# Application Ref: NP/17/0420/FUL

Case Officer Applicant Agent	Nicola Gandy Mr E Davies Mr K Morgan			
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Proposal	Conversion of existing first floor flat to 3 self contained units & alterations to ground floor cafe to provide undercover stairwell to flats above			
Site Location	Pirate Cafe, Amroth, Narberth, Pembrokeshire, SA67 8NF			
Grid Ref	SN16270702			
Date Valid	17-Jul-2017	Target Date	15-Mar-2018	

## **Officer's Appraisal**

The application was considered at the Development Management Committee on 31<sup>st</sup> January 2018, where members were minded to approve the application contrary to national and local policy. A 'cooling-off' period was subsequently invoked by the Director of Park Direction and Planning.

The key issue to be considered in this case is the principle of the additional two residential units, a highly vulnerable land use, within an identified flood zone.

The Committee report of 31<sup>st</sup> March 2018 (see attached) details the reasons why the development is not considered acceptable in terms of national and local policy. In addition to the Inspectors report referred to in the committee report of 31<sup>st</sup> January 2018, a further, application 'called in' by Welsh Ministers in respect of residential development on a site which straddled a C2 and C1 flood zone is also a relevant material consideration. That appeal relates to a residential development in Rhondda Cynon Taf (APP/L6940/V/16/3163541 refers). The Inspector in that case, similarly to this application, highlighted that NRW had not objected to the scheme, and made the following comments-

'The Applicant refers to the lack of objection of NRW in terms of the proposed development, who neither queried or contradicted how Section 6 of TAN 15 has been applied by the Council. However the WG's Chief Planner's letter of 9 January 2014 (see attached), makes it quite clear that the justification tests in TAN 15 are a matter for the local planning authority to undertake with <u>NRW's role being one of providing expert technical advice on flooding consequences;</u> in this case NRW responded to the proposal as required i.e. only in terms of assessing flooding consequences.'

The Inspector in this appeal also highlights the requirement to apply TAN15 to such development and stated:-

'I disagree with the stance taken by the main parties. Both main parties argue paragraph 11.1 allows a degree of judgment and discretion as to whether or not to apply section 6 when the site is partially within Zone C2. 107. Paragraph 11.1 does not distinguish between zones C1 & C2, and therefore should not be read as a reason for not applying the justification tests, especially

Pembrokeshire Coast National Park Authority Development Management Committee – 14<sup>th</sup> March 2018 when paragraph 6.2 of TAN 15 makes a distinction between and is quite categorical, that highly vulnerable development, such as that proposed, should not be permitted. To my mind paragraph 6.2 leaves no doubt as to what TAN 15 requires and consequently outweighs paragraphs 11.1 or 6.1 and the 'discretionary' or flexible approach advocated by the main parties.'

The application being considered today differs from the appeal site in that it wholly lies within a C2 flood zone. When applying National Policy to such development it clearly states that the development for a vulnerable land use, i.e. residential, should not be permitted in C2 flood zones.

TAN 15 states that experience of recent years suggests that the incidence of problems due to flooding may increase, both in frequency and in scale. This arises partly from changes in river hydrology and human activity, and also from changes in land management and the increase in development in areas susceptible to flooding. Even without these factors, the incidence and extent of both river and coastal flooding is expected to increase with time as a consequence of climate change.

TAN 15 sets out a precautionary framework to guide planning decisions. The principal aim of the framework is to direct new development away from those areas which are at a high risk of flooding. This principle is particularly important in the light of climate change, which is expected to significantly increase the risk of flooding over time.

The additional information circulated by the agent at the previous committee meeting has been forwarded to NRW for further comment, however, NRW had not commented at the time of writing this report. A verbal update will be provided at Committee.

At the time of writing this report a Unilateral Undertaking for the affordable housing contribution has not been received by the Authority, as such recommended reason for refusal No. 2 still stands.

Having regard to the above additional information and the original committee report, attached, the development is recommended for refusal.

## **Recommendation**

The recommendation of refusal as set out in the previous committee report still stands. The additional information in relation to additional residential units in flood zones confirms the national and local policy position and adds further weight to the recommendation.

Notwithstanding the above, if members are minded to approve the application the officer recommendation would be to allow 2 months for the submission of a completed unilateral undertaking and subsequently delegate to officers to refuse the application if the legal agreement is not forthcoming as the application is not in accord with the affordable housing policy OR to grant planning permission with the following conditions:-

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

**Reason:** Required to be imposed pursuant to Section 91 (1) of the Town and Country Planning Act 1990 (as amended).

 The development shall be carried out in accordance with the following approved plans and documents: 01 Rev F, 02 Rev F, 03 Rev F, 04 Rev G, 05 Rev G, and 06 Rev G dated 14th July 2017 and 17th October 2017; and the Flood Resilience and Personal Flood Plans detailed in the email dated 17th October 2017.

**Reason:** In order to be clear on the approved scheme of development in the interests of protecting visual amenity and the special qualities of the National Park. Policy: Local Development Plan – Policies 1 (National Park Purposes and Duty), 8 (Special Qualities), 15 (Conservation of the Pembrokeshire Coast National Park) and 29 (Sustainable Design).

3. Flood mitigation – delegate to officers to insert following any further comments from NRW.

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The application is referred to the Development Management Committee for determination as the officer's recommendation differs to that of the Community Councils.

## **Consultee Response**

Amroth Community Council: No objection

PCNPA - Ecologist: No objection

PCNPA - Access Manager: No PROW affected.

PCC - Transportation & Environment: No objection

**PCC - Drainage Engineers:** It's noted that a Flood Consequence Assessment has previously been supplied in electronic format to accompany the Application, however since the application site appears to fall entirely within C2 area as defined by the TAN 15 Development Advice Map further advice should be sought from N R W with regard to this Application. We are aware of instances of historic tidal flooding affecting the immediate area to which the application refers to, however we have no information regarding the extent to which the property may have been affected.

**Natural Resources Wales**: Advised that the Flood Consequences Assessment submitted does not provide sufficient information to determine the compliance set out in A1.14( plus Climate Change) and A1.15 of TAN 15 (2004) However, it is a matter for the Authority to determine whether the risk to the development is acceptable and can be managed.

Dwr Cymru Welsh Water: No objection

## Public Response

The application was appropriately advertised in accordance with statutory requirements. No third party comments have been received.

## **Policies considered**

Please note that these policies can be viewed on the Policies page Pembrokeshire Coast National Park website -<u>http://www.pembrokeshirecoast.org.uk/default.asp?PID=549</u>

- LDP Policy 01 National Park Purposes and Duty
- LDP Policy 06 Rural Centres
- LDP Policy 08 Special Qualities
- LDP Policy 09 Light Pollution
- LDP Policy 15 Conservation of the Pembrokeshire Coast National Park
- LDP Policy 29 Sustainable Design
- LDP Policy 30 Amenity
- LDP Policy 32 Surface Water Drainage
- LDP Policy 34 Flooding and Coastal Inundation
- LDP Policy 43 Protection of Employment Sites and Buildings
- LDP Policy 44 Housing
- LDP Policy 45 Affordable housing
- LDP Policy 49 Retail in the National Park
- LDP Policy 50 Town and District Shopping Centres
- LDP Policy 52 Sustainable Transport
- LDP Policy 53 Impacts on traffic
- PPW9 Chapter 03 Making and Enforcing Planning Decisions
- TAN 15 Development and Flood Risk

# **Constraints**

NPA Property - within 25m Special Area of Conservation - within 500m Special Protection Area - within 500m Technical Advice Note 15 LDP Mineral Safeguard Biodiversity Issue ROW Coast Path - within 10m Potential for surface water flooding LDP Centre:50pc aff housing;30 units/ha Recreation Character Areas Low Coal Risk Surface Coal Landscape Character Assessment Seascape Character Assessment

# Officer's Appraisal

Background and site description

The application site is a two storey building of relatively modern appearance, situated in a prominent location looking over Amroth Beach toward Carmarthen Bay. The building comprises a long-standing café and retail gift shop at ground floor with a large 4 bedroom flat above.

The Pirate is located in a short row of businesses and residential properties which immediately fronts the beach. The site falls within the Rural Centre of Amroth, as defined in the Pembrokeshire Coast National Park Local Development Plan (adopted 2010)

Planning History

- NP/06/058 Change windows to doors Approved 22.03.2006
- NP/480/87 Extension and alterations Approved 09.11.1987
- NP/11/84 Conversion of existing building and small extension into Ice-cream and sandwich parlour Approved 24.02.1984
- NP/03/80 Fire escape Approved 21.02.1980
- Restaurant extension for cold store and flat extension to provide additional 3 bedrooms Refused 05.11.1971 (Appeal allowed 05.07.1972)
- Private car garage Approved 07.07.1971
- Display unit and kiosk Approved 03.05.1968
- Restaurant, shop and flat over Approved 10.11.1961
- Café (Outline) Refused 08.07.1960
- NR/1256 Café (Outline) Refused 08.12.1958

## Current Proposal

Full planning permission is sought for the refurbishment and extension of the building as follows;

• At ground floor, the refurbishment of the internal space and the creation of an internal staircase to the western side of the counter/servery area.

• At first floor, the construction of two front gable extensions with central balconies between and the conversion of the single residential flat to three flats (including managers accommodation).

## Key Issues

Paragraph 3.1.3 of Planning Policy Wales (currently Edition 9 – November 2016) advises that applications for planning permission should be determined in accordance with the approved or adopted development plan for the area, unless material conditions indicate otherwise. This application raises the following planning matters, which are to be considered against the policies of the Pembrokeshire Coast National Park Local Development Plan;

- Policy
- Visual amenity and special qualities of the National Park
- Amenity
- Biodiversity
- Landscaping
- Material considerations.

## Welsh Government Policy in TAN15

Government Policy regarding flood risk is the primary material consideration in this application, and therefore a brief introduction to those principles is to be reproduced here:

TAN15 classifies land into 3 categories (Zones A, B and C) according to risk of flooding. Zone C (river, tidal or coastal) is split into C1 (areas of the floodplain which are developed and served by significant infrastructure, including flood defences) and C2 (areas of the floodplain without significant flood defence infrastructure). The TAN is accompanied by a series of Development Advice Maps (DAMs) which are based on the best available information considered sufficient to determine when flood risk issues need to be taken into account in planning future development. The application site lies within Zone C2.

TAN15 acknowledges that some flexibility is necessary to enable the risks of flooding to be addressed whilst recognising the negative economic and social consequences if policy were to preclude investment in existing urban areas and the benefits of reusing previously developed land. However, consistent with PPW, TAN 15 states that new development should be directed away from Zone C and towards suitable land in Zone A, otherwise to Zone B, where river or coastal flooding will be less of an issue. In Zone C the tests outlined in sections 6 and 7of the TAN will be applied, recognising, however, that highly vulnerable development and Emergency Services in Zone C2 should not be permitted.

#### Local Plan Policy

The site lies within the Rural Centre of Amroth as defined in the LDP and therefore Policy 6 of the Plan is relevant. The policy allows for suitable developments, including residential use. In residential uses, affordable housing will be given priority.

The property is also located within a C2 flood plain and in an area identified in the Shoreline Management Plan as at risk from coastal erosion and flooding. Whilst the policy is to hold the line by maintaining existing defences for as long as possible it is forecast that climate change and increased sea level will increase the risk of flooding over time.

Policy 34 of the Local Development Plan directs development away from those areas which are at risk from flooding now or as predicted for the future unless there are sound social or economic justifications in accordance with the advice set out in Technical Advice Note 15.

As previously discussed a C2 flood zone is identified as covering the application site. The flood consequences assessment submitted by the applicant states that the development is acceptable in terms of flood risk as the more vulnerable use (residential) will be located at first floor level and future occupants should be informed of the flood risk and register for NRW flood warnings. However, NRW have assessed the flood consequences assessment and advise that it has not assessed the tidal risk to the development and does not include an assessment of potential depths associated to wave overtopping. Amroth is known for wave overtopping with most recent records being in January 2014. Additionally, the flood consequences assessment does not include any detailed hydraulic modelling nor an assessment of the impacts to the development as a result of climate change.

In extreme events, previously flood water has reached the adjacent road along Amroth sea front, which makes access to the development difficult during flood events. The development proposes to extend the property to allow for two additional residential uses into a flood risk area where the only route for evacuation is through the flood zone itself, thus creating a risk to both the future occupants and emergency services. Furthermore, it still represents a monetary investment in the building and therefore an increase of assets within the flood zone.

Safe access and egress from a property is a matter for emergency services to determine on a site by site basis, depending on operational capabilities and equipment. It should be noted in this instance that access to and from the property is to the front, towards the coast, thus encouraging movements towards the coastal flooding risk area. The property has a river running to the rear, as such, there are no other routes to access the property for pedestrians, vehicles or emergency vehicles other than via the highway to the front of the property.

A letter circulated to all Local Planning Authorities in January 2014 asks that they consider how flooding and the consequences of flooding impact on development viability. Building and contents insurance for properties in flood zone built (developed) after 2009 are subject to uncapped risk reflective premiums.

An annex to the 2014 letter reminds Authorities of TAN15 requirements for vulnerable developments. To be justified a house should be located **ONLY** in an area of flood risk which is developed and served by significant infrastructure, including flood defences (Zone C1). Even in such circumstances the development required additional justification that it is to assist a local authority regeneration initiative or strategy and key employment objectives, necessary to sustain an existing settlement or region. The property is located in a C2 flood zone and is not part of a local authority regeneration scheme, so fails to meet the requirements of TAN15.

Whilst the flood consequence assessment submitted considers the development to be acceptable in terms of flood risk, it remains that the proposal would be introducing two additional residential units and increasing the value of assets within an area liable to flood. The property is within a C2 flood risk zone, without fundamental justification for its development.

#### Recent Appeal Cases

A decision made by the Welsh Ministers is relevant to this application which also centred on the issue of building with Flood Zone C2 (APP/E6840/V/16/3164287 refers).

In summary, the permission was refused on flood risk grounds. The application was for a boutique spa hotel on a vacant employment site in Monmouth town, in flood zone C2. All buildings would be flood free, and there would be a significant reduction in hardstanding areas compared to the existing situation and therefore offered more flood storage capacity.

The Inspector in his decision draws attention to the emphasis of PPW:

Chapter 13 of PPW covers matters pertaining to flood risk and this is supplemented by the advice contained within Technical Advice Note 15: Development and Flood Risk (2004) (TAN15). Specifically in relation to flooding, PPW states that meeting the Welsh Government's objectives for sustainable development requires action through the planning system to move away from flood defence and the mitigation of the consequences of new development in areas of flood hazard towards a more positive avoidance of development in areas defined as being of flood hazard. Planning authorities should therefore adopt a precautionary approach when formulating development plan policies on development and flood risk, and when considering planning applications.

A key statement by the Planning Inspector in this case is his assessment of NRW's role in assessing flood risk:

91. Whilst the proposal is not in accordance with national planning policy due to its classification as Highly Vulnerable Development within DAM Zone C2, it is important to note that NRW's involvement is to provide specialist advice on the findings of any FCA and not to provide advice on compliance, or otherwise, with criteria (i) - (iii) of section 6.2 of TAN15, which remains a matter for the decision maker. Accordingly, NRW's evidence is restricted to matters relating to the acceptability of flooding consequences, with particular regard to the criteria in Section 7 and Appendix 1 of TAN15.

The development proposes two additional residential units, as such, Policy 45 – Affordable Housing is also relevant. Policy 45 generally requires the provision of units on site in all developments of two or more dwellings, however, the more recent Supplementary Planning Guidance for Affordable Housing (November 2014) sets a requirement of 30% for affordable housing provision in Amroth. As this would not result in a whole unit, an affordable housing contribution, based on gross internal floor space across the two additional units, would be sought. The applicant indicates in the submitted information that they agree to the provision of this via a unilateral undertaking. However, a unilateral undertaking has not been submitted to date and, as such, the development fails to comply with Policy 45 of the LDP.

Having regard to TAN 15, LDP Policy and recent appeal decisions it is considered that the development is contrary to both National and Local Planning policy and the risk of flooding in this instance and the lack of affordable housing contribution is not acceptable.

## Visual Amenity and Special Qualities of the National Park

Policy 8 of the Pembrokeshire Coast National Park Local Development Plan (LDP) is a strategic policy which refers to the special qualities of the National Park and lists priorities to ensure that these special qualities will be protected and enhanced. Policy 15 of the LDP seeks the conservation of the Pembrokeshire Coast National Park with criteria 'a' and 'b' resisting development that would cause significant visual intrusion and/or, that would be insensitively and unsympathetically sited within the landscape. Criteria 'd' and 'e' resists development that would fail to harmonise with, or enhance the landform and landscape character of the National Park, and/or fail to incorporate important traditional features.

Policy 29 of the LDP requires all development proposals to be well designed in terms of place and local distinctiveness (criterion 'a'). Policy 30 of the LDP seeks to avoid development that is of an incompatible scale with its surroundings (criterion 'b') or is visually intrusive (criterion 'd').

The site is modest in size, and the footprint of the building largely fills the plot. There are buildings either side of The Pirate, with the main road to the front. The building is plain and modern but reflects traditional proportions, and has a low walled courtyard to the front elevation. This site is prominent in the wider streetscene, where the character is densely developed frontage. In the Authority's supplemental planning guidance on Landscape Assessment, the site falls within the LCA 1 – Saundersfoot Settled Coast, which comprises small villages set amongst wood areas along several small valleys with streams flowing to the coast. The special quality of this landscape has a strong connection to the coastline.

The proposed design of the first floor extensions take reference from modern glazed gable detailing, which has been successfully used on buildings along the Amroth seafront; and this detail contrasts well with the more traditional domestic dwellings. It is considered that the proposal is acceptable in design and appearance, and would be in accordance with the requirements of Policies 8, 15, 29 and 30, as the development would be an acceptable element of the built form of the village.

## **Neighbouring Amenity**

Policy 30 of the Local Development Plan refers to matters of amenity, and requires proposals to appropriate to where people live and work, compatible with its setting, should not lead to an increase in traffic, odour, noise or light, and should not be visually intrusive.

The proposed use would be compatible both with the setting and the pattern of neighbouring development which includes a mix of both residential and commercial uses; and the conversion of the residential accommodation from one 4-bedroom unit to three units offering a total of five bedrooms is not considered to be over-intensification of the site.

In respect of privacy, the application site sits in a row of properties whose front elevations are inevitably orientated to the beach and sea views. The refurbishment does not result in further fenestration to the side or rear elevations, and the gables to the front look over the public highway and Amroth Beach. The existing levels of privacy enjoyed would not be adversely affected. It is considered, therefore, that developing the site without adversely impacting the amenity of existing residents can be achieved and as such the proposal complies with the requirements of Policy 30 of the Local Development Plan.

#### **Biodiversity**

Policy 11 refers to the protection of biodiversity, and requires that development that would impact on habitats and species will only be permitted subject to suitable mitigation. The Authority's Ecologist has assessed the information provided - which advises that there is limited ecological value for the site – and has recommended that a suitable condition be attached to require external lighting to be agreed prior to works commencing, as the site does fall near known foraging areas for bats. As such the scheme complies with the requirements of Policy 11 which requires that any impacts to protected species or their habitats will only be permitted where the effects will be acceptably minimised or mitigated.

#### Landscaping

There are no Tree Preservation Orders on the site and the site does not fall within a conservation area where works to trees would require separate permissions. The site has a hard landscaped front forecourt, which will be retained as part of the development.

#### Conclusion

Following detailed consideration of the planning issues identified during the consideration of the application; and of the responses received from statutory consultees, the proposed development is considered to be contrary to both national and local planning policy given the flood risk associated with the development and the lack of affordable housing contribution. The recommendation is, therefore, of refusal.

#### Recommendation

#### That the application be refused for the following reasons:-

 The application site lies within Flood Zone C2, and proposes residential and commercial development which is contrary to advice contained with Welsh Government Guidance Technical Advice Note 15: Development and Flood Risk, Policy 34 (Flooding and Coastal Inundation) of the Pembrokeshire Coast National Park Local Development Plan( adopted 2010) and an annex to a letter circulated to Local Planning Authorities in 2014 setting out the instances when vulnerable development would be acceptable in areas of flood risk. The proposal would be increasing the value of assets within an area liable to flood without justification which is contrary to PPW (Edition 9 November 2016) (13.2.3) requiring action through the planning system to move away from flood defence and the mitigation of the consequences of new development in areas of flood hazard towards a more positive avoidance of development in areas defined as being of flood hazard.

 The application fails to justify the lack of provision for either affordable housing or the provision of a financial contribution towards affordable housing. The application therefore fails under Policy 45 (Affordable Housing) and Supplementary Planning Guidance for Affordable Housing (adopted 5th November 2014) and is therefore contrary to guidance contained within Planning Policy Wales (Edition 9, November 2016).











