REPORT OF HEAD OF DEVELOPMENT MANAGEMENT ON APPEALS

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

NP/08/441	5 dwellings Land adjacent to Blockett Farm, Little Haven
Type	Hearing
Current Position	The appeal is currently being held in abeyance.
NP/10/017	Low impact horticultural smallholding & retention of 2 polytunnels The Nursery, Mount Pleasant Cross, Cosheston
Type	Hearing
Current Position	The appeal has been allowed and a copy of the Inspectors decision is attached for your information.
NP/10/258	Log cabin in curtilage for purposes incidental to enjoyment of dwellinghouse Foxhill Farm, Broad Haven
Type	Written Representation
Current Position	The appeal has been allowed and a copy of the Inspectors decision is attached for your information.
NP/10/366	Conversion and extension of existing dwelling Site at Penrhyn, Newport, Pembs
Type	A Hearing will be held on 12th July, 2011
Current Position	The initial papers have been forwarded to the Inspectorate.
NP/10/380	New Bungalow Egypt House, Queens Parade, Tenby
Type	Written Representation
Current Position	The Statement of Case has been forwarded to the Inspectorate.
NP/10/376	Dwelling Ty Gwyn, Brynhenllan
Type	Written Representation
Current Position	The initial papers have been forwarded to the Inspectorate.
NP/10/532	Change of use from delicatessen to Estate Agents office Wellington House, High Street, Tenby

Type	Written Representation
Current Position	The appeal has been dismissed and a copy of the Inspectors decision is attached for your information
ENF/09/10	Unauthorised siting & occupation of caravan The Nursery, Mount Pleasant, Cosheston
Type	Hearing
Current Position	The notice is upheld as corrected and varied by the Inspector and a copy of his decision is attached.

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 17/05/11

gan Alwyn B Nixon BSc(Hons) MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 23/05/11

Appeal Decision

Site visit made on 17/05/11

by Alwyn B Nixon BSc(Hons) MRTPI

an Inspector appointed by the Welsh Ministers

Date: 23/05/11

Appeal Ref: APP/L9503/A/11/2148165
Site address: Foxhill Farm, Broad Haven, Haverfordwest, Pembrokeshire SA62 3TY

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs P Woolman against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/10/258, dated 9 June 2010, was refused by notice dated 27 August 2010.
- The development proposed is the erection of a log cabin for purposes incidental to the enjoyment of the dwelling house.

Decision

1. I allow the appeal, and grant planning permission for the erection of a log cabin for purposes incidental to the enjoyment of the dwelling house at Foxhill Farm, Broad Haven, Haverfordwest, Pembrokeshire SA62 3TY in accordance with the terms of the application, Ref NP/10/258, dated 9 June 2010, and the plans submitted with it and supplemented by constructional detail drawings D3/112-2 and D3/113 received by the local planning authority on 29 July 2010, subject to the following conditions:

   1) The development hereby permitted shall begin not later than five years from the date of this decision.

   2) No development shall take place until details and samples of the materials to be used for the external walls and roof of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

   3) No development shall take place until details of any changes in site levels, showing all proposed grading and mounding and the final levels and contours to be formed, the nature of the material and the relationship of the works to existing trees and hedgerows, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

   4) No development shall take place until details of the position of protective fencing to enclose all existing trees and hedgerows (in accordance with British Standard 5837:2005: Trees in Relation to Construction) has been submitted to and approved in writing by the local planning authority. The protective fencing shall be placed in position in accordance with the approved details before any

construction work commences and shall remain in place for the duration of the construction works and until all equipment, machinery and surplus materials have been removed from the site. The fencing shall not be removed or breached during construction operations without the prior written approval of the local planning authority.

5) The cabin hereby permitted shall at no time be used as a self-contained living unit or as tourist accommodation of any kind.

Reasons

2. The main issue is the effect of the proposed development on the character and appearance of the area.

3. The site lies within the Pembrokeshire Coast National Park. The statutory purposes of National Park designation are to conserve and enhance their natural beauty, wildlife and cultural heritage, and to promote opportunities for the enjoyment and understanding of their special qualities. I have taken these statutory purposes into account in determining this appeal.

4. At the time of the Authority's decision the development plan for the area was the Joint Unitary Development Plan for Pembrokeshire (JUDP). Within the National Park the JUDP has now been superseded by the Pembrokeshire Coast National Park Local Development Plan (LDP). In reaching my decision I have therefore had regard to the policies of the LDP rather than those of the JUDP. My attention has been drawn in particular to policies 1, 8 and 15 of the LDP.

5. The submitted details show the proposed building to be a garden cabin of timber construction with a ridged roof which would be clad with a grey/black bitumastic tile. Scaled from the drawings, the building would measure about 7.5m by 4.5m (excluding roof overhang). The height to eaves would be some 2.5m and about 3.5m to the ridge. The building is intended to be used for purposes incidental to the enjoyment of the dwellinghouse at Foxhill Farm, which are stated as potentially including use as a playroom for grandchildren when visiting, a study/home office, hobby room and store and occasional sleepover accommodation for family members.

6. Foxhill Farm stands within the open countryside, surrounded by fields. The building would be located in a lower corner of the garden area, about 25m away from the house and at a significantly lower level. In this location the building would be surrounded by mature garden and hedgerow trees, garden hedgerow boundaries and an adjacent orchard and wooded area. The submitted arboricultural assessment confirms that the building can be accommodated without harm to the adjacent trees. Whilst the external materials would be different to those of the housing and the farm buildings converted to holiday accommodation, they reflect the building's simple form and ancillary domestic purpose and would not have a visually harmful effect. As such, I regard them as appropriate. Although the building would have a sizeable floor area it would not in my view appear obtrusive or out of scale within the domestic setting concerned. Whilst not immediately adjacent to the house or other buildings, the proposed cabin would sit comfortably within the existing residential curtilage and would not appear as a disparate element of built development or materially detract from the existing grouping of buildings.

7. I consider that in this well screened and unobtrusive position the building would not detract from the character or appearance of its surroundings. From the public footpath crossing the fields to the south west the building would not be readily

apparent, due to the intervening distance and enclosing hedgerows and trees. There are no other significant public vantage points in the wider landscape. Taking all factors into consideration I conclude that the proposed development is acceptably designed and would not harm the character or appearance of the area or detract from the special qualities of the National Park. As such, the development would not be in conflict with policies 1, 8 or 15 of the LDP. I am satisfied that permitting the development to proceed would not run counter to the statutory purposes of National Park designation.

8. I have considered in the light of the guidance in Circular WO35/95 the conditions suggested in the event of the appeal being allowed. In addition to the usual time limit for commencement of development I consider that conditions relating to the approval of samples of external wall and roof materials and the protection of existing trees and hedgerows are necessary in order to protect the character and visual amenity of the area. For the same reason I shall impose a condition relating to agreement of details of any changes to land levels. However, I do not consider that a condition requiring additional landscape planting is necessary. I agree that a condition restricting the use of the cabin is necessary, in order to ensure that wider policies concerning development in the countryside are observed. Since the permission granted is defined by the plans submitted as comprising the application a condition stating this to be the case is unnecessary.

9. For the reasons given above, and having considered all matters raised, I conclude that the appeal should be allowed.

Alwyn B Nixon

Inspector

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Gwrandawiad a gynhaliwyd ar 27/01/11
Ymweliad â safle a wnaed ar 26/01/11

gan R G Gardener BSc(TownPlan) MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/05/11

Appeal Decision

Hearing held on 27/01/11
Site visit made on 26/01/11

by R G Gardener BSc(TownPlan) MRTPI

an Inspector appointed by the Welsh Ministers

Date: 11/05/11

The Welsh Ministers have transferred the authority to decide these appeals to me as the appointed Inspector.

Site address: The Nursery, Mount Pleasant Cross, Cosheston, Pembrokeshire SA72 4TZ
Appeals made by Mr John Hargraves

Appeal A Ref: APP/L9503/C/10/2132307

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Pembrokeshire Coast National Park Authority (**NPA**).
- The NPA's reference is ENF/09/10.
- The notice was issued on 16/06/10.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land by the siting and residential occupation of a caravan.
- The requirements of the notice are to (1) permanently cease using the land for residential purposes; (2) permanently remove the caravan from the land; (3) permanently remove the compost toilet associated with the unauthorised use and (d) restore the land to its former condition.
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the ground (a) set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The notice is upheld as corrected and varied in respect of the period for compliance.

Appeal B Ref: APP/L9503/A/10/2132242

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the decision of Pembrokeshire Coast National Park Authority (**NPA**) to refuse to grant planning permission.
- The application Ref NP/10/017, dated 26/10/09, was refused by notice dated 12/03/10.
- The development proposed is to change the previous commercial nursery site into a low-impact organic horticultural smallholding. The site will be planned on sustainability principles and will include woodland coppicing, an orchard, fruit tree nursery, fruit and vegetable produce, free range eggs, wildlife habitats and a carbon neutral off-grid dwelling. The site will provide an educational resource for schools to use as an outdoor 'classroom', and retention of 2 polytunnels.

Summary of decision: Planning permission is granted subject to conditions.

Procedural matters

1. At the Hearing an application for costs was made by the NPA against Mr Hargraves. This application is the subject of a separate Decision.

2. An earlier hearing into these appeals was held on 12/13 October 2010. However, following complaints it was decided that a fresh hearing should be held. A number of documents were submitted at the earlier event and those remain as part of the cases before me. In addition, the appellant had concluded a Unilateral Undertaking, an Obligation under s106 of the 1990 Act, which he presented at the previous hearing. This set out 3 commitments on his part should planning permission be granted and the development commenced. The commitments are (1) compliance with the Management Plan included with the application; (2) retention of the dwelling, buildings and land as a single entity, and (3) cessation of the residential caravan use on occupation of the proposed dwelling. This Obligation remains in place should planning permission be granted and implemented.

3. For **Appeal A**, before Mr Hargraves acquired the land it seems that it was used in 2 parts – the southern part as a wholesale horticultural nursery and the larger, northern part as grazing land, an agricultural use. The NPA accepts these uses are lawful. As the description of the proposed development for Appeal B indicates, the appellant intends to continue essentially horticultural and other related activities which in large part would not amount to a material change of use requiring planning permission. Although at a lower level than intended by the proposal, such activities are already taking place albeit currently for the appellant's own use. Nevertheless, preparatory fruit and other tree planting and soil improvements have been undertaken and, I understand, livestock has been grazing the paddock. It seems to me that the lawful uses are still in place and therefore what has occurred is a mixed use involving the siting of the residential caravan alleged and for horticulture/agriculture. I shall correct the notice allegation accordingly.

4. For **Appeal B**, when determining the application the NPA described the proposed development as being for '*low-impact horticultural smallholding and retention of 2 polytunnels*'. This omits both the proposed dwelling and the intended use as an educational resource. There is nothing to establish that the NPA's description was first agreed with Mr Hargraves and I have continued to have regard to the application's full and expansive description.

5. At the hearing, while not overlooking Mr Hargrave's view that the enterprise should be considered as a whole, it was acknowledged that all elements of the proposal other than the erection of the dwelling, the use as an educational resource (once material) and the retention of the polytunnels could be undertaken without planning permission.

6. There are 2 polytunnels on the site, part of the former wholesale nursery, which the application proposes should remain. These result from earlier grants of temporary planning permission in 2000 and 2004, the last period of which (NPA Ref: NP/04/534) expired in October 2009. They are currently without planning permission but, while included in Appeal B they are not subject to the Appeal A Enforcement Notice requirements.

7. For completeness, there is also a small barn (the barn) on the site close to the site entrance and gravel parking area, which was granted permanent planning permission in 1998 (NPA ref: NP/98/319) again in connection with the horticultural activity. This would also be kept as part of the Appeal B proposal.

8. The Appeal B scheme does not include the continued siting of the residential caravan although Mr Hargraves expressed the wish to keep it as part of the educational resource. The s106 Obligation does not undertake to remove it, only to cease its residential use. Nevertheless, there is a connection between the 2 proposals since the appellant asks to remain living in the caravan pending the occupation of the Appeal B dwelling. Otherwise, Mr Hargraves accepts that he makes no case that the residential caravan use should remain. The matters turn essentially on the outcome of Appeal B I shall therefore consider that first.

Appeal B

The scheme

9. The character distinction between the 2 parts of the site would be reflected in the layout of the scheme. That part occupied by the former wholesale nursery would be cleared of large portions of the black plastic sheeting which covers the site and new orchard would be planted to complement that which already exists. In addition, vegetable beds would be created, including school plots, and peripheral wildflower areas. The polytunnels would remain, as both growing areas and as part of the educational resource on offer, particularly as cover during inclement weather. The barn would be kept as a secure store for tools and so on, as would a rainwater reservoir. A solar composting toilet would be provided for visitors close to the existing entrance, which would remain much as now.

10. On the northern grazing part the central area would be improved as meadow/pasture flanked by a pond and wild flower area. The major change here would be a belt of new broadleaf woodland to be managed as coppice principally to provide wood as heating fuel. Existing trees and hedges which bound and divide the site are shown to be kept but added to with native species.

11. The proposed dwelling would be positioned about midway along and within the hedge line which separates the northern and southern parts and roughly central to the site. The structure would be single storey, clad in larch boards under a turf roof and would provide 2 bedrooms, bathroom/w.c. and shared living/kitchen. I refer to other aspects of the dwelling in due course.

12. It is integral to the project that it would be a low impact form of development.

Main Issues

13. The Pembrokeshire Coast Local Development Plan (LDP) has been adopted since the decision was made to refuse planning permission. In all relevant respects, however, it continues the National Park, countryside and low impact development policies set out in the earlier Joint Unitary Development Plan for Pembrokeshire (JUDP), now superceded within the National Park, on which the decision to refuse permission was framed. That the development must secure the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the National Park[1] [2] and its special qualities[3] is not in dispute.

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[1] LDP Policy 1 National Park Purposes and Duty

[2] LDP Policy 15 Conservation of the Pembrokeshire Coast National park

[3] LDP Policy 8 Special Qualities

14. Nor is the fact that only development within a specified range should be permitted outside settlement boundaries[4]. Those include, for instance, housing for essential farming or forestry workers' needs. Mr Hargraves does not suggest that his project would satisfy that restriction or with the wider requirements set out in PPW and TAN6 for rural enterprise dwellings in countryside locations such as this. However, more particularly, via Policy 7(g), low impact development (LID) which would make a positive contribution in accordance with Policy 47 is also permitted.

15. Policy 47 was developed in recognition of an overarching objective to promote sustainable development and as such is a specific exception to the restriction on development in the countryside. It is this exception on which Mr Hargraves relies. As stated it continues the earlier JUDP Policy 52 amended only to specifically recognise that it applies within the countryside. Indeed, the supporting Supplementary Planning Guidance[5] (SPG) is that which was prepared with JUDP Policy 52 but has been carried through to sit with Policy 47. The SPG has been appropriately prepared and adopted and I give it significant weight. It provides guidance on how Policy 47 is to be applied.

16. The role of planning in assisting the Assembly Government's One Planet[6] initiative is set out in PPW[7] and TAN6[8]. One Planet Development takes forward LID in the Welsh context but to avoid confusion I use only the LID acronym here. It seems that the draft version of TAN 6 was known when the LDP was under consideration; indeed the LDP was adopted after PPW and TAN6 were published but the fact that Policy 47 was so little changed from the earlier Policy 52 suggests that they were issued too late to have any marked effect. I have therefore also had regard to the Assembly Government's policy and advice when assessing the proposal.

17. Although the appeals raise potentially different issues, Mr Hargraves' original grounds of appeal were the same for both. In effect they were that the residential caravan and the proposed Appeal B project comply with the local and national policies for LID. However, in view of Mr Hargraves' concession concerning the residential caravan, that cannot be the case for Appeal A .

18. Consequently, the main issue to be determined for Appeal B is whether the proposal is an acceptable low impact development in accordance with LDP Policy 47, when considered also in relation to the Assembly Government's policy and guidance, and consequently a justifiable exception to the strong presumption against development in the countryside. In any event, where not already addressed by consideration of Policy 47 criteria, regard is also to be had to the impact of the proposals on the attributes of the National Park and on the landscape, one of Outstanding Historic Interest.

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[4] LDP Policy 7 Countryside.

[5] 'Low Impact Development making a positive contribution' adopted 24 May 2006

[6] One Wales - One Planet May 2009

[7] Planning Policy Wales Third edition July 2010, since revised

[8] Technical Advice Note 6 Planning for Sustainable Rural Communities July 2010

Reasons

19. The starting point is the development plan[9]. The LDP explains that, in general terms, proof will be needed to show that proposed LID would meet the various Policy 47 criteria and that a management plan is required to cover a range of issues while the SPG expands on what is necessary. The policy lists criteria, all of which need to be satisfied. In this case, the NPA contend that criteria a), b), d), e) and f) are not met. Consideration of those is the basis of what follows. TAN 6 also emphasises the need for robust evidence and also states that a management plan must accompany all applications for such developments and sets out what should be included.

20. Mr Hargraves' Management Plan is comprised of 8 separate documents. Updated versions of several of these from those submitted with the application were provided. Bearing in mind the notification and consultation which has been undertaken together with the added timescale following the earlier hearing I am satisfied that these 'new' documents can be taken into consideration without prejudice to other interests.

Policy 47 Criterion a) – make a positive environmental, social and/or economic contribution with public benefit

21. It is apparent that it is not necessary for a LID to provide all of these contributions. On the environmental factor, the site is relatively small, said variously to be about 1.75ha. or 2 ha., which limits the scale of contribution it could make although even small sites can provide ecological and habitat diversity which is of value. The project proposes the planting of further orchard of more unusual varieties of fruit, the planting of an area of broadleaf coppice and the regeneration of the remaining meadow with traditional mixed grasses and wild flowers. Artificial fertilisers and herbicides would be avoided and I accept that these measures would aid the ecology and bio-diversity of the site. While the boundary hedges and trees already provide habitat of value, including for a barn owl, this would be enhanced with additional native species and managed. Together with the pond, additional wildflower planting and the removal of areas of the black matting I do not doubt that there would be a significant environmental improvement over that which the site currently offers.

22. While in large measure these works are intended to support Mr Hargraves' low impact initiative they would also have some public benefit. Both the coppice and orchards, for instance, would not only be productive but would also benefit the landscape, habitat and ecological diversity as well as promote carbon absorption. Some of this planting has already been commenced, mainly the extension of the orchard and some of the proposed broadleaf coppice which has been approved and supported by the Welsh Forestry Commission.

23. The NPA, however, considers that the possibility of such gains would be undermined by the retention of the horticultural area, particularly the polytunnels. However, as I explain elsewhere, I consider that the impact of this area would be both physically reduced and acceptably mitigated by the project as a whole. In addition, the polytunnels – and barn - are an existing resource and their re-use is to be preferred to replacement. Again, I comment on this aspect of the project elsewhere. Overall, I consider that the scheme would improve bio-diversity and make a positive

[9] S38(6) of the Planning and Compulsory Purchase Act 2004

environmental contribution sufficient for purposes of this aspect of criterion (a). It would also meet the biodiversity and landscape requirements of TAN6[10].

24. Whether or not there would be social and/or economic benefits also requires both positive and negative impacts to be assessed. As well as reducing Mr Hargraves' own demands on the world's resources, the main benefit claimed is that the project would provide an educational resource for local schools and other organisations. This would offer children hands-on experience of, for instance, growing organic fruit and vegetables as well as an understanding and appreciation of low impact living and the concept of a sustainable lifestyle. In addition, events would be organised which would be open to the public. Whether these would indeed be a public benefit depends largely on their popularity. There are a significant number of schools within the locality, some of which have expressed an interest and willingness to make use of the educational resource offered. These were supportive but not entirely without reservation. For instance the need for approval of the education authority is identified but has not been sought despite assurances given at the hearing that it would be forthcoming. Its success remains uncertain. The NPA's criticism of the need for schools to travel by car or private bus is addressed elsewhere.

25. Much of the project, including building and development work would be undertaken by Mr Hargraves himself and not generate local employment. The propagation and sale of fruit trees and surplus vegetables would be to sustain him and his family with less than obvious public gains. While he hopes to be a source of local produce and promote the planting of new orchards, the project would generate little for the local rural economy as such. Given the relatively small area suggested to be shared as school plots, the suggested growing of vegetables for use in their own kitchens is unlikely to be significant.

26. On this and other matters I have had regard to 2 other LID projects relied on by Mr Hargraves which were the subject of successful appeals; I refer to these simply as Lammas[11] and Coedwig Blaen[12]. Although both were within the administrative area of the Pembrokeshire County Council and not the NPA they were subject to effectively the same development plan policy context. However, while of interest they did not support Mr Hargraves' case to the extent believed - Lammas because it was for a communal development of considerably greater scale and corresponding credibility as an exemplar of low impact lifestyle and Coedwig Blaen because it was for temporary accommodation for forestry workers which was found to be also acceptable under other rural dwelling considerations. Moreover, in the latter case the scheme offered significantly more tangible public and community benefits, a number of which were already being realised.

27. Even so, LID can be single homes[13] in which case the benefits such small projects might reasonably be expected to provide should be commensurate. This would be a small project which would undoubtedly provide at least equivalent environmental gains. There is potential for community benefit if the educational resource is utilised

[10] See 4.20.1

[11] Appeal ref: APP/N6845/A/09/2096728

[12] Appeal ref: APP/N6845/A/09/2106414

[13] TAN6, 4.15.2

and there are indications that it could be. Other social and/or community activities are aspired to but remain unclear and uncommitted. However, I see little negative impact on the local community from the project either from the works proposed or from movements to and from the site at the level projected, both of which I comment on in greater detail in due course. While uncertainty remains whether the project will be effective as an education resource I have concluded that criterion (a) is met, and the assessment of community impact required by TAN6[14] does not weigh against it.

Policy 47 Criterion b) – all activities and structures on site would have low impact in terms of the environment and use of resources

28. TAN6 similarly requires that such development should achieve a low ecological footprint and zero carbon in construction and use. In both instances the evidence establishes that they can be met to a satisfactory extent. While it is the project and not Mr Hargraves which is under consideration his lifestyle gives a reasonable indication of what can be expected. An assessment of that to date, before the project is underway, indicates an ecological footprint of 2.37 gha[15], just within the TAN6 stipulation that LID should initially achieve 2.4 gha or less in terms of consumption. This is about 53% of the Welsh average and is a reflection of his modest use of resources, transport and energy. Should the project proceed, his ecological footprint should be improved by, for instance, the high sustainability attributes of the dwelling when compared to his caravan, greater on-site food production and, possibly, reduced demand on public and private resources. It is reasonable to contemplate that the project is capable of moving towards 1.88 gha over time, as the Assembly Government expects[16].

29. The dwelling is said to be designed to achieve Level 5/6 of the Code for Sustainable Homes despite assertions that this assessment method is not appropriate for this type of low-tech project. The details provided show that it would be carbon neutral both in respect of the energy embodied in its construction materials and in energy use over the life of the building. It would be off-grid, that is, not connected to mains electricity, gas or sewers, oriented to maximise passive solar gain, use renewable energy sources and recycled materials, be highly insulated and incorporate features such as a composting toilet and wood burning stove. By using shallow foundations, suspended floor and removable, re-usable components such as timber cladding the building would also be movable should that be necessary.

30. Even so, the NPA considers that this criterion is not met because the source of the materials to be used is not clear and the extent to which they would be renewable or re-useable has not been demonstrated. However, the underlying principles are stated and these matters could be resolved as discussed at the hearing. In addition the NPA contends that, in use, it would not entirely support a self-sufficient lifestyle derived solely from the site. While water catchment and retention would provide for most needs, an existing mains supply would be retained for drinking water and bottled gas would be used for cooking, both of which the NPA considers contrary to the underlying LID philosophy. Since the water connection is already in place from the previous horticultural activity it would not add to the initial energy input required.

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[14] See 4.21.1

[15] Global hectares per person

[16] See 4.15.1

Since bottled gas for cooking would need to be imported the project cannot be deemed to be zero carbon in use, although it would still be low impact. Consumption of bottle gas is likely to be relatively small but will need to be monitored. Neither of these factors seriously negates the project's otherwise sound LID credentials.

31. With regard to activities associated with the project, clearly the tree, fruit and vegetable growing and the coppicing would have a low impact. Mr Hargraves is committed to a low use of his private car and uses public transport or cycles when he can. Despite the relative remoteness of the site, a high usage of private vehicles is not essential for such a lifestyle. The completion of a cycleway link to Pembroke Dock will assist that in due course. There would be a need to deliver his produce as well as shop for his own needs and for school trips but his overall use is assessed to be less than a third of the average rural household and could be reduced further. This is committed to within the management plan.

32. Use of the educational resource would also generate journeys to and from the site. These are estimated to be 1-2 minibus trips weekly should up to 12 local schools make use of the facility. Other less specified community and educational activities have not been similarly assessed. Consequently, the project overall would continue to have a dependence on the use of private vehicles, as the NPA points out, and be fossil-fuel dependent to an extent.

33. Realistically it is improbable that it could be otherwise and the emphasis should be on minimising the impact. A travel plan as such has not been produced and I do not consider it necessary for a project of this size. Some comparison with the former horticultural use is justified. Despite the very limited evidence available, it is reasonable to assume that the delivery of raw materials such as compost and so on, the delivery and despatch of plants and the daily worker trips would have been comparable if not greater than that which is suggested could arise from the all aspects of the proposal, including the education resource. As Mr Hargraves also pointed out, were he not to live at the site he would need to travel back and forth in any event. Again, close monitoring will be necessary but I consider that this criterion could be satisfied as could the Assembly Government's transport objectives[17].

Policy 47 Criterion d) – be well integrated into the landscape and does not have adverse visual effects

34. The character of the site would be changed through further planting and adaptation as I have described and would become a new landscape feature within the same open rural setting close to the estuary and within the National Park. While I also note that the site is within the Milford Haven Waterway Landscape of Outstanding Historic Interest[18] I do not consider that its historic qualities would be affected. Moreover, these particular changes are not criticised by the NPA.

35. I share the NPA's view that the visual impact of the former commercial horticultural area is alien to the otherwise open rural landscape. This area would effectively remain in horticultural use and with it the main structures. However, other than the temporary polytunnels, there is nothing to suggest other features, including the barn, would not stay should the project not be allowed to go ahead. That said, the

[17] See TAN6 4.22.1

[18] Published by Cadw

polytunnels are particularly intrusive but their effect would be balanced by other gains such as the removal of areas of sheeting, further tree and wildflower planting and boundary enhancement to which I have referred. The prominence and impact of the polytunnels would be considerably reduced by such changes, as would the current overtly commercial horticultural character of this part of the site. Additionally, the polytunnels are an existing resource which it would be more sustainable to retain in use as proposed rather than replace, a principle supported by criterion c).

36. The dwelling would be a modest, single storey structure set centrally within the site at the intersection of the southern and northern parts of the site, positioned in the developing hedge and tree line which separates them. Its low profile would be complemented by a turf roof and timber clad walls with a natural finish as well as further nearby planting to aid is assimilation into its immediate setting. This combination of scale, design, materials and location away from any immediate viewpoints into or across the site would render the dwelling largely inconspicuous.

37. Moreover, LID is in principle acceptable in countryside locations and it is to be expected that it would have some impact on the local rural scene. The project needs to be considered as a whole and the considerable overall upgrading intended would considerably offset the presence of the various structures in the local landscape.

38. Finally, the caravan would be used as temporary accommodation for Mr Hargraves only while the dwelling was being constructed. As to then being retained as part of the project in some fashion, it is not shown in the application scheme. In my view its retention should, if necessary, be considered separately once its function can be more clearly established.

Policy 47 Criterion e) – requires a countryside location and is tied directly to the land on which it is located

39. The project is essentially horticultural and forestry based. It requires land from which to function and a rural location offers the most likely and appropriate location as the NPA broadly acknowledge. Mr Hargraves' household needs both in terms of consumption and income generation would be largely derived from land and is consequently also reliant on where it is.

40. The NPA's main contention is that it has not been demonstrated that such an educational resource needs be in the countryside. In its view it could be located in or adjacent to a settlement, for instance in school or other community grounds, which would reduce the need to travel to and from it. I can well understand that point of view and it is evident from TAN6 that a rural location is not inevitably required for LID. A less isolated location would be preferable but the characteristics of this site and its previous history of use lend itself to the project. It is unlikely that such diverse ecology and habitats would be found in a settlement or at acceptable cost.

41. Moreover, while Mr Hargraves has stressed the education resource as a public benefit, it is not the principle activity underlying the project which is the organic horticultural smallholding and the opportunity it offers for its inhabitants to meet their own needs. Moreover, it is the low impact lifestyle proposed which would largely offer the educational interest and consequently the 2 activities are mutually supportive and mutually reliant on being in the countryside. This is a clear relationship between the

use of the land and the projects proposed such as referred to in TAN6[19]. Similarly, both would be tied to the land. This criterion is accordingly met.

42. TAN6 raises other related matters, notably that such proposals in the countryside must justify the need to live on the site[20]. In this case there is no functional need for Mr Hargraves to be resident, for instance, to safeguard the trees, fruit or vegetables he intends to grow or in any other way and he does not claim otherwise. Nevertheless he relies on 2 factors; first, that living elsewhere and so commuting to the site would be contradictory to the ethos of low impact carbon neutral development and, second, the dwelling itself would be integral to and illustrative of his sustainable lifestyle and so part of the educational resource the project would offer.

43. The need for Mr Hargraves to live on the site is clearly one of principle rather than function. Even so, while TAN6 does not explain what factors would justify the need to live on a proposed site, it is reasonable to assume that they are not those required for rural enterprise dwellings. Had that not been so this might well have been an instance, as with other rural enterprises, where initial temporary accommodation would have been permitted pending the successful proving of the project. That is not the situation here since the elements of the scheme cannot be separated and still secure the same low impact. On balance, I consider that the need to live on the site has been shown. Mr Hargraves has also confirmed, through the management plan, that the dwelling would be his sole residence.

Criterion f) – will provide sufficient livelihood for and substantially meet the needs of residents on the site

44. The SPG explains that 75% of the inhabitants' basic household needs should be met from the site by Year 3 of the project. Mr Hargrave's intention is to be largely self-sufficient in fruit, vegetables and eggs and to derive water, other than for drinking, and fuel and electricity from the site, other than for cooking. Income would be generated in part by selling surplus food in various ways (box scheme, markets, and local shops) but mainly by propagating fruit trees and native species trees and wildflowers. The NPA considers the anticipated returns from these sources to be ambitious which, in an untested market they might well be. However, support from a local shop for the fruit and vegetables and from a nursery for trees has already been given. There is no expectation of any income from the education or community activities.

45. Mr Hargraves' annual expenditure, including notional values for food and fuel derived from the site, is low but not seriously contradicted. It a number of ways the level of expenditure is already being incurred. As to consumption and income, vegetables and some fruit from the site could be grown very quickly and indeed it seems that Mr Hargraves is already able to partly meet his own needs. Trees for sale are unlikely to be available for 2/3 years at best and the coppice is unlikely to provide timber for fuel within that period, if not longer since it has yet to be planted. Whether or not the anticipated income is ambitious, the projected timescale probably is.

46. With these factors in mind, I treat Mr Hargraves' claim that he would meet 96% of his basic household needs from the resources and activities on the site by Year 3 with

[19] See 4.17.1

[20] See 4.16.1 and 4.17.1

considerable caution. However, it is sufficiently in excess of the NPA's required 75% threshold to be tolerable. As I infer, the NPA's particular concern that fuel from the coppice will not be available when predicted is well-founded but, even allowing for the modest income/expenditure sums involved, it is a relatively small element of the overall accounting. In the meantime, it seems that wood can be cheaply sourced both from the boundary hedgerows and trees and by, for instance, trading hay with local farms, as is the case now. Here also monitoring the scheme will be important but it is implicit in the concept of such projects that there will inevitably be a need to adapt to changing circumstances, so long as the underlying low impact principle is maintained. In these ways this policy criterion is also met.

47. TAN6 sets possibly more stringent expectations. Inhabitants' requirements in terms of income, food, energy and waste assimilation are to be obtained directly from the site and the land use activities must be capable of supporting such needs, even on a subsistence basis, within no more than 5 years[21]. Mr Hargraves' projections do not advance that far ahead but he suggests that what he has shown is sufficiently close to the target that it is reasonable to expect that all of his requirements would be met once the project matures. As I say, 96% by Year 3 is questionable but strongly in the right direction and I would not condemn the project for this alone.

48. While he owns the land himself, Mr Hargraves has been assisted by outside funding and expects to receive further grants. The nature and purpose of such assistance was not given but may bring into question whether his requirements would then be truly derived from the resources and activities on the site. This may be a further matter for the monitoring regime which is to go hand in hand with the project.

Conclusions

49. With regard to Policy 47, the NPA had already accepted that criteria (c), (g) and (i) were either met or did not apply to the proposal. To that I would now add that I consider that the other criteria would be satisfied to an acceptable degree or could be made to, as would the corresponding provisions of TAN6 to an acceptable degree. Consequently, I am satisfied that the proposal should be treated as being low impact development within the terms of the development plan.

50. As such, it would be justifiable development within the countryside and, for the reasons I have given, its impact on the landscape and other attributes of the National Park would also be acceptable. Despite initial objections, the NPA accepted that the design of the dwelling, notwithstanding its non-traditional appearance, should not be a reason to refuse planning permission if the project was otherwise acceptable. Consequently, and having regard to all other matters raised, I have concluded that planning permission should be granted.

Conditions

51. I have referred to the s106 Obligation entered into by Mr Hargraves and its provisions. PPW explains that the imposition of conditions is preferable to the entering into a planning obligation, where there is a choice. In this case it seems to me that the obligation's provisions could be satisfactorily met by suitable conditions and its existence does not strengthen the case for planning permission being granted. For the same reasons, while TAN6 indicates that legal agreements should be in place in

[21] See 4.17.1

relation to the occupation of the site[22], to control the activities agreed in the permission and to tie the dwelling to the land[23] in this case I consider planning conditions would offer an appropriate degree of control.

52. A list of conditions was discussed at the hearing. Full compliance with the management plan is essential to ensure that the project is low impact as intended since it is this quality which sets it apart from, for instance, other forms of rural enterprise and justifies the exception being made. Thereafter, annual monitoring reports to assess the project's progress are equally important together with measures, if necessary, to maintain compliance with LID principles. To be effective it will also be necessary to specify the consequences should the project fail. Should that prove to be the case, the NPA suggested 28 days for the use to cease and structures, including the dwelling, to be removed. The dwelling will be demountable so that the land can be restored to its former condition if necessary. However, since it will be Mr Hargraves' sole residence a longer period was felt to be necessary at the hearing. Having considered the debate, I consider that 6 months would be appropriate.

53. The application was made before the date set for the application of national policy to impose code Level 3 performance for single dwellings[24]. Even so, the project should meet the more stringent requirement to be zero carbon in construction and use. Indeed, Mr Hargraves' management plan states that the dwelling will achieve Level 5/6. Strictly, since imported bottled gas would be used for cooking it is questionable whether Level 6 could be met. Moreover, since Mr Hargraves contends that the code was not suitable for this type of dwelling, an alternative analysis of carbon use was provided. The NPA asked for conditions to ensure compliance with the code following the models suggested in TAN22[25]. The code is the nationally adopted standard and should be the starting point. Even so, the NPA accepted that an alternative method might secure the same standard and I shall allow some flexibility in that regard. I would expect that such an assessment, whether in line with the code or otherwise, would cover such matters as the source and nature of the materials to be used, a matter referred to previously as a possible condition.

54. The NPA asks that a condition be imposed to prevent the dwelling, buildings and land involved from being separated, a commitment already given with the s106 Obligation. I agree that this is necessary and appropriate although there is a strong likelihood that the management plan could not be complied with were sub-division to occur.

55. In view of the extensive planting involved and illustrated on the project layout Mr Hargraves questioned the need for a further landscaping scheme. However, the layout omits essential details such as plant species, standards and densities and in view of the landscape sensitivity of the location a full scheme is required, together with a commitment to subsequent implementation and maintenance. A similar challenge was made to the need for materials to be separately agreed for the proposed dwelling. These are indeed indicated on the scheme drawings while the application specifies the finishes. The condition as tabled is unnecessary.

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[22] TAN6 4.16.1

[23] TAN6 4.23

[24] PPW 4.11.4, Code for Sustainable Homes

[25] Technical Advice Note 22 Planning for Sustainable Homes June 2010

56. Finally, the NPA asks for a number of permitted development rights to be removed. These would otherwise permit alterations and extensions to the dwellinghouse as well as the additional ancillary residential use of caravans. The condition would require prior permission for such eventualities. The need for all of the restrictions was questioned since it is not apparent that the dwelling would have a specific curtilage within which the rights could operate. That may not always be the case and, again, in view of the location and ethos of the project such a control is justified.

57. A condition is not required for the residential use of the caravan to cease in view of what follows.

Appeal A

Ground (a) – whether planning permission ought to be granted

58. The main issue here is the impact of the continued use of the land for the siting of a residential caravan on the character and appearance of the area, within the National Park landscape.

59. As I have explained recorded, Mr Hargraves does not suggest that, in isolation, the use should be allowed to continue. Unrelated to the LID project, for instance, such a use would appear incongruous and harmfully add to present unsightly appearance of the site, contrary to those policies designed to safeguard the National Park and the countryside. Mr Hargraves case is that he should be allowed to occupy his caravan, which is of a traditional traveller style, as an interim measure pending the occupation of the dwelling considered under Appeal B. Although that appeal was successful, a grant of planning permission for the caravan use would be separate and free-standing. It cannot be assured that the dwelling will be built. Consequently such a planning permission would be open-ended without certainty that the trigger to secure its removal – occupation of the dwelling – would ever come about. That would have harmful and unacceptable consequences.

60. I have therefore determined that planning permission should not be granted and the appeal on ground (a) fails.

Ground (f) – whether the period for compliance is reasonable

61. Although an appeal on this ground has not been made I have instead considered whether under the circumstances the period for compliance with the notice requirements should be extended to provide for this situation. Mr Hargraves was confident that he would commence the construction of the dwelling quickly once planning permission was granted. It is a moot point whether, once he has commenced construction of the dwelling, an express grant of planning permission is required in any event to retain the caravan for his own occupation while works are continuing. If not, by virtue of s180, that would be likely to override the notice provisions for that period.

62. I shall therefore extend the period for compliance. Some allowance should be made for the requirements of the conditions arising from the Appeal B project to be discharged and to allow any other approvals to be obtained. The extended period will be 12 months. The appeal succeeds to that extent.

Formal Decisions

Appeal A Ref: APP/L9503/C/10/2132307

63. I direct that the enforcement notice be

(a) Corrected by the substitution of the allegation set out in Section 3 of the notice with the following "**Without planning permission the material change of use of the land to a mixed use comprising horticulture and agriculture and by the siting and residential occupation of a caravan.**"

and

(b) Varied by the substitution of **12 months** for 3 calendar months as the period for compliance with the notice requirements set out in at Section 6 of the notice.

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

Appeal B Ref: APP/L9503/A/10/2132242

65. I allow the appeal, and grant planning permission to change the previous commercial nursery site at The Nursery, Mount Pleasant Cross, Cosheston, Pembrokeshire SA72 4TZ into a low-impact organic horticultural smallholding. The site will be planned on sustainability principles and will include woodland coppicing, an orchard, fruit tree nursery, fruit and vegetable produce, free range eggs, wildlife habitats and a carbon neutral off-grid dwelling. The site will provide an educational resource for schools to use as an outdoor 'classroom', and retention of 2 polytunnels in accordance with the terms of the application, Ref NP/10/017, dated 26/10/09, and the plans submitted with it, subject to the appended conditions.

R G Gardener

Inspector

APPEARANCES

For the appellant:

Mr John Hargraves	Appellant
Mr Paul Wimbush	Of Lammas Low-Impact Initiatives
Mr Kevin Thompson	Of Innovative Design and Architecture Ltd

For the Local Planning Authority:

Mrs Vicki Hirst MA MRTPI	Head of Development Management

Interested persons:

Mr Richard Shepherd, for Cosheston Community NPA

Mr Raul Speek

Mr John Downes

Mr David Williams

Mrs Anne Gregson

Mr Simon Jacobson

Mr Ian Ratcliffe

Mrs Kay Allen

Ms Helen Flavel

Ms Rachel Matthews

Gareth Bickerton, Director, Wales UnLtd

Documents produced at Hearing 12/10/2010

1 Letter of notification and list of persons notified

2 List of corresponding JUDP/LDP Policy numbers (NPA)

3 Extract from Cadw publication: Register of Landscapes of Outstanding Historic Interest in Wales (NPA)

4 S106 Obligation dated 13/10/201 (Appellant)

5 Breach of Condition Notice dated 16/06/2010 concerning Condition 1 of planning permissions NP/99/486 and NP/04/534 (NPA)

6 Copy of planning permission NP/04/534

7 Map to show Location of South Pembrokeshire Schools (Appellant)

Documents produced at Hearing 27/01/2011

1 Policies – Pembrokeshire Coast Local Development Plan September 2010 (NPA)

2 Suggested Conditions – Appeal A (NPA)

3 Suggested conditions – Appeal B (NPA)

Appeal B Ref: APP/L9503/A/10/2132242

Conditions

1) The development comprising the dwelling hereby permitted shall begin not later than five years from the date of this decision.

2) The construction of the dwelling shall not commence unless and until a timetable for the implementation of the whole of the development hereby approved as been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out only in accordance with the aims, objectives and methodology set out in the Management Plan and the approved timetable unless otherwise agreed in writing with the Local Planning Authority.

The use hereby permitted shall be discontinued, the low impact dwelling and other structures hereby permitted removed from the land and land restored to its former condition, within 6 months if the requirements of the Management Plan are not implemented within the approved timetable.

The Management Plan consists of the following:

a) Green Apple Cross, A One Planet Development (August 2010)

b) Updated GACE low-impact statement (June 2010)

c) Green Apple Cross Business Plan (June 2010)

d) Updated Green Apple Cross Management Plan (July 2010)

e) Ecological Footprint Report (August 2010)

f) Carbon Assessment of low impact dwelling (August 2010)

g) Green Apple Cross Monitoring Proposals (August 2010)

h) Biodiversity in relation to surrounding area (October 2009)

3) No later than 1st April each year, commencing 1st April 2012, a written Monitoring Report shall be submitted to the Local Planning Authority giving details of the activities carried out during the previous twelve months in compliance with the Management Plan. In particular, the Monitoring Report shall include details of the following

a) An appraisal of the project's progress in relation to the Management Plan and towards 1.88 gha ecological footprint.

b) An assessment of the proportion of basic household needs being met directly from land-based activities on the site to secure at least 75% provision by Year 3 and 100% by Year 5.

c) An appraisal of vehicle trips generated by the project.

d) A record of social and/or educational events provided.

e) A carbon analysis of the project and its activities to demonstrate that it is zero carbon in use

4) Should the Monitoring Report identify to the Local Planning Authority that the aims and objectives of the Management Plan are not being met, there shall be submitted to the Local Planning Authority at its request and for its approval in writing details of corrective or mitigating measures to be taken and a timetable for doing so. Such approved measures shall thereafter be implemented in accordance with the approved details and timetable.

5) Construction of the dwelling hereby permitted shall not begin until an Interim Certificate has been submitted to the Local Planning Authority certifying that a

minimum Code for Sustainable Homes Level 5/6 (Low to Zero Carbon) has been achieved for the dwelling in accordance with the requirements of the Code for Sustainable Homes: Technical Guide or an assessment clearly demonstrating similar attributes. The development shall be carried out entirely in accordance with the approved assessment and certification.

6) Occupation of the dwelling hereby permitted shall not commence until a Final Certificate has been submitted to the Local Planning Authority certifying that a minimum of Code for Sustainable Homes Level 5/6 (Low to Zero Carbon) has been achieved for that dwelling in accordance with the requirements of the Code for Sustainable Homes: Technical Guide or an assessment clearly demonstrating similar attributes.

7) The dwelling, buildings and land comprising the application site shall be retained in use and occupation as a single site and no part shall be sold or leased separately.

8) Before any development is commenced, a comprehensive scheme for the soft and hard landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall take full account of the natural trees and shrub species on the site and in the area in general together with the existing hedgebanks, natural stone boundary walls and tree/shrub growth. The scheme shall include measures for the protection of trees, shrubs, stone walls and hedgebanks at all times.

9) All planting, seeding and turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of development, whichever is the sooner; and any trees or plants which, within a period of five years from the completion of the development, fail, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority give written consent to any variation.

10) Notwithstanding the provisions of Article 3 of The Town and Country Planning (General Permitted Development) Order 1995, (relating to extensions to, and changes to the external appearance of, the dwelling and to development or the siting of a caravan within the curtilage of the dwellinghouse), no development within Parts 1, 2, 5 and 40 of Schedule 2 of that Order (or any Order revoking or re-enacting that Order) shall be carried out without specific planning permission being obtained.

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar gostau

Gwrandawiad a gynhaliwyd ar 27/01/11
Ymweliad â safle a wnaed ar 26/01/11

gan R G Gardener BSc(TownPlan) MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/05/11

Costs Decision

Hearing held on 27/01/11
Site visit made on 26/01/11

by R G Gardener BSc(TownPlan) MRTPI

an Inspector appointed by the Welsh Ministers

Date: 11/05/11

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

Costs application in relation to
Appeal A Ref: APP/L9503/C/10/2132307
Appeal B Ref: APP/L9503/A/10/2132242
Site address: Land at The Nursery, Mount Pleasant Cross, Cosheston SA72 4TZ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Pembrokeshire Coast National Park Authority (**NPA**) for a full award of costs against Mr John Hargraves.
- For **Appeal A**, the hearing was in connection with an appeal against an enforcement notice alleging the siting and occupation of a caravan.
- For **Appeal B**, the hearing was in connection with an appeal against the refusal of planning permission for a low impact horticultural holding to be used as an educational resource, including a carbon-neutral dwelling and the retention of 2 polytunnels.

Decision

1. I refuse the application for an award of costs.

Procedural matters

2. The application does not result from the appeal proceedings or hearing held on 27/01/11 but to an earlier hearing into these appeals held on 12-13/10/10. Following complaints received by The Planning Inspectorate it was decided that a second hearing should be held for which I was appointed. Since I was not party to the earlier proceedings, I rely entirely on the recollections of those who were present.

3. When made it appeared that the application was for a full award of costs in respect of the matters set down and concerned both Appeal A and Appeal B. In the event, as explained below, it is apparent that the application centres on events surrounding the submission of a s106 Obligation by Mr Hargraves during the earlier hearing. That obligation was in regard to the Appeal B proposal only and therefore cannot apply to any actions, unreasonable or otherwise, or any costs incurred in relation to Appeal A.

4. Moreover, the application does not suggest that Mr Hargraves otherwise behaved unreasonably in pursing his appeals. In both these ways the NPA can only be seeking a partial award of costs and I have approached the application on that basis.

The submissions for the National Park Authority

5. The appellant behaved unreasonably by introducing the s106 Obligation, a Unilateral Undertaking, during the original hearing into this case. This resulted in the NPA not having sufficient time to properly consider the obligation or to seek the necessary legal advice without adjournment and delay.

6. The advice in TAN6[1] on the need to enter into a s106 Obligation in relation to low impact developments is clear and that advice was available to the appellant in advance of the original hearing. The appellant was aware of that advice having referred to it in his statement of case. An obligation could have been discussed with the NPA prior to the hearing. That would have enabled it to have been fully considered and so reduce time and cost for the NPA through the subsequent delay in the hearing proceedings which were required to extend into a second day.

The response by Mr Hargraves

7. The application is unwarranted particularly given that the Inspector himself at the previous hearing requested and encouraged the late submission of the s106 Obligation. Since the obligation was in the form of a Unilateral Undertaking, not an agreement, it did not require the NPA's collaboration.

8. It is already established and conceded by The Planning Inspectorate that there are question marks over the manner in which the previous hearing was directed.

9. As to incurring unnecessary expense, the adjournment during the first hearing was not specifically called to allow consideration of the s106 Obligation but was, rather, due to a whole range of factors which delayed the hearing. These included the timely consideration of detailed planning policy points, such as the definition of a caravan, as well as making provision for a site inspection. Since it was a Unilateral Undertaking it was not necessary for the NPA to take legal advice.

The NPA's final response

10. When first introduced at the hearing the s106 Obligation was in the form of an agreement which needed the NPA to be party to it. However, following discussion it became a Unilateral Undertaking. Nevertheless, it was necessary for legal advice to be sought on its implications.

11. There were other matters which contributed to the delay and it is accepted that it may be difficult to assess that part attributable to the s106 matter. Even so, discussion on the obligation was significant and it contributed to the need for the hearing to go into the afternoon of the second day.

Reasons

12. I have considered this application for costs in the light of Circular 23/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

13. It appears that the s106 Obligation was tabled by Mr Hargraves at the instigation of the Inspector at the first hearing. This was confirmed not only by the NPA but also by

[1] Technical Advice Note 6 "Planning for Sustainable Rural Communities" July 2010

all those at my hearing who also attended the first hearing and who I invited to comment to assist my understanding. It seems that the emergence of the obligation came about in response to the policy advice set out in PPW[2] and TAN6 on the apparent need for such a legal document in relation to low impact, One Planet, developments. As a consequence the Inspector intimated that he would be unable to grant planning permission, even if he was minded to, unless such an obligation was in place.

14. However, while I comment on what I am told ensued at the hearing itself, it is Mr Hargraves' action or, rather, lack of action beforehand which is the cause of the NPA's application for an award of costs. Simply put, the NPA says that he should have known that an obligation would be required and should have prepared it in advance, not at the hearing with the consequent delay claimed.

15. A need for an obligation is not set out in the NPA's own policy and guidance concerning low impact development. Reference is made in both PPW and TAN6 to the management plan, which is specifically required, as the basis of a legal obligation relating to the occupation of the proposed development. That advice was in place by July 2010, before the arrangements were made for the hearing in October 2010. It was therefore known in advance by all concerned. Yet it seems that the need or otherwise for such an obligation had not been discussed beforehand and had not been raised by anyone, including the NPA, as an issue which needed to be addressed. Under the circumstances I do not consider that it was incumbent on Mr Hargraves to assume in isolation that an obligation would be required of him. Accordingly, the fact that he came to the hearing without having first completed an obligation cannot be fairly considered to have been unreasonable.

16. It seems that the situation he faced at the hearing was such that, even should Appeal B be otherwise successful, he was advised that he could not receive the planning permission he sought unless an obligation was in place. Thereon I do not consider that it was unreasonable of him to attempt to remedy the matter. Indeed, it was commonsense to do so rather than risk the possibility of having to make a further application to the NPA and the duplication of time and effort that would have entailed. That is reflected in the fact that the Inspector allowed time for the obligation to be prepared and discussed and, properly, for the NPA to have participated in the process. While it is unfortunate that it became necessary to deal with the situation in this way, it did not amount to unreasonable behaviour on Mr Hargraves' part.

17. As such, it is not necessary for me to consider whether the NPA incurred expenditure unnecessarily.

R G Gardener

Inspector

[2] Planning Policy Wales Edition 3, July 2010

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 17/05/11

gan Alwyn B Nixon BSc(Hons) MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26/05/11

Appeal Decision

Site visit made on 17/05/11

by Alwyn B Nixon BSc(Hons) MRTPI

an Inspector appointed by the Welsh Ministers

Date: 26/05/11

Appeal Ref: APP/L9503/A/11/2147442
Site address: Wellington House, High Street, Tenby, Pembrokeshire SA70 7HD

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr F T Broomhead against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/10/532, dated 26 November 2010, was refused by notice dated 4 February 2011.
- The development proposed is change of use from delicatessen to estate agent's office.

Decision

1. I dismiss the appeal.

Reasons

2. The main issue is the effect of the proposal on the retail character of its surroundings, having regard to prevailing policies.

3. Tenby is the main retail centre within the Pembrokeshire Coast National Park. It is the only retail centre within the National Park which has a designated primary retail frontage. The appeal premises are located in the northern part of High Street, which forms part of the primary retail frontage. Policy 50 of the Pembrokeshire Coast National Park Local Development Plan (LDP) sets out the policy position with regard to change of use proposals within the Park area's shopping centres. The policy permits change to a Class A2 use within a primary retail frontage provided that the proposal would not create a concentration of non-retail uses. The supporting text to policy 50 states for primary retail frontages that non-A1 uses which would lead to or unacceptably increase the concentration of similar uses or reduce the retail character of the area will be resisted. Each application will be considered on its individual merits; however, a maximum of one-third of the retail frontage in non-retail use, and no more than 3 non-A1 units adjacent to each other is generally considered an appropriate balance of uses.

4. Wellington House is a Class A1 retail unit. Although currently vacant, its last use was as a delicatessen; that use ceased in November 2010. The National Park Authority's monitoring data for the whole primary retail frontage (comprising High Street, Church Street and Tudor Square) indicates that the percentage of frontage in non-A1 use at present is 37%. This is significantly over the one-third cited in the LDP as the normal

acceptable maximum. The proposal would increase the proportion of non-retail frontage still further, to 39%. Taking a more localised view, the proposal would increase the percentage of non-A1 frontage within the eastern side of High Street running southwards through Tudor Square from the current 33% to 38%. On both these measures, therefore, the proposal would weaken the retail character of the primary retail frontage beyond the generally recognised acceptable maximum.

5. Although criticisms are made of the Authority's data, I do not consider these are valid. Unit frontage lengths appear to have been calculated on a consistent basis. In my view the Market Hall frontage is rightly included as A1, especially since it incorporates a travel agent's window within the recessed entrance area. The "dead" frontage between Tenby Rock and Fudge and Surf & Skate is not included in the calculation. I consider that the 3m frontage containing the Nat West Bank ATM between the bank entrance and Tenby Rock and Fudge is rightly included as part of the A2 frontage. Moreover, removal of the Market Hall frontage from A1 and various non-shop doorways from the frontage calculations would not reduce the resulting percentage figure for non-A1 uses. I conclude that the Authority's calculations are robust.

6. I have considered carefully whether there are particular circumstances why the one-third maximum frontage in non-A1 use should not be firmly applied in this case. However, it is plainly of great importance, given Tenby's function role as the principal retail centre within the National Park, that the retail character of its primary shopping streets is protected by resisting proposals which would unacceptably dilute this. Although some national multiples may have left Tenby in recent times I do not find this a strong argument for permitting an excessive proliferation of non-A1 uses within the primary retail frontage. Whilst other vacant units have been highlighted, the Authority points out that Tenby's vacancy rates for A class units are below the national average. Short-term vacancies are part of the dynamic of retail areas over time and I find no firm evidence of a significant incidence of long-term vacancies within the primary retail frontage beyond that which might be expected in the current difficult economic climate. The appeal premises were not vacant for any significant period before the application to the Authority. Although the proposal would secure an immediate long-term use for the premises, I am not persuaded that this would be in the longer-term interests of the primary retail area in terms of protecting its retail character, since the premises would be unlikely to revert to A1 use thereafter.

7. In reaching my decision I have taken into account all other points raised, including the various letters supporting the proposal. However, I find nothing which is sufficient to alter my conclusions that to permit this proposal would unacceptably dilute the retail character of Tenby's primary frontage, contrary to policy 50 of the LDP, and that there are no considerations in this case sufficient to warrant a determination otherwise than in accordance with the development plan.

8. In determining this appeal I have borne in mind the site's location within the National Park and within the Tenby Conservation Area, as well as the listed building status of Wellington House. However, I do not find that the various statutory requirements in relation to those matters are such as to alter the balance of considerations, either for or against the proposal, which have led to my decision.

9. For the above reasons I dismiss the appeal.

Alwyn B Nixon

Inspector