Blackman's further note beginning "I would also like …" as quoted above. The Claimant says that this amounted to advising the Committee that the risk of harm to the integrity of the SAC was to be balanced against other matters (and in particular the benefits derived from greater public knowledge) with it being acceptable for there to be a risk of such harm provided it was outweighed by the other considerations.

116. If Miss Blackman's comments are to be read in the way the Claimant asserts then the Committee was given incorrect advice and are to be taken as having proceeded on a false basis. Conversely, if Miss Blackman's comments are to be read as indicating that public involvement is a potential benefit which can be taken into account in circumstances where there is no risk of harm to the integrity of the SAC then there was no public law error. Saying that greater public involvement was a potential benefit in such circumstances was not really contentious and I note that a similar point was made in the NRW Draft Report in section 4.3.

117. The comments are to be read in context having regard not just to the balance of the further note but also to the Appropriate Assessment and keeping in mind the approach laid down in *R (Mansell) v Tonbridge & Malling BC.* When that is done it is clear that the Claimant's interpretation is incorrect. Miss Blackman made it clear that it was her view that there was no threat to the integrity of the SAC. In doing so she emphasized her assessment that the risk of the disturbance of individual seals did not amount to a risk of harm to the favourable conservation status of the SAC. It is clear that Miss Blackman's judgement on those aspects of the matter was made by reference to the potential impact of the activities on the SAC and that she was not saying that there was harm against which the benefit of greater involvement could be balanced. The passage on which the Claimant relies was not introducing a different test by a side route and the Claimant's reading of it is inconsistent with the thrust of the comments in the further note and the contents of the Appropriate Assessment.

118. It follows that the Committee was not misled into applying an incorrect approach in this respect and this ground fails.

Relief and the Operation of Section 31(2A) of the Senior Courts Act 1981.

119. Ground 1 has succeeded in respect of the Defendant's failure to publish the NRW Draft Report and ground 2 has succeeded on the basis that there was a failure to have regard to a mandatory relevant consideration. Is relief precluded by the requirement in section 31(2A) that relief is to be refused if it appears that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred?

120. In *Bradbury* at [71] – [75] Lewis LJ explained the approach to be taken when considering the application of section 31(2A). The following aspects of that guidance are of particular relevance here:

i) At [71] Lewis LJ said:

> "In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision-making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision in order to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-maker would have approached matters, or what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied."

ii) At [74] he explained that the requirement that it is highly likely that there would have been no substantial difference is "a high test to surmount" adding:

> "The section emphatically does not require the court to embark on an exercise where the error is left out of account and the court tries to predict what the public body would have done if the error had not been made. Approaching section 31(2A) in that way would run the risk of the court forming a view on the merits and deciding if it thinks the public body would reach that view if it had not made the error. Rather, the focus should be on the impact of the error on the decision-making process that the decision-maker undertook to ascertain whether it is highly likely that the decision that the public body took would not have been substantially different if the error had not occurred."

121. Each of the two grounds which the Claimant has established relates to significant failings. The failure to disclose the NRW Draft Report meant that in proceeding on the basis that the assessment of the position by NRW was a factor in favour of the grant of permission the Defendant was doing so in the absence of the arguments which the Claimant could have made and which went to the reliance which could be placed on the report. The error in relation to the ACW SSSI meant that the Defendant approached the application for permission without having regard to a mandatory relevant consideration and without members being alerted to the presumption against harmful development and the need for careful assessment in relation to the impact on that SSSI.

122. In neither case can it be said that the refusal of permission would be an inevitable consequence of applying the correct approach. Nonetheless, each failing was significant and each was capable of causing the Defendant to take a different approach and for

there a different outcome. There may well not have been a different ultimate outcome in terms of the grant or refusal of permission but there is, at the lowest, a real possibility that there would have been a different outcome in terms of the approach taken to the conditions to be imposed. In those circumstances the high hurdle necessary for the court to be satisfied that it is highly likely that the outcome would not have been substantially different has not been surmounted and relief is not precluded by reason of section 31(2A). That would have been the position if either of the grounds had stood alone and it is even more so given the presence of the two significant failings.

Conclusion.

123. It follows that the claim succeeds and the Decision is to be quashed.

Appeal Decision

by J de-Courcey BSc LLB MTPI MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 01/10/2025

Appeal reference: CAS-03432-T1R1T6

Site address: Nettie's Lodge, Happy Acre, Lydstep, Tenby, Pembrokeshire, SA70 7SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Caryl Anne Morris against an enforcement notice issued by Pembrokeshire Coast National Park Authority.
- The enforcement notice, reference EC21/0201, was issued on 27 March 2024.
- The breach of planning control as alleged in the notice is: Without planning permission,
  (i) the making of a material change of use of the Land from agriculture to a mixed-use for agriculture and for residential purposes through the sighting of a residential static caravan, the storage of a touring caravan and boat; and
  (ii) the erection of a lean-to porch structure along the western side of the static caravan.
- The requirements of the notice are:
  1. Permanently cease the use of the Land for residential purposes;
  2. Permanently remove from the Land the static caravan, touring caravan, boats and any items stored on the Land ancillary to the residential use;
  3. Dismantle and permanently remove the lean-to porch structure and all its associated fittings and materials from the Land;
  4. Restore the Land to its former condition before the breach took place.
- The period for compliance is 2 years beginning with the day on which the Notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Act.
- A site visit was made on 4 June 2025.

Decision

1. It is directed that the notice is corrected as set out below:
   - In schedule 3 (i) [The matters which appear to constitute the breach of planning control alleged] change ‘boat’ to ‘boats’.
2. Subject to the above correction the appeal is dismissed, and the enforcement notice is upheld.

Background

3. The site accommodates a number of buildings, including polytunnels and poultry coops. The static caravan, with timber-clad lean-to, has a grassed and planted area around it that is demarcated by fencing and hedging and contains garden furniture and various other domestic paraphernalia. The appellant was living there when I visited.

Preliminary Matter(s)

4. The alleged breach of planning control includes the storage of 'a boat'. The reasons for issuing the notice and the associated remedy refer to 'boats'.

5. The appellant states there is only one boat as the dinghy is on a trailer, normally moored at Saundersfoot harbour, and only kept on site for maintenance and in bad weather conditions. The appellant advises that she is agreeable to removal of '*the Boat'*.

6. Prior to service of the enforcement notice on 27 March 2024, the Local Planning Authority (LPA) noted that two boats were being stored on the Land on 24 January 2024. It refers to '*the second boat being a small tender or dinghy'*. This is consistent with the appellant's evidence that the second boat i.e. the dinghy is kept on the site on an intermittent basis. The LPA's photos from 11 August 2023 show a boat on a trailer, kept in the position that the appellant refers to as being where the dinghy is stored when on site. No boats were on site when I visited.

7. As both parties' evidence relates to more than one boat, if I were to exercise my powers in accordance with s176(1)(a) of the Act to correct the notice so that it refers to 'boats' rather than 'boat', this would not result in injustice to the appellant or the Council.

8. The Land subject of the enforcement notice is shown within a red line on an accompanying plan; the area includes a barn in its south-east corner. The settlement boundary for Lydstep, as shown in the adopted Pembrokeshire Coast National Park Local Development Plan 2 (end date 2031) [the LDP], includes the barn, an area to the rear of that building and the access lane to the site subject of the enforcement notice. On 5 November 2024 planning permission was granted for residential conversion and extension of the barn (Application number: NP/24/0137/FUL). The application site extends beyond the building and part of its approved curtilage also falls within the site subject of the enforcement notice.

9. The appellant's concerns about implementation of that planning permission, if the barn is not excluded from the plan accompanying the enforcement notice, are noted. However, its inclusion therein would not fetter implementation of the extant planning permission or preclude its residential use. Accordingly, there is no need for the exercise of my powers under Section (s)176(1) of the Act to correct or vary the plan.

The appeal on ground (c)

10. The appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control.

11. The appellant contends that the siting of the residential static caravan does not constitute a breach of planning control as it is sited on Land that has always been in residential use. Therefore, no change of use has occurred.

12. I note the appeal decision (APP/L9503/C/13/2204441) which upheld the previous enforcement notice and required removal of the static caravan then on the Land. It appears that notice was complied with, and a new static caravan was brought onto the Land. Notwithstanding the history, from the evidence before me, the static caravan subject of the current notice is occupied as the appellant's primary residence. It has no physical or functional association with the adjoining cottage, formerly the appellant's

home, that the LPA states is now in separate ownership. As such, the physical and functional separation of the Land from that dwelling's curtilage has given rise to a new planning unit and a new chapter in the Land's planning history. The independent and separate occupation of the caravan constitutes a breach of planning control.

13. The erection of a lean-to porch structure along the western side of the static caravan constitutes operational development that requires planning permission. It is therefore a breach of planning control.

14. In respect of the boats, these appear to be used in association with the residential occupation of the caravan. Their storage is therefore a component of the material change of use of agricultural Land to its current mixed use for agricultural and residential purposes.

15. I note that Happy Acre is a registered small holding, extending to approximately 0.8 hectares. The appellant's evidence on the livestock kept, is generally consistent what I saw at the time of my visit. The placing of a modest caravan on Land in agricultural use, to provide necessary storage and occasional welfare/shelter for agricultural workers can, in some instances, be considered as incidental to the lawful use of the Land for agriculture or be permitted development as part of the management of the livestock enterprise, in accordance with The Town and County Planning (General Permitted Development) Order 1995 as amended and the Caravan Sites Act 1968 as amended.

16. However, in this instance, these is no evidence as to: the frequency of the caravan's use for overnight stays by a relief stock person; the nature and frequency of its use; or the need for it as a day rest room given that the appellant lives on site. The caravan apparently remains on site all year round. Use by visiting family, which the appellant stated takes place in replying to the Planning Contravention Notice, would not be incidental to the permitted use of the Land. Therefore, taking account of the available evidence, on the balance of probabilities, I am not persuaded that the touring caravan is incidental to the site's use for agriculture.

17. The appellant submits that following the grant of planning permission for the residential conversion and extension of the adjoining barn that there is a need to have a caravan on site to oversee the works. She cited legislative provisions considered to confer permitted development rights in that respect. That consent was given after issue of the enforcement notice subject of this appeal so cannot be relied upon in respect of the appeal on ground (c). The appellant acknowledges that the two-year period for compliance with the notice is generous and should be sufficient to extension and residential conversion of the barn to be carried out. However, should that permitted dwelling not be ready for habitation during the period for compliance, section 191 or 192 of the Act, as appropriate, would provide a mechanism for her to ascertain whether retention of a caravan in association with those building operations would need express planning permission.

18. For the foregoing reasons, on the balance of probabilities, the matters alleged, as corrected, constitute a breach of planning control and the appeal on ground (c) fails.

Conclusion

19. Account has been taken of all the other matters raised and I find that none outweigh my finding. The appeal fails and is dismissed. I uphold the notice as corrected.

J de-Courcey

INSPECTOR