

Penderfyniad ar yr apêl

Ymchwiliad agorwyd ar 24/01/07
Ymweliad â safle a wnaed ar 28/02/07

Appeal Decision

Inquiry opened on 24/01/07
Site visit made on 28/02/07

gan/by G P Thomas BA(Hons) DMS MRTPI

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date 12/03/07

Appeal Ref: APP/N6845/A/06/1199641

Site address: Arqiva transmitting station, The Ridgeway, Penally, Tenby, Pembrokeshire SA70 7NT.

The National Assembly has 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 failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Arqiva against Pembrokeshire County Council.
- The application Ref 05/1254/PA, is dated 21 December 2005.
- The development proposed is telecommunications & broadcasting.

Summary of Decision: The appeal is allowed, and planning permission is granted subject to the conditions set out in the Formal Decision below.

Preliminary Matters

1. The inquiry sat on 24 & 25 January and 28 February 2007. On January 23 I inspected the appeal site and its environs unaccompanied. I carried out an accompanied visit on the afternoon of 28 February. In addition to visiting the appeal site itself, I viewed the site from The Wheelabout and its garden and from the vicinity of Highlights. I also viewed alternative locations that had been referred to during the inquiry at Palmerslake Farm, Narberth Road Service Reservoir, Cornish Down, Slippery Back and Gumfreston Farm. I also viewed the appeal site from New Hedges, the vicinity of Bryn Hir Reservoir and Gumfreston Ridge. The visibility on both these days was good and the existing mast at the appeal site and the other nearby masts along Strawberry Lane could be seen from a distance.
2. The proposal seeks planning permission for the installation of a 17m high steel monopole to replace an existing 16m high wooden pole; the transfer of the existing pole mounted equipment onto the new pole; installation of 2No. 4stack dipole antennas at 16.5m on the new pole, to a maximum height of 19.1m; provision of 2 small radio equipment cabinets at the base of the new pole and; ancillary cabling and other associated works, including the removal of the existing pole from site upon commissioning of the new. I shall amend the description of the proposed development to reflect the nature of the proposal.
3. All the equipment would be sited within the existing fenced compound. Three alternative pole designs were submitted to the Council as part of the planning application. It was agreed

at the inquiry that the proposed monopole mast as shown on drawing number DO.P2-24365 Revision 4 is the subject of this appeal. That was the scheme the Council was considering when the appeal was lodged and it is on the basis of that structure that I shall determine this appeal.

4. The planning application was presented to Pembrokeshire County Council's Planning and Rights of Way Committee on 11 April 2006. The Director of Development recommended the application be approved subject to conditions. A decision was deferred so that the committee could visit the site. The visit took place in May 2006 and the application was again considered on 20 June 2006. It was deferred in order to give the applicants an opportunity to consider an alternative site on land at Crackwell Farm that had been suggested by a Councillor. The application was again deferred on 25 July 2006 to enable an application for the Crackwell Farm site to be submitted and evaluated. The appeal was made on 10 August 2006. The Planning and Rights of Way Committee resolved on the 10 October 2006 that "*If the Committee had still been in a position to determine planning application no. 05/1254/PA planning permission would have been granted.*" The Council refused the prior approval application for a 15m timber pole mast and equipment (with an overall height of 17m) at Crackwell Farm on 12 September 2006 (Ref 06/0004/PN).
5. The Council did not put forward any witnesses at the inquiry. The application was opposed by the Harriet Davis Seaside Holiday Trust for Disabled Children [the Harriet Davis Trust] who appeared as a Rule 6 party.
6. At the inquiry an application for costs was made by Arqiva against Pembrokeshire County Council and by the Harriet Davis Trust against Arqiva. Both of these applications are the subject of separate decisions.

Main Issues

7. I consider the main issues to be the effect the proposal would have on;
 - the character and appearance of the surrounding area; and,
 - the living conditions of the residents in the surrounding area and, in particular the occupiers of The Wheelabout, with regard to the perception of risk to health and public safety.

Planning Policy

8. The development plan for the area is the Joint Unitary Development Plan for Pembrokeshire. This was adopted by Pembrokeshire County Council on 13 July 2006. Policy 119 is supportive of telecommunication development that is part of a planned system of provision taking account of opportunities afforded by the shared use of existing masts, antenna or other structures at the least obtrusive or damaging technically-feasible structure and location.
9. Planning Policy Wales (March 2002) [PPW] and Technical Advice Note 19: "Telecommunications" [TAN 19] sets out the planning policies of the Welsh Assembly Government on this issue.

Reasons

Background

10. The existing 16m high wooden pole television repeater station re-broadcasts television coverage to Tenby and Penally and has been operating since 1978. It also has an RNLI antenna. The proposal forms part of a planned system to provide Terrestrial Trunk Radio [TETRA] coverage as part of the UK Emergency Services network. The network has been introduced across the country on a police force by police force basis and the minimum requirement for the Dyfed-Powys Police force is to have 'major road' coverage. Within a defined part of Tenby (Appendix 7 Mr Holt's submissions) the requirement is for 100% 'hand held' coverage. The proposal would provide the necessary TETRA coverage. The ambulance and fire service will shortly commence its roll-out onto the TETRA system.

Character and Appearance

11. The appeal site is on one of a series of parallel ridgelines which run on a broadly east west alignment. This particular ridgeline is at a height of 80 – 100m Above Ordnance Datum [AOD]. The appeal site is some 87m AOD and is adjacent to an unclassified public highway, The Ridgeway. The site is some 2.7km to the south west of Tenby.
12. The proposed replacement mast would be some 50m away from The Wheelabout, a holiday home for disabled children and their families operated by the Harriet Davis Trust. In addition to the 16m wooden pole at the appeal site, three steel monopole telecommunication masts have been erected in more recent times along Strawberry Lane. Some 80m to the east of The Wheelabout is a 13.5m mast with 2m high antenna operated by Orange (overall height 15.5m); 35m to the east of which is a 13m T-Mobile mast with 2m high antenna (overall height 15m); and, 60m to the east of that a 15m mast with 2.5m antenna operated by Vodaphone (overall height 17.5m).
13. These form a cluster of masts in an area of attractive countryside on the fringe of the Pembrokeshire Coast National Park. The upper parts of these masts are visible on the skyline from a wide area, including parts of Tenby.
14. Paragraph 12.13.2 of PPW indicates that the Assembly Government attaches considerable importance to keeping the number of masts, and the sites for such installations, to the minimum consistent with the efficient operation of the telecommunication network. The sharing of masts and sites is strongly encouraged where that represents the optimum environmental solution in a particular case.
15. A replacement mast is required since the structural integrity of the existing wooden pole is not able to support the existing antenna arrays and the proposed equipment. Furthermore, the additional 1m in height of the pole is needed to ensure that the proposed antennas are at the optimum height to fulfil the coverage objectives.
16. I have been referred to an earlier appeal decision relating to an additional mast with an overall height of 15m in close proximity to the existing masts at Strawberry Lane, in May 2004. In dismissing the appeal the Inspector concluded that the proposal would detract significantly from the character and appearance of the locality (Ref APP/N6845/A/04/1138402). However, the proposal that is before me is for a replacement, rather than an additional, mast in a different location to the proposal that was before that Inspector. I consider these factors to be material differences between the two proposals.
17. The two existing 3m high equipment cabins at the appeal site are largely screened from the public highway by an earth bank topped with a mature hedgerow. These cabinets and the hedgerow would screen the two additional equipment cabinets from public view. I do not

consider these ground based items of equipment would be visually harmful to the surrounding rural landscape.

18. The steel monopole would be a marginally more bulky structure than the existing wooden pole and would be visually intrusive in the landscape. The Pembrokeshire Coast National Park Authority did not object to the proposed steel monopole mast on landscape grounds on the basis that the replacement mast would be only 1m higher than the existing mast. I do not consider increasing the height of the mast by 1m and the addition of the two slim dipole antenna would result in a significantly taller structure.
19. The report by the Director of Development to the Planning and Rights of Way Committee on the planning application considered that the overall increased visual impact of the replacement mast would be limited. I agree with these views and I do not consider the replacement mast would amount to a significantly more substantial structure and would not have a significantly greater impact on the landscape than the present arrangement at the appeal site.
20. Whilst the upper parts of the replacement mast and the two dipole antenna would be visible above the existing hedgerows, I consider the alignment of the dipole antenna would minimise the visual impact when viewed from The Wheelabout. I saw during my visit that the existing mast is visible from the indoor swimming pool at The Wheelabout and from the garden area at the western end of the property. I note the number of objections that have been made by people who have stayed at The Wheelabout. Many of these objections are to an additional mast rather than a replacement mast. I do not consider that the proposed replacement mast would be such a visually dominant structure that it would have a detrimental visual impact on the enjoyment of the users of the swimming pool or garden area.
21. The upper part of the proposed mast would be visible from a first floor balcony on the southern side of the property that is accessed from the lounge and from a first floor bedroom window. However, the view of the proposed mast would be at an oblique angle and would not intrude into the main vista from the balcony or the bedroom window. I do not consider the proposal would have a detrimental impact on the outlook from The Wheelabout.
22. The visual impact of the proposed mast would reduce significantly when viewed from further along Strawberry Lane in the vicinity of Highlights.

Alternative Sites

23. The need for the level of coverage that would be provided and the methodology used to predict the coverage was questioned at the inquiry. The police force's operational needs are clearly stated and I do not question that requirement. I have no reason to question the methodology used in producing the coverage details that have been provided.
24. In addition to the appeal site, the appellants presented details of 32 alternative locations in the Tenby area to the inquiry. Whilst this is a larger number compared to those that were identified to the Council when the planning application was submitted, I do not consider this undermines either the planning application or the subsequent appeal.
25. It is not necessary for me to examine all these alternative sites in detail since many have been discounted for technical reasons. However, it was argued at the inquiry by those opposed to the appeal proposal that Cornish Down (Site 25 in Mr Waterson's submissions) and the Narberth Road Service Reservoir (Site 28), being well away from The Wheelabout, were

preferable locations. Mr Holt's evidence indicated that a 30m mast would be required at Cornish Down and a 45m high mast at Narberth Road to provide the necessary level of coverage. Although the need for such tall masts was challenged at the inquiry I am satisfied that masts of this height would be necessary to provide the required levels of coverage. I also accept Mr Hilder's evidence that masts of this height would have substantial landscape and visual impact.

26. A further possible site on land at Palmerslake Farm further west along The Ridgeway was also identified. I accept Mr Holt's evidence that this location would be too far away and would not provide the required coverage.
27. For the above reasons I conclude on this issue that the proposal would not have an unacceptable impact on the character and appearance of the surrounding area. Furthermore, I conclude that the proposal is part of a planned system of provision; makes a shared use of a transmitting site; and, is the least obtrusive location that can be secured. It would be in accordance with development plan Policy 119 and national policy and guidance.

Health and Public Safety

28. The Independent Expert Group on Mobile Phones considered concerns about the health effects from the use of mobile phones, base stations and transmitters. The report, known as the 'Stewart Report' was published in 2000 and states "*We conclude therefore that it is not possible at present to say that exposure to radio frequency RF radiation, even at levels below national guidelines, is totally without potential adverse health effects, and that the gaps in knowledge are sufficient to justify a precautionary approach.*" It went on to say "*the balance of evidence indicates that there is no general risk to the health of people living near to base stations on the basis that exposures are expected to be small fractions of guidelines. However, there can be indirect adverse effects on their well-being in some cases.*" We recommend that, as a precautionary approach, the ICNIRP¹ guidelines for public exposure be adopted for use in the UK rather than the NRPB² guidelines."
29. An Advisory Group on Non-ionising Radiation [AGNIR] issued a report in 2001 entitled "*Possible Health Effects from Terrestrial Trunked Radio (TETRA)*" commonly known as the 'Doll' report. The report notes that the signals from base stations are continuous, not pulsed. The report concludes "*Although areas of uncertainty remain about the biological effects of low level radio frequency radiation in general, including modulated signals, current evidence suggests that it is unlikely that the special features of the signals from TETRA mobile terminals and repeaters pose a hazard to health.*" Whilst this recommendation relates to mobile terminals and repeaters rather than base stations the report does not indicate concerns regarding emissions from the base stations.
30. In 2003 AGNIR published "*Health Effects from Radiofrequency Electromagnetic Fields*" - the 'Swerdlow' report. The conclusion to the report indicates that it does not specifically consider TETRA signals but states "*no information has been identified that alters the conclusion about these signals in the 2001 report.*" It is worth noting however, that in the

¹ International Commission on Non-Ionizing Radiation Protection.

² The National Radiological Protection Board. (Now the Radiation Protection Division of the Health Protection Agency).

overall summary and conclusion it states *"Exposure levels from living near to mobile phone base station are extremely low, and the overall evidence indicates that they are unlikely to pose a risk to health."*

31. A further report *"Mobile Phones and Health 2004"* was issued by the NRPB in 2004 ('Stewart 2'). Paragraph 91 states *".. Ofcom has made some measurements of TETRA base stations and these have shown that exposures are small fractions of guidelines. Consequently, there is no reason for the signals from TETRA base stations to be treated differently to signals from GSM³ base stations in relation to their potential for biological effects."* The report states *"The Board believes that the main conclusions reached in the Stewart Report in 2000 still apply today and that a precautionary approach to the use of mobile phone technologies should continue to be adopted."*
32. The Assembly Government's view is that, if a development meets the ICNIRP guidelines on the limitation of exposure of the general public to electromagnetic fields, it should not be necessary for a local planning authority in processing a planning application to consider further the health aspects and concerns about them.
33. The ICNIRP Compliance Notice for the proposal indicates that the maximum signal strength would reach the ground approximately 25m away from the mast with a predicted level less than 0.16% of the public exposure guideline. Independent consultants commissioned by Pembrokeshire County Council (ELMAC) confirm that the signal strength would be well within the ICNIRP guidelines. The report indicates that the discrepancy between their figures and those given in the Compliance Notice *"is almost certainly because the two calculations have used different antenna patterns."*
34. Mr Holt's evidence indicates that The Wheelabout is to the side of the intended direction of transmission from the proposed mast and bearing in mind the separation distance, the field strength of the signal would be less than 0.04% of the public exposure guidelines. The antennas on the existing mast produce an exposure level of 7.1% of the ICNIRP exposure guidelines. The combined public exposure resulting from the proposal would be clearly well within the ICNIRP guidelines.
35. PPW indicates that health considerations can be material considerations in determining planning applications as, in principle, can public concerns with in relation to such effects. It is for the decision-maker to determine what weight to attach to such considerations in any particular case. There is clear concern about the effect exposure to the emissions from the TETRA equipment could have on the area and the users of The Wheelabout in particular. The concerns relate to the direct effect of the emissions and to the indirect effect resulting from the perception of health risks. I accept that these fears are relevant to my decision.
36. The submissions made by the Harriet Davis Trust included a number of articles opposing TETRA technology. I found many of these articles to be far from impartial and relying on uncorroborated assertions. I also found this to be the case with the large number of press cuttings that were submitted. I have carefully considered these submissions having regard to the findings of those national and international bodies which can draw on a broad range of relevant expertise. In my judgement none of this material undermines the independent studies and publications that have advised the UK and Welsh Assembly Governments on

³ Global System for Mobile Communications.

these matters. Furthermore, there is no evidence to indicate that these various papers and articles are considered by the research community to contain significant new information that requires further study. In many cases, including a newspaper article in The Times dated 20 January 2007, the matters relate to the concerns relating to the use of handsets rather than base stations.

The Wheelabout

37. The Wheelabout is one of three properties in the Tenby area run by the Harriet Davis Trust to provide holiday breaks for disabled children and their families. In a letter dated 22 January 2007 the editor of 'Holidays in Britain and Ireland: a Guide for Disabled People' states "*I have been very pleased to have been able to include information on the Harriet Davis Trust houses as I do not know of any other properties that have been specifically designed to provide holidays for families with severely disabled children.*" The author states that other accommodation and activity and holiday centres for disabled young people "*do not provide the specific design features, fittings and support services available at The Wheelabout and the 2 other Harriet Davis Trust properties.*"
38. The Wheelabout was purpose designed and built and includes a wide range of specialist facilities and equipment to cater for profoundly disabled children. I accept that the level of specialist provision is far in excess of that which would usually be found in holiday accommodation and in some cases may well represent one of the few opportunities for a family with a profoundly disabled child to holiday together. It is usually booked in excess of 40 weeks each year.
39. Many of these objections made by people who have stayed at The Wheelabout express concern about the effects such masts may have on the health of disabled children and to sufferers of epileptic seizures. Mr Menzies gave evidence at the inquiry regarding his family's experience of using The Wheelabout. As a serving police officer he has experience and knowledge of the TETRA system. He stated that, in view of the serious brain condition of the three children he is not convinced that they would not be adversely affected by being in proximity to such transmitters. He also expressed concerns about the effects the three mobile masts to the east of The Wheelabout might have and indicated that he would be unlikely to stay at The Wheelabout again.
40. Mrs Gunnell indicated that the family had come on family holidays to Tenby for a number years with her son Ben, a profoundly disabled young man. The Wheelabout gave Ben an opportunity to have a 'proper' holiday. She was concerned of the effects that the TETRA system could have on persons suffering from epilepsy. She indicated that the family might have to consider cancelling further holidays at The Wheelabout. It was also indicated that the Melhuish family would not take the risk of the unknown and would not stay at The Wheelabout. Mr Pitson indicated that The Wheelabout had enabled their disabled daughter and 4 other children to have a family holiday together for the last 2 years. He expressed concern about the possible health effects associated with the TETRA system and indicated that he would have to consider whether to bring his family on holiday to The Wheelabout in future.
41. I appreciate that parents of severely or profoundly disabled children may well be more sensitive to situations that may impact on the well-being of their children and, whilst I sympathise with the situation facing these families with regard to their continued use of The Wheelabout no objective evidence was produced to substantiate their fears. Whilst some

families may decide not to use The Wheelabout others may take up those vacancies. I note that the three mobile masts to the east of the property (one of which is within the grounds of The Wheelabout) do not appear to have had an adverse effect on the high occupancy levels that have been achieved to date.

42. The County Council was advised that the proposal would not cause interference to medical devices or specialist equipment which may be used at The Wheelabout. Bearing in mind that the emissions would be well within the guidelines the Welsh Assembly Government accepts meets the requirements of health and safety of school children and other vulnerable groups and the lack of objective evidence to support the fears that have been expressed, I do not consider the perception of risk to health and public safety are sufficient to justify refusing planning permission.
43. I have carefully considered the submissions made by Mr Charles with regard to the Children Act 1989 and the Disability Discrimination Act 2005. The planning function is carried out in the public interest and in assessing this proposal and the relevant factors I have regard to all groups within the population.
44. For the above reasons I conclude that none of the above considerations amount to exceptional circumstances which justify a departure from local and national policy. I further conclude that the proposal would not harm the living conditions of residents in the area, and the occupiers of The Wheelabout in particular and would not be contrary to local and national policy.

Other Matters

45. I do not attach significant weight to the police force's decision not to provide a supporting letter with regard to the appeal proposal. It is a matter for the police force to determine the extent of its involvement in any particular TETRA proposal that is put forward to meet its operational requirements. I do not consider the decision not to support the proposal should be interpreted that the police force is opposed to it. As Mr Charles states it indicates a neutral stance.
46. Copies of e-mails have been submitted which appear to indicate that Superintendent Gary Evans, the Dyfed-Powys Police lead officer on Airwave, would possibly be willing to consider a compromise on the TETRA coverage that would be available in the Tenby area. This is also referred to in the letter dated 27 February 2007 from Nick Ainger MP and Christine Gwyther AM that was tabled at the inquiry. It is a matter for the equipment provider to satisfy the contractual requirements that have been agreed with the Dyfed-Powys Police Authority. Superintendent Evans was not present at the inquiry and I note that these comments that have been attributed to him are at variance with his letter dated 12 October 2005 from Dyfed-Powys Police to Pembrokeshire County Council indicating the need for the required infrastructure. The letter states that if Airwave was unable to provide coverage for the residents and visitors to Tenby then the Chief Constable would have to review how policing services were to be delivered in the future. There is nothing before me to indicate that the Chief Constable does not require the coverage that this proposal would provide.
47. The decision to use the TETRA system, as opposed to TETRAPOL, was made at national level. It is not appropriate for me to examine the merits of this alternative system as part of this inquiry.

48. The Harriet Davis Trust argued that the proposal could jeopardise the viability of The Wheelabout and have an adverse impact on the value of the property. It is not for the planning system to protect the financial interests of one party against another and I make no comment on the property valuations that have been submitted.
49. Representations were made on behalf of the Trustees of the Robert Lock Trust, the freehold owners of the appeal site, asserting that the lease did not allow the proposed mast sharing. This was challenged by the appellants who tabled legal advice they had obtained from a specialist Landlord and Tenant Counsel. This is not a matter that is within the remit of this inquiry. I am satisfied that the appellants made the appropriate notifications when the planning application was submitted and I make no further comment on this matter.

Conditions

50. I have considered the planning conditions that have been suggested by the Council. Since the planning permission requires the development to be carried out in accordance with the relevant application drawings I do not consider that a condition to this effect is necessary. I agree that a condition safeguarding the existing hedgerow is necessary in order to safeguard the appearance of the surrounding area. Whilst I accept there is provision within the operator's licence relating to the removal of redundant equipment I consider it would be reasonable to impose a condition to this effect to enable the local planning authority to enforce such measures within a reasonable time-frame. I shall amend the wording of the suggested conditions for reasons of clarity and precision.

Conclusions

51. For the reasons given above and having regard to all other matters raised, including the petitions of objection, all the submissions that were made to the County Council and the numerous Appeal Decisions and Court Judgements that I have been referred to, I conclude that the appeal should be allowed.

Formal Decision

52. I allow the appeal, and grant planning permission for the installation of a 17m high steel monopole to replace the existing 16m high wooden pole, the transfer of the existing equipment onto the new pole, the installation of 2No. 4stack dipole antenna to a maximum height of 19.1m, 2 new radio equipment cabinets together with ancillary cabling and other associated works at the Arqiva transmitting station, The Ridgeway, Penally, Tenby, Pembrokeshire SA70 7NT in accordance with the terms of the application, Ref 05/1254/PA, dated 21 December 2005, and the plans submitted with it (including Drawing No DO.P2-24365 revision 4), subject to the following conditions:
- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
 - 2) The existing mast and any associated redundant equipment and structures shall be removed from the site within 3 months of the new installation becoming operational.
 - 3) The equipment hereby approved, together with the equipment cabinets already on the site, shall be removed from the site and the site restored to its condition before any development took place within three months of it no longer being required for telecommunications purposes.

- 4) The existing hedge fronting onto The Ridgeway shall be retained and shall not be reduced below its present height.
- 5) The development hereby approved shall not commence until details of the specification and position of protective fencing for the existing hedges along the boundary of the site during the construction of the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Gwynedd P Thomas

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Miss Tina Douglas

Of Counsel: Instructed by D Lawrence, Head of
Development Control, Pembrokeshire County
Council.

FOR THE APPELLANT:

Mr Trevor Blaney MSc LAMRTPI

Partner: Lawrence Graham LLP, Solicitors.

He called

R G Holt BEng(Hons) NDEE, TileHouse Solutions Limited.
MIEE

B Hilder DipLA, MLI Enplan; Planning Landscape & Environmental
Consultants.

I Waterson BA(Hons) DMS AAP Consulting Ltd.
MRTPI

FOR THE RULE 6 PARTY:

S M Charles LLB Hons

Sinclairs Solicitors.

He called

Mr J Davis Harriet Davis Trust.

Mrs Kit Davis Harriet Davis Trust.

Mr T J Menzies Newton on Trent, Lincoln.

INTERESTED PERSONS:

Mrs Gunnell Objector: 5 Wilton Avenue, Kidderminster,
Worcestershire DY11 5PR.

Mr Pitson Objector: 11 Ffordd Alltwen, Gowerton, Swansea SA4
3HG.

Mr Melhuish Objector: 16 Park Lane, Trecynon, Aberdare CF44 8HN.

Mrs Dassen Objector: Flemish Heights, Penally, Pembrokeshire
SA70 7PZ.

Mr G Birt

Objector: Charles Birt & Co, Lock House, St Julian
Street, Tenby SA70 7AS.

DOCUMENTS

- 1 Letters of notification of the inquiry and list of persons notified.
- 2 Statement of Common Ground submitted by Mr Blaney at the inquiry.
- 3 Supplemental bundle submitted by Mr Charles at the opening of the inquiry.
- 4 Miss Douglas' Opening Statement.
- 5 Letter from Airwave O2 Limited dated 27 February 2007 submitted at the inquiry by Mr Blaney on 28 February 2007.
- 6 Letter dated 26 February 2007 submitted by Mr Charles at the inquiry on 28 February 2007.
- 7 Extract of prior approval application August 2006 submitted by Mr Blaney at the inquiry on 28 February 2007.
- 8 Letter from Nick Ainger MP and Christine Gwyther AM submitted at the inquiry on 28 February 2007.
- 9 Bundle of correspondence relating to valuation of The Wheelhouse submitted by Mr Blaney at the inquiry.
- 10 Letter from Airwave Regional Account Director dated 23 January 2007 submitted by Mr Blaney at the inquiry.
- 11 Submission made by Mr Giles Birt to the inquiry.
- 12 Letter from MLM Solicitors on behalf of the Robert Lock Trust dated 25 January 2007 submitted at the inquiry.
- 13 Bundle of submissions made by the appellant relating to the Lease submitted at the inquiry by Mr Blaney
- 14 Bundle of submissions by Mr Goodwin.
- 15 Letter from J C Robinson submitted at the inquiry
- 16 Radio Coverage Plots Cornish Down submitted by Mr Holt at the inquiry.
- 17 Radio Coverage Plots Palmerslake Farm submitted by Mr Holt at the inquiry.
- 18 Radio Coverage Plots Narberth Road (detailing inadequate coverage) submitted by Mr Holt at the inquiry.
- 19 Submissions tabled by Mrs Dassen on the 28 February 2007.
- 20 Closing submissions - Miss Douglas.

21 Closing submissions - Mr Charles.

22 Closing submissions - Mr Blaney.

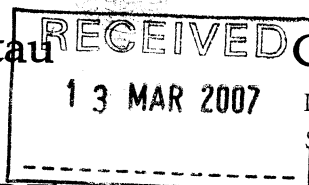
PLANS

A1 – A3 The Application Plans.

B1 – B3 Alternative mast structures.

Penderfyniad ar gostau

Ymchwiliad agorwyd ar 24/01/07
Ymweliad â safle a wnaed ar 28/02/07



Costs Decision

Inquiry opened on 24/01/07
Site visit made on 28/02/07

gan/by G P Thomas BA(Hons) DMS MRTPI

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date 12/03/07

Costs application in relation to Appeal Ref: APP/N6845/A/06/1199641

Site address: Arqiva transmitting station, The Ridgeway, Penally, Tenby, Pembrokeshire SA70 7NT.

The National Assembly has transferred the authority to decide this costs application to me as the appointed Inspector.

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Arqiva for a full award of costs against Pembrokeshire County Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the installation of a 17m high steel monopole to replace the existing 16m high wooden pole, the transfer of the existing equipment onto the new pole, the installation of 2No. 4 stack dipole antenna to a maximum height of 19.1m, 2 new radio equipment cabinets together with ancillary cabling and other associated works.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Arqiva

1. The application for a full award of costs is made having regard to paragraphs 7 - 11 of Annex 3 to Welsh Office Circular 23/93.
2. A planning authority should produce evidence in an appeal against non-determination or deemed planning refusal. No evidence has been produced by the Council to support that deemed planning refusal. It has been necessary for the appellant to pursue this matter to an inquiry in order to achieve a decision on this planning application. This has incurred unnecessary costs.
3. A planning application for this development was submitted in June 2005. The Council had deferred making a decision on that planning application since it was awaiting the Uzmaeston Road appeal decision. The Council failed to determine the June application and an appeal against the failure to determine the application was made in November 2005. That appeal was subsequently withdrawn.
4. The planning application that is the subject of this appeal, was presented to the Planning and Rights of Way Committee with a favourable officer recommendation in April, June and July 2006. However, the officer advice was rejected on each occasion. In July 2006 the Council invited an application for an alternative site. However, that application was refused by the

Council. The application that is the subject of this appeal was still current and an appeal against the failure of the Council to determine the application was made on 10 August 2006.

5. The Planning and Rights of Way Committee again considered the matter in October 2006. The officer report recommended: i) That if they had still been in a position to determine application 05/1254/PA they would have resolved to grant planning permission. ii) Any new application for the same development be determined in accordance with that resolution under powers delegated to the Director of Development. The Committee was advised by the Director of Development that recommendation ii) was withdrawn. The Committee accepted the officer recommendation. The minutes also indicate that the Director of Development undertook to submit representations to the Welsh Assembly Government and Welsh Local Government Association that planning applications for telecommunication installations (and refinery installation) should be determined by the Welsh Assembly and not the Local Authority.
6. In that context Arqiva had no confidence that planning permission would be granted had a planning application been submitted.
7. In September 2006 the Council indicated that it would argue at this inquiry that an exceptional precautionary approach should be adopted in relation to the possible direct or indirect adverse impact of emissions on the users of the nearby Harriet Davis Trust Home. It also indicated that it would be argued that the potential loss of the facility would be regrettable. Following a stream of letters the Council did not withdraw these elements from its case until a letter dated 13 December 2006. This was too late to pursue a fresh planning application. The bulk of the inquiry was taken up with those matters.
8. The Council indicated that the Statement of Common Ground would be its Statement of Case. It stated that the Lpa and the Appellant may differ on the issues of the perceived risk to health from the operation of the proposed installation on the impact it may have on the amenity of the users of The Wheelabout and continued operation of the Harriet Davis Trust.
9. This matter was not resolved before the inquiry opened and amounts to unreasonable behaviour by the planning authority.

The Response by Pembrokeshire County Council

10. The Council resists the application for costs. Parties are not normally expected to meet their own costs and costs are only awarded when unreasonable behaviour is held to have occurred. Awards do not follow the event.
11. The Council's conduct in deferring the determination of the planning application and its conduct at the inquiry has not been unreasonable. Even if it was, the appellant has not shown that wasted or unnecessary costs have been incurred. Paragraph 26 of Annex 3 indicates that if a local planning authority fail to determine an application within the statutory period, or any extended period to which the applicant agrees the applicant may appeal the Lpa will be expected to show that they had adequate and specific reasons for not reaching a decision within the specific time limits.
12. The application could not have been determined before 28 February 2006 due to inadequate plans. The Council's decisions to defer determining the planning application were not unreasonable. Independent advice was required and obtained on conflicting technical issues. Not to do so would have been a dereliction of the local planning authority's duty. The importance of the Harriet Davis Trust Home and the sensitivities of those staying there required the most careful scrutiny. It was reasonable for the Council to defer the planning application whilst it considered the application at the alternative site. Until all these matters had been clarified the local planning

authority was not in a position to ascertain whether the application was compliant with the development plan or what weight to give to the feared impacts on the Harriet Davis Trust.

13. Within 8 weeks of the appeal being lodged the Council indicated that it would have approved the planning application. Had the appellant submitted a planning application the inquiry would have been avoided.
14. It was not unreasonable for the Council to submit its Rule 6 statement. Whilst it did not reflect the Council's final position it may have been unreasonable but it is recognised that such behaviour may be excusable. There were only 18 days between the Rule 6 submission and the Council's position being made clear at Committee. There was even less time between the Harriet Davis Trust obtaining Rule 6 status and Council's change of stance. The appellant precipitous appeal had placed itself in a position where it was going to have to answer the issues raised by those third parties. The appellant's costs flow from the decision to appeal rather than from the behaviour of the Council.
15. Had the appellant submitted a fresh planning application after the Council's decision on 10 October 2006 that planning permission would have been granted before the inquiry commenced and the bulk of the expense could have been avoided. If costs are awarded they should not reflect any sum incurred after 11 October 2006.
16. The prolonged and unnecessary correspondence after 12 December 2006 was an endeavour to substantiate and inflate a claim for costs. The Appellant has been aware of the Council's position since 10 October 2006 and this was made completely clear in the Council's letter of 6 December 2006.
17. Such evidence that the appellant has had to prepare for this appeal flows from the need to deal with the Rule 6 parties case and not the Council. That could have been avoided had a fresh planning application been submitted.
18. The Council accepts that between the date the appeal was submitted and 10 October, when the Committee made its position clear, the appellant would have been expecting to have to address in evidence the local planning authority's expressed concerns regarding the impact on the Harriet Davis Trust Home. However, this evidence would have to be produced once the Harriet Davis Trust was granted Rule 6 status on 2 October 2006. The Council argues that the sole period during which the appellant can have occasioned wasted costs by the local planning authority is between the 29 September 2006 and 2 October 2006.
19. Having regard to paragraph 12 of Annex 2 there is no evidence that the Council failed to consider the application properly. The committee took into account only those matters which were material to the application and it was for them as decision makers to determine the weight of those considerations. The evidence that the alternative site further away from The Wheelabout was not suitable only came to light a month after the appeal was made. Had the appellant submitted a planning application for the alternative more distant technically feasible site earlier that proposal would have been considered and refused well within the time to permit the Council to determine and approve this application in the light of that refusal as they have indicated they would have done.
20. Paragraph 15 of Annex 2 indicates that the local planning authority can minimise an award of costs against them if they confirm to the appellant that, on re-examining the case, that any of their reasons for refusal cannot be supported. The appellants were informed of this immediately after the 10 October Committee meeting and was repeated to them again and again.

21. No part of the costs expended by the appellant in dealing with matters not attributable to the impact on the Harriet Davis Trust, as set out in their statement of case, can be attributed to the Council.
22. The Council has not behaved unreasonably in failing to determine the application within the statutory time; it has not behaved unreasonably in the course of the appeal; it accepts that the reasons set out in the Rule 6 have not been supported by evidence but contends that the appellant was aware in short order that would be the case. If that is determined to amount to unreasonable behaviour it can only have occasioned wasted expense associated with the period between the Rule 6 submission and the approval of the Harriet Davis Trust as a Rule 6 party or the very least the Committee decision on 10 October 2006. If any costs are attributable to that short period they can only relate to those issues relating to the matters arising in paragraphs 2 & 3 of the Council's Statement of Case.

Conclusions

23. I have considered this application for costs in the light of Welsh Office 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.
24. This is one of many planning applications relating to the TETRA system that has been submitted to Pembrokeshire County Council. A previous planning application for the same development at this site had been submitted in June 2005 (Ref 05/0364/PA). Whilst that application is not before me I consider this background is material to the manner in which the Council has considered the proposal that is the subject of this appeal.
25. In the Grounds of Appeal to the previous application the appellant acknowledged that the proposal was within a sensitive and prominent area and would raise concerns within the community. It was acknowledged that the application was receiving full and dutiful consideration. The officer had advised that the application would be recommended for conditional approval but the Committee would not be willing to consider the application until the outcome of an appeal decision by the same operator for a TETRA mast proposal at Uzmaston Road in Haverfordwest was known. The applicant was unwilling to hold the application in abeyance until that time and an appeal due to the failure of the Council to determine the application was made in November 2005. The appeal was later withdrawn. The Uzmaston Road decision was issued on 24 January 2006.
26. The planning application that is before me was submitted on 21 December 2005 and was first reported to the committee on 11 April 2006. The report by the Director of Development referred to the Uzmaston Road inquiry and the Inspector's findings with regard to the health issues. The report acknowledged that the perception of risk from the residents of The Wheelabout would be significant but concluded that in the absence of clear scientific evidence to back up such perceptions the extent of the loss of amenity must be limited. The report recommended that conditional planning permission should be granted.
27. The members deferred making a decision to enable the site inspection. The application was clearly a contentious matter and I can well understand the committee's decision to carry out a site inspection before it made a determination.
28. The officer report to the committee on 20 June 2006 indicated that an independent expert had reviewed the Declaration of Conformity and confirmed that the public exposure limits would be below the ICNIRP levels. The report also indicated that it was not considered there was any evidence to suggest that the proposal would cause interference to medical devices or specialist

equipment at The Wheelabout. The report again recommended that conditional planning permission should be granted. It seems to me that the committee was furnished with all the information it required to make its decision on the proposal on the merits of the proposal.

29. The Council had received a large number of objections to the proposal and planning authorities are expected to consider the views of local residents when determining a planning application. Nevertheless, that opposition should be founded on valid planning reasons which are supported by substantial evidence. While a planning authority will need to consider the substance of any local opposition to a proposal, its duty is to decide a case on its planning merits.
30. A planning authority is not bound to adopt the professional or technical advice given by its own officers, or received from statutory bodies or consultees. However, it will be expected to show it had reasonable planning grounds for taking a decision contrary to such advice. As I have indicated above the committee was well acquainted with applications for TETRA installations and was furnished with the necessary information to enable it to determine the planning application. I do not consider the local planning authority had specific and adequate reasons for failing to make a decision on the planning application in June 2006.
31. Whilst I accept the authority's wish to consider alternative locations the Council would have been aware of the interest in providing TETRA coverage from the appeal site from the first planning application in June 2005. The possibility of an alternative site was raised by the Council after the planning application had been with the authority for some 6 months.
32. In the supplementary report to the committee on the 25 July 2006 the officer indicated that coverage from the alternative site could be achieved by the erection of a 15m tower with two collinear antennas. The report again recommended that conditional planning permission should be granted. The committee deferred making a decision in order to allow an application in respect of that alternative site to be submitted and evaluated. The appellant lodged the appeal that is before me on 10 August 2006.
33. From the information that is before me I can understand the applicant's scepticism as to whether the Council would grant planning permission for this proposal and the decision to appeal.
34. When the Council resolved at its meeting in October 2006, that it would have granted planning permission there is no indication that it had been furnished with additional relevant information in the meantime. If the committee was able to come to that conclusion in October I see no reason why it could not have done so in June.
35. I consider the officer's report to the October committee is concerned with minimising the possibility of costs being awarded against the authority. The officer had already reported on the merits of the proposal three times and had recommended that the application should have been approved on each occasion. The report suggests that, in the light of the committee's rejection of the alternative site, if the applicant did not take up the opportunity to allow officers to determine a new planning application under delegated powers then it would "*at least offer the authority another ground on which to fight any costs application.*" The possibility of officer delegation was in any case withdrawn.
36. I do not accept the argument that had a new planning application been submitted then it would have been granted. The Director of Development's undertaking to submit representations relating to the manner in which such planning applications should be determined does not suggest to me that the authority would necessarily have granted planning permission had a new application been submitted.

37. I do not accept the argument that the appellant was precipitous in submitting this appeal or that the costs flow from that decision rather than from the behaviour of the Council. I find that the actions by the planning authority prevented, inhibited and delayed a development which could reasonably have been permitted, in the light of the development plan and of any other material considerations.
38. All the other matters that have been put to me relate to matters that occurred as a consequence of the Council's failure to determine the planning application when it had an opportunity to do so. I consider the appellant has incurred these unnecessary expenses as a result of the Council's unreasonable behaviour.
39. I find that unreasonable behaviour resulting in unnecessary expense, as described in Welsh Office Circular 23/93, has been demonstrated. I therefore conclude that an award of costs is justified.

Formal Decision and Costs Order

40. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Pembrokeshire County Council will pay to Arqiva, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the failure to determine an application for planning permission for the installation of a 17m high steel monopole to replace the existing 16m high wooden pole, the transfer of all the existing equipment onto the new pole, the installation of 2 no 4 stack dipole antenna to a maximum height of 19.1m, 2 new radio equipment cabinets together with ancillary cabling and other associated work on land at the Arqiva transmitting station, The Ridgeway, Penally, Tenby, Pembrokeshire SA70 7NT.
41. The applicant is now invited to submit to Pembrokeshire County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

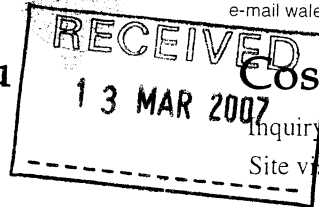
Gwynedd P Thomas

Inspector

Penderfyniad ar gostau

Ymchwiliad agorwyd ar 24/01/07

Ymweliad â safle a wnaed ar 28/02/07



Costs Decision

Inquiry opened on 24/01/07

Site visit made on 28/02/07

gan/by G P Thomas BA(Hons) DMS MRTPI

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date 12/03/07

Costs application in relation to Appeal Ref: APP/N6845/A/06/1199641

Site address: Arqiva transmitting station, The Ridgeway, Penally, Tenby, Pembrokeshire SA70 7NT.

The National Assembly has transferred the authority to decide this costs application to me as the appointed Inspector.

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Harriet Davis Seaside Holiday Trust for Disabled Children for a full award of costs against Arqiva.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the installation of a 17m high steel monopole to replace the existing 16m high wooden pole, the transfer of the existing equipment onto the new pole, the installation of 2No. 4 stack dipole antenna to a maximum height of 19.1m, 2 new radio equipment cabinets together with ancillary cabling and other associated works.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for the Harriet Davis Seaside Holiday Trust for Disabled Children

1. The application does not rely on any specific paragraph or Annex in Welsh Office Circular 23/93. The legality of the appellant's right to use the appeal site is being disputed by the freehold landowner. The appellant should not have started the whole process when ultimately there was no hope of success due the legal dispute. That dispute should be resolved before this application is determined since the outcome may result in the planning application being academic. The appellant has behaved unreasonably in pressing for a decision on the application.

The Response by Arqiva

2. Reference is made to Annex 4 to Welsh Office Circular 23/93. Paragraph 2 indicates that awards of costs either in favour of or against third parties will be made only in exceptional circumstances. There is no substance to this application for an award of costs which is based on complete misunderstanding of Planning Law. Planning applications can be made to carry out development on land that is not within the ownership of the applicant. The appellant has not behaved unreasonably.

Conclusions

3. I have considered this application for costs in the light of Welsh Office 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.
4. There is no basis for the argument put forward on behalf of the Harriet Davis Seaside Holiday Trust for Disabled Children. A planning application can be submitted on land which is not owned by the applicant, subject to appropriate notifications being served. Whilst the landowner is now in dispute with Arqiva that does not nullify the right of Arqiva to have made the planning application in the first place.
5. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Welsh Circular 23/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

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

Gwynedd P Thomas

Inspector