REPORT OF THE DEVELOPMENT MANAGEMENT MANAGER ON APPEALS

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

EC21/0041	Installation of four rooflights within the front roof slope elevation and the erection of a glass balustrade along the front boundary forecourt - Cambrian House, Settlands Hill, Little Haven, Haverfordwest, Pembrokeshire, SA62 3LA
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW
EC21/0097	Unauthorised change of use of land from agricultural to residential - OS Field No.'s 6881 & 7878 north of Ffynnonwen, Brynberian, Crymych, Pembrokeshire, SA41 3UB
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW
EC21/0145	Construction of new access and access track; erection of timber cabin for residential use; storing of touring caravan; storing of converted van type vehicle; erection of solar panels & erection of tented canopy - Land OS Parcel No. 1050, known as Pwllau Clau, Crosswell, Crymych, Pembrokeshire, SA41 3SA
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW
EC22/0024	Erection and siting of summerhouse/shed - Land referred to as Llainfach, northwest of Carnhedryn Uchaf, near St Davids, Pembrokeshire
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW
EC24/0029	Alleged unauthorised Siting of Caravan - Land to the rear of Jacks Drift, Moreton Lane, Incline Way, Saundersfoot, SA69 9LX
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW
NP/23/0555/S73	Variation of Condition 1 of NP/19/0693/FUL to extend the permission for a further 5 years from original expiry date -

	Temple House, Square & Compass, Haverfordwest, Pembrokeshire, SA62 5JJ
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW

NP/23/0556/FUL	Retention of residential annex and residential curtilage extension - Leet Cottage, Little Haven, Haverfordwest, Pembrokeshire, SA62 3UH
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW

NP/23/0356/DPO	Discharge of Section 106 to remove the agricultural occupancy restriction in legal agreement relating to NP/99/0537 & NP/99/0122 – White Moor Farm, Manorbier, Tenby, Pembrokeshire, SA70 7SN
Type	Written Reps
Current Position	The appeal has been allowed and a copy of the Inspectors decision is attached for information

NP/23/0333/PNA	Proposed welfare shed/dry room building - Little Portclew Farm, Chapel Lane, Freshwater East, Pembroke, Pembrokeshire, SA71 5LB
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW

NP/23/0124/FUL	Change of use of surplus public toilets to takeaway ice cream parlour/coffee bar & beach themed retail with small rear extension to create kitchen together with new public disabled toilet as required by Pembrokeshire County Council - Redundant Toilet Block, Adjacent to Newgale Campsite, Newgale, Haverfordwest, Pembrokeshire, SA62 6AS
Type	Written Reps
Current Position	The appeal has been dismissed and the Inspectors decision is attached for your information.

NP/24/0175/FUL	Rear first floor extension. Extended garage and reconfigured driveway/parking - 35, Holbrook Road, Broad Haven, Haverfordwest, Pembrokeshire, SA62 3HZ
Type	Written Reps
Current Position	The initial documentation has been forwarded to PEDW

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Appeal Decision

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by Helen Smith BA(Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 27/09/2024

Appeal reference: CAS-03308-M9M1L2

Site address: Redundant Toilet Block, Adjacent to Newgale Campsite, Newgale, Haverfordwest, SA62 6AS

- 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 Mike Harris against the decision of Pembrokeshire Coast National Park Authority.
- The application Ref NP/23/0124/FUL, dated 8 March 2023, was refused by notice dated 6 September 2023.
- The development proposed is change of use of surplus public toilet to takeaway ice cream parlour/coffee bar and beach themed retail with small rear extension to create kitchen together with new public disabled toilet as required by Pembrokeshire County Council.
- A site visit was made on 12 August 2024.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal complies with:
   a) national and local planning policies relating to flooding and the management of coastal change;
   b) local planning policies designed to protect the vitality, viability and diversity of shopping centres and the provision and protection of community facilities; and
   c) whether there are material considerations that would outweigh any policy conflict in relation to the above issues.

Reasons

Flooding

3. The appeal site is located on the eastern side of the A487 which separates it from the shingle bank of Newgale Beach. The site is located within flood risk Zone C2, as designated by the Development Advice Maps (DAM) which accompanies Technical

Advice Note 15: Development and Flood Risk (TAN 15). Natural Resources Wales's (NRW) Flood Maps for Planning (FMfP) are the most up to date flooding information and are a material consideration. The FMfP identifies the site as being in Flood Zone 3 – Rivers and Sea, a high-risk flood area. In addition, the appeal site is located within an area subject to a Shoreline Management Plan (SMP) and within a Coastal Change Management Area as identified in the Pembrokeshire Coast National Park Local Development Plan 2 (LDP). The SMP identifies this area as being subject to Managed Realignment but with the long-term intent of allowing the shingle ridge to behave naturally with no active intervention. Planning Policy Wales Edition 12 (PPW) advises that where it is established that coastal defences will no longer be maintained, development should only take place where risks and consequences are understood and can be acceptably managed over the lifetime of the development. Policy 35 of the LDP follows that the proposal should demonstrate that it will result in no increase in risk to life or significant increase in risk to property. The proposal is therefore situated in an area of significant flood risk with very limited likelihood of investment in flood defence infrastructure, and where new development must be carefully controlled.

4. Although TAN 15 dates back to 2006, it is still a material consideration which I give significant weight. Furthermore, PPW advises that a precautionary approach of positive avoidance of development in areas of flooding from sea or rivers should be adopted. Therefore, the overarching aim of the precautionary approach remains unchanged, i.e. to direct new development away from those areas which are at high risk of flooding. Policy 34 of the LDP is consistent with PPW and TAN 15.

5. The proposal is for less vulnerable development. Even so, TAN15 states that in zone C2 such development should only be permitted if it is determined that it is justified in that location having regard to the tests set out in paragraph 6.2. These are in 4 parts, and one must satisfy tests (i) and (ii) before moving on to consider (iii) and (iv). No evidence has been put forward indicating that the development is necessary to assist, or be part of a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement (test i). Similarly, although some employment benefits are advocated by the appellant, there is little to suggest that the proposed development is necessary to contribute to key employment objectives supported by the local authority and other key partners to sustain an existing settlement (test ii). Therefore, the development would not meet the justification tests (i) or (ii) set out in paragraph 6.2 of TAN15. As the scheme fails tests (i) and (ii) there is no requirement to go further as there is clear conflict with TAN15. The proposal would also be contrary to policy 34 of the LDP.

6. I recognise that there is no dispute between the parties that the flood risk consequences could be acceptably managed, and that the proposal would replace the previous less vulnerable use on brownfield land. Even so, whilst the proposed extension is modest in size, it would be a permanent form of development and given that it would represent an increase in the floor area of the building by approximately 50%, there would be some intensification of its use by persons and therefore an increase in risk to life. The appellant proposes the use of flood resistant design measures, however, the risks would still be present even if they could be acceptably managed, and the proposal therefore conflicts with Policy 35.

7. I note NRW have raised no objections to the proposal, however, this is on the basis of managing the consequences of flood risk and they have not commented in relation to the application of the justification tests. I acknowledge that the appellant accepts the risk of flooding, however I find no compelling evidence that would justify a departure from national and local planning policies which seek to direct development away from high-risk flood areas in the first instance.

8. I conclude that the proposal would result in unsustainable development in a high-risk flood area, contrary to TAN 15, PPW and policies 34 and 35 of the LDP.

Retail/ Community facilities

9. The appeal site is located outside but close to the Rural Centre of Newgale, where Policy 7 of the LDP permits, amongst other things, tourist attractions where the need to locate in the countryside is essential. The proposal would include a takeaway ice cream parlour/coffee bar and a small area for beach themed retail, for the sale of goods such as buckets/spades/beach balls/sun cream/sports activities, and a new public accessible toilet which would serve the campsite, visitors to Newgale and the community.

10. There is no dispute that the provision of an accessible public toilet to replace those that have been closed for some time would meet the aims of Policy 54 which seeks to ensure the provision and protection of community facilities. However, in relation to the retail element, the Authority considers that the proposal would not be well located to meet the community's needs, and references convenience shops which are defined as a community facility for the purpose of policy 54 of the LDP. Although the proposal would serve the community in addition to the general public and visitors of the campsite, given the seasonal nature of the proposal and the proposed type of goods to be sold, I do not consider that the proposal would constitute a convenience shop. Consequently, I do not consider that policy 54 is directly relevant to this element of the proposal.

11. Policy 57 of the LDP seeks to ensure that the vitality, viability and diversity of shopping centres is maintained and enhanced by, amongst other things, permitting proposals for retail or commercial uses in a Rural Centre. This policy is consistent with PPW's 'town centres first' approach in relation to the location of new retail and commercial centre development.

12. No information in relation to the likely impacts on any existing retail centres has been provided. Nevertheless, owing to the small size of the proposed retail floorspace, and having regard to the potential use of conditions to limit the type of goods sold at the premises and its seasonal nature, there would not be any significant harm to the vitality, viability and diversity of the rural centre of Newgale or any other nearby centres.

13. I therefore find no material conflict with the purpose of policy 57 of the LDP or PPW insofar as it relates to the protection of the viability and vibrancy of retail centres.

Other material considerations

14. The provision of an accessible public toilet would be a benefit to the community and the general public to which I attach moderate weight, particularly given the limited provision in the vicinity of the appeal site. I also note the representations in support of the proposal. Nevertheless, it is indicated that the proposed development would be a seasonal facility, suggesting that it would only operate during certain times of the year. Whilst this would provide a suitable provision for visitors during the busier times of the year, it would limit the benefits to the local community.

15. Owing to the small scale of the proposal, the employment benefits would be limited. For the same reason, the proposal's contribution to the wider tourism of the area would also be modest. I recognise that no concerns have been raised in relation to the proposal's impact on the special qualities of the Pembrokeshire Coast National Park. However, absence of harm is a neutral outcome, rather than a benefit to be weighed in the overall balance.

16. I have also had regard to the fallback position as a consequence of the recent planning permission for the change of use of the appeal site to a takeaway ice cream

parlour/coffee bar with toilet facility for public use and a disabled parking space (Ref NP/23/0527/FUL). Nonetheless, this relates to a temporary consent for the change of use only and does not include any extensions. I have considered whether the appeal proposal could also be allowed on a temporary basis, however, as it includes a permanent extension this would not be reasonable. In these circumstances, the fallback position would not cause worse or similar effects to the proposal and therefore would not justify allowing the appeal.

17. The appellant has drawn my attention to other developments permitted by the Authority within high-risk flood zones, primarily in Milton, Solva and Saundersfoot. In relation to the application in Milton, Members considered that the proposal had community and economic benefits, and in relation to the application in Solva it was approved for economic reasons, which I have found do not merit the conflict to policy in this case. Whilst being in a high-risk flood area, the Beach Kiosk in Saundersfoot did not include an extension to the building. These developments are not directly comparable to the appeal proposal and I have therefore determined the appeal on its own merits.

18. I conclude that there are no material considerations that outweigh the significant conflict with national and local policies relating to flooding that I have identified.

Planning Balance and Conclusion

19. Although I have found no material conflict with policies relating to retail and community facilities, I give substantial weight to national and local policies that direct new development away from those areas which are at high risk of flooding. There are no material considerations that suggest a decision should be taken otherwise than in accordance with the development plan and for the reasons set out above, the appeal should be dismissed.

20. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

H Smith

INSPECTOR

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Appeal Decision

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by Victoria Robinson BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 09/09/2024

Appeal reference: CAS-03299-J9V5M3

Site address: White Moor Farm, Manobier, Tenby, Pembrokeshire, SA70 7SN

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
- The appeal is made by Nick Thomas against the decision of Pembrokeshire Coast National Park Authority.
- The development to which the planning obligation relates is a dwelling house.
- The planning obligation, dated 6 January 2000, was made between Pembrokeshire Coast National Park Authority and Nicholas Karl Thomas and James Hugh Thomas.
- The application Ref NP/23/0356/DPO, dated 4 July 2023, was refused by notice dated 13 October 2023.
- The application sought to have the planning obligation discharged.
- A site visit was made on 17 August 2024.

Decision

1. The appeal is allowed. The planning obligation, dated 6 January 2000, made between Pembrokeshire Coast National Park Authority and Nicholas Karl Thomas and James Hugh Thomas does not serve a useful purpose and is discharged.

Main Issue

2. The main issue is whether the obligation meets the tests specified in Welsh Office Circular 13/97 Planning Obligations and in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations), and, if it meets the tests, whether the obligation continues to serve a useful planning purpose.

Reasons

3. Outline planning permission was granted in January 2000 under reference NP/99/0122 subject to a Section 106 Legal Agreement containing the following planning obligations:

   "The Owner [and his successors in title] shall not:

   a) Cause or permit the Dwelling House (or any part thereof or any extension which may be constructed on or against the buildings) to be occupied other than by a person who is solely or mainly employed or last employed at the Property in agriculture as defined in Section 336 of the Town and Country Planning Act 1990 or in forestry or a

dependent of such person residing with him or her or a widow or widower of such a person or

b) Cause or permit the proposed Dwelling House to be sold away or otherwise alienated from the Property."

4. The 'Property' refers to some 26 acres of land shown edged red on a plan attached to the legal agreement comprising land immediately next to the dwelling and 2 separate land parcels to the south of the dwelling. I am advised the planning permission was implemented; therefore, the obligation is effective.
5. Section 106A of the Town and Country Planning Act 1990 (as amended) provides that on an application for discharge, the determination may be that the obligation shall continue to have effect without modification; or if the obligation no longer serves a useful purpose, that it shall be discharged.
6. I acknowledge the Authority's contention that the obligation is necessary and reasonable in order to control a property permitted as an exception within a countryside location by ensuring that the dwelling at White Moor Farm continues to remain available as a rural enterprise dwelling.
7. The dwelling is in the countryside where Policy 7 Countryside of the Pembrokeshire Coast National Park Local Development Plan (LDP) advises development must be strictly controlled. It permits development in exceptional circumstances, which include new rural enterprise dwellings. Similarly, Planning Policy Wales (PPW) recognises that rural enterprise dwellings represent one of the few circumstances in which isolated new residential development in the open countryside may be justified (paragraph 4.2.37 refers).
8. Since the original planning permission Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010) has been published. It advises that where the need to provide accommodation to enable rural enterprise workers to live at or near their place of work has been accepted as justifying isolated residential development in the open countryside, it will be necessary to ensure that the dwellings are kept available for meeting this need. The TAN provides suggested wording for a sequential condition to be attached to any such planning permission, restricting occupancy to those working or last working on a rural enterprise in the locality; or if it can be demonstrated that there are no such eligible occupiers, to those who would be eligible for consideration for affordable housing under the local authority's housing policies; or widows, widowers or civil partners of the above and any resident dependants.
9. In the case of the appeal property, in addition to the planning obligation, the original outline permission (reference NP/99/0122) and reserved matters application (reference NP/99/0537) had an occupancy condition imposed as follows:

   "The occupation of the dwelling hereby permitted shall be limited to a person employed, or last employed, locally in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry or a dependant of such a person residing with him (including a widow or widower of such a person)."
10. Subsequently on 4 April 2023 the Authority granted a section 73 application (reference NP/23/0036/S73) replacing the original agricultural occupancy condition with the suggested rural enterprise dwelling condition set out in TAN 6. The policy justification for this is to ensure that the dwelling is kept available to meet the housing needs of rural workers and local people in need of affordable housing.
11. The first planning obligation, in essence, repeated the occupancy restriction already secured by the original condition, now superseded with the new condition, albeit with

additional reference to the occupier being employed or last employed at the 'Property' rather than in agriculture locally as stated in the condition. The second obligation seeks to further restrict the ownership of the dwelling in relation to land that formed part of the agricultural holding that justified the granting of the original planning permission. In considering whether these obligations meet the necessity test specified in Circular 13/97 and the CIL Regulations, it is important to consider the latest advice in national policy.

12. TAN 6 advises it should not be necessary to tie the occupation of the dwelling to workers engaged in one specific rural enterprise even though the needs of that enterprise justified the provision of the dwelling (paragraph 4.13.2 refers). This recognises that an occupancy condition will ensure that the dwelling is kept available to meet the needs of other rural enterprises in the locality if it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the open countryside, or alternatively make provision to meet local need for affordable housing.

13. I acknowledge that the TAN also states that in appropriate circumstances, authorities may use planning obligations, for example, to tie a rural enterprise dwelling to adjacent buildings or land, to prevent them being sold separately without further application to the authority. However, it does not elaborate on what the appropriate circumstances may be, but it does cross-reference to the earlier advice on the exceptional circumstances justifying second dwellings on established farms. PPW Paragraph 4.2.38 only refers to the use of a condition, rather than a planning obligation, being necessary to restrict the occupancy of the property to ensure that rural enterprise dwellings are retained for their intended purpose. Therefore, read as a whole, I do not consider the latest advice in TAN 6 and PPW justifies a planning obligation restricting occupancy and tying the land to the dwelling in the circumstances in this case. Furthermore, both obligations would unreasonably limit the occupancy of the dwellinghouse and the separate use of the land to meet the needs of other rural enterprises in the locality and inhibit the use of the dwelling to meet affordable housing need. The obligations are therefore in conflict with the advice in TAN 6.

14. I am advised that some of the land comprising part of the 'Property' is landlocked, only accessible as a result of a 'gentleman's agreement' with adjoining landowners and therefore would not be available to anyone else to buy or rent, other than neighbouring farmers. This adds to my concerns that the obligation is unreasonably restrictive and would prohibit the dwelling being available to meet the needs of other rural enterprises in the locality or to meet local affordable housing need.

15. In addition, Circular 13/97 advises that if there is a choice between imposing conditions and entering into a planning obligation, the imposition of a condition is preferable. Further, that terms of conditions imposed on a planning permission should not be re-stated in a planning obligation as such obligations entail unnecessary duplication. This advice is echoed in the more recent Circular 16/2014 on The Use of Planning Conditions for Development Management.

16. Despite Circular 13/97 being in place at the time of the original permission, the first obligation in essence re-stated the occupancy restriction controlled by condition on the planning permission. Having regard to this, and the fact that national policy clearly advocates the use of conditions rather than obligations in these circumstances, it would appear that the obligation did not satisfy the necessity test given that a planning condition secured the same end.

17. I note that the Authority have suggested it would be possible for the applicant to seek to modify the planning obligation to broaden its terms in line with the revised condition, however this has not been proposed, nor would it meet the necessity test in light of my findings above.

18. I thus find that the obligation conflicts with the tests in Circular 13/97 'Planning Obligations' and the CIL Regulations and therefore cannot serve a useful planning purpose.

Other Matters

19. The Authority considers that the legal agreement retains the ability to ensure that the occupation is complied with in perpetuity in a more secure way than a planning condition. Section 106(5) provides for restrictions imposed under a planning obligation to be enforced by injunction. I am not aware that the Authority has pursued this action to date. Whilst there are different implications for enforcement between planning conditions and planning obligations, I am not satisfied that makes the latter necessary in this case nor does it overcome my findings on the conflict with national policy. Furthermore, enforcement powers relating to breaches of conditions should reasonably be expected to be sufficient.

20. I note that a Certificate of Lawful Development (reference NP/22/0465/CLE) in respect of non-compliance with the agricultural occupancy condition of outline planning permission (Ref NP/99/122) and the reserved matters approval (Ref NP/99/537) for over a 10 year period, was issued on 6 October 2022. I am advised that this lawful breach of the occupancy condition continues and I have no evidence to dispute this. Furthermore, I am advised that the land known as the Property in the planning obligation is leased to a local farmer and has been in breach of the S106 Agreement for 16 years. Given my findings in relation to the main issue, these matters do not alter my conclusions on the useful purpose of the planning obligation. Retaining the obligations with or without modification to rectify a lack of enforcement action leading to a lawful breach of the occupancy condition would be unreasonable. Furthermore, the place to consider whether the planning condition still serves a useful planning purpose is through a section 73 application and is not a matter for this appeal.

Conclusion

21. For the reasons given above, and having regard to all other matters, I conclude that the appeal should be allowed. The planning obligation, dated 6 January 2000, made between Pembrokeshire Coast National Park Authority and Nicholas Karl Thomas and James Hugh Thomas does not serve a useful purpose and should be discharged.

22. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives.

V. Robinson

INSPECTOR