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Our ref: BLA2/1/PT/SG/PW
Your ref: 46C427K/TR/EIA/ECON

30 January 2023

Dear Sirs

**Penrhos Penrhos Coastal Park, Cae Glas and Kingsland, Holyhead
(46C427K/TR/EIA/ECON)**

- 1 We act for a group of concerned local residents (“our client”) who have consistently objected to the development and monitored the various steps in relation to it.
- 2 According to an objective interpretation of the planning history, which we set out in more detail in the following parts of this letter, the outline permission referenced above and granted in 2016 should have been implemented by 7 August 2022. It was not so implemented, and the permission accordingly is no longer valid and capable of implementation. The developer should, therefore, be required to submit a new application, when the deficiencies our client noted throughout the progress of this planning history can be addressed.

Background

- 3 On 19 April 2016 a hybrid planning permission (46C427K/TR/EIA /ECON), “the Permission”) was granted by the Isle of Anglesey County Council (“the Council”) comprising outline permission for up to 500 new leisure units and full permission for inter alia the change of use of the Bailiff’s Tower from a cricket clubhouse to a visitors information centre (“the proposed development”) at the above site (“the Site”). The Permission included the following conditions as to the time limit for commencing development:

Condition 3. “The first reserved matters application shall be submitted to the Local Planning Authority not later than the expiration of 3 years beginning with the date of this planning permission. All subsequent Reserved Matters approval applications shall be submitted to the Local Planning Authority not later than the expiration of 10 years beginning with the date of this planning permission.”

Condition 4. “The development hereby permitted shall commence no later than whichever is the latest of the following dates:

- the expiration of 5 years from the date of the grant of this permission; or
- the expiration of 2 years from the date of the approval of the first Reserved Matters application to be approved. “

Condition 70. “The change of use hereby permitted shall commence before the expiration of five years from the date of this planning permission.”

Condition 71. "The change of use hereby permitted shall only commence following the implementation of the first Reserved Matters application approval in respect of the Penrhos Phase of the development. The change of use hereby permitted shall thereafter only be used on an ancillary basis to the holiday leisure village together with other ancillary uses approved under the provision of [the Permission]."

- 4 The Permission also included 35 other conditions which were pre-commencement conditions. These include:

Condition 5. "No development shall commence until a Phasing Plan for each Phase of the development has been submitted to the Local Planning Authority and approved by it in writing. The Phasing Plan shall provide a timetable for the sequential implementation, completion and occupation/use of all areas and component parts of the Phase together with detail of the location of all associated facilities, services, road, landscaping and any other associated elements. The development shall be carried out in accordance with the provisions of the required Phasing Plan Reason: To ensure that the sequence and timescale of the ongoing development and completion of each Phase of the development take place in a satisfactory manner."

Condition 30. "No Phase or component part of the development shall commence until full details of all proposed electrical, telecommunications, gas and other services for that Phase or component part of the development have been submitted to and approved in writing by the Local Planning Authority. No development of the Phase or component part of the development shall commence until the detail under this condition has been approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the detail approved by the Local Planning Authority under this condition.

Reason: To ensure that the development conserves the Area of Outstanding Natural Beauty and to safeguard ecological and landscape features."

- 5 An application for reserved matters approval in respect of part of the Site (RM/2018/6) was approved on 7 August 2020 ("the RMA approval"), for:

Reserved matters application including details of the appearance, landscaping, layout and scale for raised boardwalk footways and works to trees subject to a Tree Preservation Order on part of the publicly accessible area approved under outline planning permission 46C427K/TR/EIA/ECON at the Penrhos Coastal Park, Holyhead at Land and Lakes, Penrhos Coastal Park, Caergybi / Holyhead

The consequence of this RMA approval was that, in compliance with condition 4 of the Permission, the deadline for implementation of the outline element of the Permission was set at 7 August 2022.

- 6 On 1 April 2021 the Council granted the following additional consent, approving the discharge of various conditions (DIS-2020-92, "the condition approval")

Application to discharge conditions (05)(Phasing Plan), (07) (EIA), (14)(Natural stone details), (17)(Full details of all external materials and finishes), (18)(Full details of external materials and colours, construction specifications of any engineered gradients, batters, bunds, all retaining walls and structures, bridges and any associated engineering works) (25)(Full details of all the Existing Traditional Agricultural Landscape and other Features ('ETAL')), (32)(Preliminary Construction Environmental Management Plan('PCEMP')), (33)(Preliminary Construction Traffic Environmental Management Plan ('PCTEMP')), (34)(Soil Management Plan ('SMP')), (35)(Waste Management Plan ('WMP')), (38)(Written Scheme of Investigation of any archaeological remains), (40)(Sustainable Drainage Systems ('SDS Scheme')), (44)(Culvert and Pipe Management Plan), (45)(Ponds and Water Bodies Strategy), (48)(Phased Ecological Plan), (49)(Protected species licenses), (50)(Ecological Monitoring Strategy ('EMS')), (51)(Method statement for protected species), (52)(Details of all measures designed to prevent the incidental capture/killing of amphibians and reptiles), (54)(Great Crested Newt compensation scheme), (55)(Scheme for the retention, enhancement and translocation of existing ground flora), (56)(Scheme for eradication of invasive plant species), (66)(Coastal Path and other public rights of way and cycle routes scheme) and (68)(Details of surface water disposal from the private access and other roads and parking areas) of planning permission 46C427K/TR/EIA/ECON in so far as they relate to reserved matters application RM/2018/6 (Reserved matters application including details of the appearance, landscaping, layout and scale for raised boardwalk footways

and works to trees subject to a Tree Preservation Order) only on part of the publicly accessible areaat [sic]

- 7 Whilst this deals with the vast majority of conditions precedent required before implementation, crucially, this list does not include Condition 30, a point we will return to later.
- 8 We understand from our client that on 6 January 2022 the developer started to carry out work at the Site comprising the replacement of a rotting section of boardwalk and the addition of stones to a footpath (“the path works”). The developer also removed a section of carpet from a pre-existing building on the site (“the Bailiff’s Tower”). As set out above, the Permission incorporated a change of use over the part of the Site that the Tower is located on.
- 9 We understand from an email from the Council (Rhys Lloyd Jones) to our client that the Council considers the path works actually commenced on 2 April 2021 and that the commencement of the alleged change of use of the Bailiff’s Tower as a visitor centre commenced on 15 April 2021 following written notification from the developer.

Summary of the legal requirements

- 10 In order for the outline element of the Permission to have been lawfully implemented,
 - o the change of use must have taken place prior to 19 April 2021 (cf condition 70 in para 3 above); and
 - o The RMA approval must have been commenced.
- 11 For the RMA approval to have been commenced lawfully:
 - The path works must have constituted a material operation for the purposes of s.56 of the Town and Country Planning Act 1990 (“TCPA”); and
 - the path works, if relied upon as works of implementation, must have taken place by 7 August 2022; and
 - Condition 30 had to be discharged in respect of the RMA approval before the path works were carried out
- 12 We address each of these in turn below.

The full part of the Permission

- 13 Section 56(1)(b) TCPA states that development which consists of a change of use will commence at the time when that new use is instituted. It is sometimes difficult to establish when a change of use has commenced because such changes are frequently a gradual process. However, we consider that the mere removal of a carpet from a building is not sufficient, without more, to institute a change of use of the Bailiff’s Tower from residential to use as a visitor centre.
- 14 The Council maintains that the RMA approval was implemented on 2 April 2021 and that the change of use took place on 15 April 2021 (see para 9 above). Therefore, on the Council’s case the change of use occurred after the implementation of the RMA approval in accordance with Condition 71, and before 19 April 2021 in accordance with Condition 70. However, this is not supported by the evidence, as we set out below.

The outline part of the permission

- 15 A key question here is whether the path works constitute a material operation capable of lawfully implementing a permission. Pursuant to s.56 TCPA, a planning permission is taken to have been implemented on the earliest date on which any “material operation” comprised in the development begins to be carried out. “Material operation” is defined in s.56(4) as follows:

(a) any work of construction in the course of the erection of a building;
(aa) any work of demolition of a building;
(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
(d) any operation in the course of laying out or constructing a road or part of a road;
(e) any change in the use of any land which constitutes material development.

- 16 The path works do not fall within any of these categories. Arguably, they could be seen as an operation “in the course of laying out or constructing a road or part of a road”(d). Whilst “road” is not defined in the TCPA, it has been held to include a private driveway and a service yard: Spackman v SSfE [1977] 1 All ER 257. The OED definition is: “a wide way between places, especially one surfaced for use by vehicles”. Together these suggest a significantly more substantial operation than the path works, which accordingly do not fall within the statutory definition of material operation.
- 17 Again, it might be argued that the path works could engage category (a) “any work of construction in the course of the erection of a building” if a boardwalk is a building. Yet a closer look at this point does not bear support. “Building” is defined in s 336(1) of the TCPA in broad terms as “any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.”. “Erection” includes “extension, alteration and re-erection”. Whilst the path works could conceivably constitute a “structure or erection”, it is highly unlikely that the path is a “building”.
- 18 Even assuming (which we refute) that the path works could have constituted a material operation, the pre-commencement Condition 30 would have had to have been signed off beforehand. From the notation of the permission as repeated in the Council’s reply to the FOI requests we made, it is apparent that the Council does not consider that Condition 30 applies to the RMA approval. We dispute that position. Condition 5 requires the approval of a Phasing Plan, which has been approved. The Permission has a definitions section where the “Penrhos Phase” is defined as “*a leisure village comprising up to 500 new leisure units and associated development as described in the planning application hereby approved on land delineated with green hatching...*”
- 19 Condition 30 does not, however, just apply to the phases of the development (as defined in the Permission to include the Penrhos Phase) but to each “component part of the development”. No definition of “component part” is provided, but Condition 5 states:

...The Phasing Plan shall provide a timetable for the sequential implementation, completion and occupation/use of all areas and component parts of the Phase together with detail of the location of all associated facilities, services, road, landscaping and any other associated elements.

The component parts of each phase are, therefore, the sub-phases, such as those set out in the phasing plan. All of the work carried out on the Site falls broadly within the Penrhos Phase as defined and the works authorised by the RMA approval fall within the Penrhos Coastal Park Preliminary (sub) Phase as shown on the phasing plan. Indeed, we note that the covering letter submitted with the condition approval explains

that this Preliminary (sub) Phase involves “the Penrhos Coastal Park Reserved Matters enhancement proposals as approved on 7th August 2020” (i.e. the RMA approval). Considered in this light, the RMA approval is clearly a “component part” and the works authorised by the RMA approval do fall within the scope Condition 30.

- 20 It follows that Condition 30 had to be discharged in respect of the RMA approval before the path works could lawfully commence: development which is carried out in contravention of a condition precedent cannot be taken as lawfully commencing development: Whitley & Sons v Secretary of State for Wales (1992) 64 P & CR 296.
- 21 No application to discharge Condition 30 has been made and so, accordingly, it has not been complied with.

Conclusion

- 22 For all the reasons set out above, it is clear that the permission (outline and full parts) has not been lawfully implemented and, since the deadline date has passed, is incapable of being so implemented. Accordingly, the developer should be required (if it wishes to continue with the development) to submit a fresh application.

Yours faithfully



RICHARD BUXTON SOLICITORS