

## **APPENDIX B**

### **APPEALS SUMMARY September 2019 – March 2020**

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#### **APPEALS DISMISSED**

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##### **1. APPLICATION NO. 23/2018/1164**

**SITE ADDRESS:** Caer Mynydd Caravan Park, Saron, Denbigh

**PROPOSAL:** Retention of amenity block and change of use to agricultural building.

**BASIS OF REFUSAL:** Removal was a requirement of a previous permission, to bring about an improvement in the visual and residential amenities of the locality.

**TYPE OF APPEAL:** Written representations

##### **ISSUES OF NOTE**

The Inspector considered the main issues to be whether the retention and use of the building for agricultural purposes is justified especially given planning permission ref. 23/2016/1218, which explicitly requires removal of the building and the effect of the building on the character and appearance of the area.

##### **Inspector's conclusions:**

The Inspector concluded that the building is physically unsuitable for its proposed agricultural use; there is little evidence of any agricultural need, and there are other opportunities to meet any such need that may arise. The justification for the removal of the building as part of the wider planning permission to extend the existing Holiday Park is an important consideration. Removal of the building is justified in the interests of the character of the area.

**COSTS :** N/a

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##### **2. APPLICATION NO. 45/2019/0156**

**SITE ADDRESS:** 64 Brighton Road, Rhyl

**PROPOSAL:** Change of use and alterations to former offices to form a 61 bed, 6 ward bespoke hospital

**BASIS OF REFUSAL:** the proposal would result in the loss of office accommodation, in conflict with basic tests in Policy PSE 3 of the Denbighshire Local Development Plan, which

require assessment of available alternative sites and marketing attempts to retain the use, and the loss of the use would prejudice the ability of the area to meet a range of local employment needs.

TYPE OF APPEAL: Written representations

#### ISSUES OF NOTE

The Inspector considered the main issue was the effect of the proposal on local employment needs.

Inspector's conclusions:

The Inspector considered that the matter which needed to be addressed was whether the proposed private hospital constitutes an employment use as envisaged by the development plan. As its primary aim is to provide medical care and not generate jobs and wealth, the Inspector did not consider that the proposal fulfils the definition of economic development set out in national policy, and hence the site constitutes employment land of the type Policy PSE 3 of the Local Development Plan seeks to protect.

On the basis of the evidence presented, the Inspector was unable to reach a reasoned conclusion on whether there are any suitable alternative sites, or whether the loss of this site for employment use would be acceptable. She was also not satisfied by the evidence that the building is incapable of renovation to modern standards or that such works would be unviable.

Ultimately, in the light of the tests set out in Policy PSE 3 of the Local Development Plan, the Inspector did not consider that sufficient information has been submitted to justify the loss of the site as employment land, contrary to Policies RD 1 and PSE 3 of the Plan.

COSTS : N/a

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### **3. APPLICATION NO. 03/2018/0184**

SITE ADDRESS: Penddol Caravan Park, Llangollen

PROPOSAL: Siting of a static unit for use as manager's dwelling in connection with managing and supervision of caravan site.

BASIS OF REFUSAL: application fails to demonstrate the tests of TAN6 in relation to rural enterprise dwellings are satisfied – no functional need for an additional worker on site, no information on financial soundness of the enterprise, and no investigation of options for accommodation considered.

TYPE OF APPEAL: Hearing.

#### ISSUES OF NOTE

The Inspector considered the main issue was whether there is an essential need for a second dwelling to accommodate a full-time worker on the enterprise.

Inspector's conclusions:

The Inspector considered in relation to:

- Functional test and full time need

There is no persuasive evidence that the enterprise requires a ready presence of a worker or two workers to justify the proposed development outside normal working hours to deal with an emergency that would threaten the continued viability and

existence of the enterprise. The situations that have arisen on the site have not been so severe as to require out of hours intervention or have been shown to damage the viability of the enterprise. The caravan site operates on a seasonal basis, out of season the need does not translate to a full-time presence. In season, the present key worker works part-time elsewhere and has indicated that the enterprise cannot afford to pay an on-site manager. The functional and time tests of TAN 6 are not met.

- Financial test. No financial forecasts for the next 5 years have been provided to demonstrate that the business would be economically sustainable. The absence of full 3-year accounts, and 5-year financial forecasting together with the concerns regarding the payment of wages to the second worker leads to the conclusion that the financial test of TAN 6 is not met.
- Other dwelling test. A separate residential annex unit has been established adjoining Penddol Farm dwelling house and that has been let out to persons unconnected with the appellant's family. It appears that there is already a second dwelling on the unit and the other dwelling test has therefore not been met.

COSTS : N/a

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#### **4. APPLICATION NO. 08/2019/0161/PF**

SITE ADDRESS: Hydro Power Station, Cynwyd

PROPOSAL: Conversion of part of existing power station building to holiday accommodation unit.

BASIS OF REFUSAL: The site lies entirely within a C2 Flood Zone and the proposal for holiday accommodation introduces a highly vulnerable use which should not be permitted, in line with TAN15 and Planning Policy Wales.

TYPE OF APPEAL: Written representations.

#### **ISSUES OF NOTE**

The Inspector considered the main issue was whether the location would be appropriate having regard to flooding, with particular reference to Planning Policy Wales Edition 10 (PPW) and Technical Advice Note 15: Development and Flood Risk (TAN 15).

#### **Inspector's conclusions:**

The Inspector referred to TAN 15 which 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 considering climate change, which is expected to significantly increase the risk of flooding over time. In the case of the appeal site it is at potential risk from flooding. Figure 1 of TAN 15 says that zone C2 is used to indicate that only less vulnerable development should be considered subject to the application of the justification tests, however importantly, it states that highly vulnerable development should not be considered, in line with Welsh Government advice. When the proposed development is assessed in the context of paragraph 6.2 of TAN 15, the Inspector did not consider it necessary to examine whether or not it can be justified having regard to the criteria as set out. The tests in section 7 relating to an assessment of the flood consequences, and the relevant appendices to TAN 15 are also not applicable to

highly vulnerable development in zone C2. He therefore concluded the proposal is therefore contrary to advice given in TAN 15 and does not represent sustainable development as espoused by PPW. As such, the proposed development is contrary to the principles of national planning policy.

COSTS : N/a

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## **5. REFERENCE NO. ENF/2019/00010**

SITE ADDRESS: Land South east of Bro Dawel, Saron, Denbigh

### **SUBJECT OF APPEAL:**

- i. Breach of planning control alleged in the notice is without planning permission, 'the change of use of agricultural land through its use as a caravan site for permanent residential accommodation'.
- ii. Application for planning permission for above

TYPE OF APPEAL: Written representations.

### **ISSUES OF NOTE**

The Inspector considered the main issue was whether the proposed development is justified in its rural location bearing in mind planning policies/advice which seek to strictly control development in the countryside, with particular reference to Planning Policy Wales (PPW) and advice as contained within TAN 6.

Inspector's conclusions:

The Inspector considered in relation to:

#### **- Functional test**

It was accepted that having someone permanently resident on the site to deal with the day to day running of activities associated with any business or activity may be desirable, however it has not been shown that it is essential for the proper functioning of any enterprise on the site. On this basis there is no justification for the caravan allied to the activities on the site, and therefore, the functional test as set out in TAN 6 is not met.

#### **- Full time worker test**

The Inspector agreed with the Council's assessment that the full-time worker test has not been met owing to the small amount of livestock kept on the site, even allowing for a higher number of stock as alluded to in the PCN or the previously submitted planning application.

#### **- Financial test**

In the absence of any financial information related to the development subject to the appeal, the Inspector concluded that the financial test has not been met.

#### **- Security reasons**

The Inspector concluded no documentary evidence has been produced to substantiate the magnitude of any security problem associated with the site, and that any residential use of the existing caravan on the site in connection with any existing rural enterprise has not been justified on the basis that the accommodation is not essential for the proper functioning of the enterprise. The proposal therefore conflicts with national planning policy as detailed in PPW and guidance within TAN 6.

The Inspector dismissed the appeal, upheld the enforcement notice, and refused planning permission on the application deemed to have been made under section 177 (5) of the Act.

COSTS : N/a

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## APPEALS ALLOWED

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### 4. APPLICATION NO. 02/2018/0343

SITE ADDRESS: Coed yr Hengoed, Bontuchel, Ruthin

PROPOSAL: Application for Certificate of lawfulness of proposed use of land for stationing of a caravan for use ancillary to agriculture and forestry.

BASIS OF REFUSAL: Proposed use is not permitted by the restrictions placed on the land by condition 4 of planning permission 14/2017/0487. Condition reads:  
*There shall be no external storage of tools, goods, crates, lorry backs, storage containers, or waste or any items relating to the use of the site within the application site boundary and land included within the blue line (including incidental uses), at any time.*

TYPE OF APPEAL: Hearing

#### ISSUES OF NOTE

The Inspector considered the main issue centred on the meaning of the word 'storage' in condition 4.

#### Inspector's conclusions:

The Inspector determined that the condition does not prohibit the stationing of a caravan for its intended purpose. He agreed that a caravan would fall within the description of 'other items' as drafted in the condition.

In respect of the word 'storage', the Inspector stated: 'The ordinary meaning of 'storage' according to the Concise Oxford English Dictionary includes 'the action of storing', and to 'store' includes to 'keep or accumulate for future use'. I consider that the use of the word 'storage' effectively limits the scope of the condition to prevent the placing of the items on the land in circumstances where they are held but are not actively used. The Council opined that this interpretation of the scope of the condition is more limited in its extent than that which was intended by it when drafting the condition; it had intended that the condition should prevent items being kept on the land. However, when asked by me, it accepted that there is a difference between 'storage' and 'stationing'. It is clearly the case that the interpretation of the condition must be made on its wording, not on the basis of what the author may have intended.'

As the applicant did not intend to store a caravan on the land, but to station one so it can be used for a purpose ancillary to the agricultural and forestry use of the land, the proposal is outside the scope of the condition's restriction, would not constitute a material change in the use of the land, and would therefore be a lawful use.

COSTS : Claimed and awarded against the Council.

The Inspector noted the appellant had highlighted the significance of the word 'storage' in the condition in advance of the hearing, and considered the Council had acted unreasonably in refusing the application, and thereafter maintaining its position, on the basis of a purported conflict with a planning condition when he considered on the plain reading of that condition its restrictions do not apply to the proposed use. It was concluded the Council had failed to substantiate its reason for refusing the application and that its actions were unreasonable and had caused the applicant to incur the unnecessary expense of pursuing the appeal.

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