



Neutral Citation Number: [2024] EWHC 2582 (Admin)

Case No: AC-2023-CDF-000127

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
WALES DISTRICT REGISTRY

Cardiff Civil Justice Centre,
2 Park Street, Cardiff, CF10 1ET

Date: 11/10/2024

Before :

MR JUSTICE MOULD

Between :

HILARY JONES

Claimant

- and -

ISLE OF ANGLESEY COUNTY COUNCIL

Defendant

- and -

LAND AND LAKES (ANGLESEY) LIMITED

**Interested
Party**

BEN FULLBROOK (instructed by **Richard Buxton Solicitors**) for the **Claimant**
REBECCA CLUTTEN (instructed by **Burges Salmon LLP**) for the **Defendant**
STEPHANIE HALL (instructed by **Pinsent Masons LLP**) for the **Interested Party**

Hearing date: 5th June 2024

Approved Judgment

This judgment was handed down remotely at 2pm on Friday 11th October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD

MR JUSTICE MOULD :

Introduction

1. The Penrhos Estate at Holyhead, Anglesey was once the country home of the Stanley family. As with many great country houses of former times, the fortunes of the Estate diminished in the years following the Second World War. The House no longer survives. However, within the former estate lands lies the Penrhos Nature Reserve, opened officially by HRH The Prince of Wales as long ago as 1972. The Claimant is a local resident who has had a lifetime of enjoyment of walking the paths within the Estate and of participating in the day to day life of the Nature Reserve. She was made a Reserve warden at the age of 14 and awarded a medal for her service to the Reserve on the day of its official opening. She is, understandably, determined to do what she can to ensure that the Nature Reserve and the amenity of the former estate grounds are not threatened, as she sees it, by development.
2. The Defendant is the local planning authority for the Isle of Anglesey. On 19 April 2016, on the Interested Party's application, the Defendant granted outline planning permission for development at the Penrhos Estate and other land at Holyhead [**the planning permission**]. The scheme comprised outline planning permission for a leisure village at Penrhos Coastal Park; for the erection of leisure village accommodation and facilities on land at Cae Glas; and for residential development on land at Kingsland; and full planning permission for the change of use of surviving estate buildings at Penrhos Coastal Park. Although Penrhos House itself has long since been demolished, a number of estate buildings remain. The present claim is concerned primarily with one of those estate buildings, known as the Bailiff's Tower, which has in more recent years served as a cricket pavilion and clubhouse.
3. The planning permission is described as hybrid, since it includes both outline and full elements, but it takes the form of a single grant of planning permission under reference 46C427K/TR/EIA/ECON.
4. The Claimant objected to the Interested Party's planning application and has continued to take a close interest in its progress since the grant of the planning permission. By this claim for judicial review, the Claimant challenges three decisions made by the Defendant on 19 September 2023. Those three decisions relate to matters arising for approval under the terms of an agreement dated 19 April 2016 [**the section 106 agreement**] in accordance with section 106 of the Town and Country Planning Act 1990 [**the 1990 Act**]. The section 106 agreement was made between the Defendant, the Interested Party and Anglesey Aluminium Metal Limited. Its purpose was stated to be to facilitate and to regulate the development and use of land pursuant to the planning permission.
5. The Claimant's case is that on 19 September 2023 the Defendant decided to approve certain matters under the terms of the section 106 agreement on the premise that the planning permission remained capable of implementation. That premise was false, says the Claimant, because by that date the planning permission had expired. For that reason, the approvals given on 19 September 2023 are said to have been unlawful.

6. In summary, the basis for the Claimant's case is as follows –
- (1) Condition 70 of the planning permission required the change of use which was authorised by the planning permission to have commenced within the period of five years from the date of its grant, that is to say, by 19 April 2021. The Claimant's first ground of claim is that the Interested Party has failed to comply with condition 70, since it did not commence the change of use of any of the existing estate buildings at Penrhos Coastal Park by that date. The particular question raised by the claim is whether the use of the Bailiff's Tower had changed from use as a cricket clubhouse to use as a visitor information centre. The Defendant decided that by 19 April 2021, that change in the use of the Bailiff's Tower had taken place. The Claimant contends that decision was unlawful. As a result, the Claimant argues, the Interested Party is no longer able lawfully to implement the change of use authorised by the planning permission.
 - (2) The Claimant's second ground of claim is that the inability to implement that change of use has the effect of rendering the entire planning permission incapable of implementation. In short, it is the Claimant's contention that the planning permission as a whole has expired.
 - (3) The Claimant's third ground of claim is that the Defendant acted unlawfully in refusing to consider possible enforcement action. On 9 October 2023, the Claimant's solicitors wrote to the Defendant under the pre-action protocol for judicial review, raising the Claimant's contention that, by virtue of the expiry of the planning permission, the Defendant had not been empowered to grant the approvals under the terms of the section 106 agreement. The Claimant's solicitors invited the Defendant to agree to "*open an enforcement investigation*", on the basis that the grant of the approvals "*does not prevent future enforcement action from being taken in respect of a failure to lawfully implement the Permission*". In response on 23 October 2023, the Defendant's solicitors stated that the Defendant "*has seen no information to lead it to any conclusion that unlawful development has or will take place in respect of the Permission or site. As such, enforcement is not an action that [the Defendant] will, or reasonably should, be contemplating*".
7. Permission to apply for judicial review on the grounds which I have outlined above was granted by Eyre J, following an oral renewal hearing, on 27 February 2024. Eyre J refused permission on other grounds, to which I shall briefly return below.

The factual background

The planning permission

8. In summary, the outline elements of the planning permission, in relation to which all matters save for means of access are reserved, are as follows. The proposed leisure village at Penrhos Coastal Park comprises up to 500 new leisure units, including new lodges and cottages. The leisure village also includes a wide range of supporting facilities, such as an indoor sports hall, cafes, bars, restaurants and retail units. The proposed development at Cae Glas includes leisure village accommodation which has been designed to be used initially as temporary accommodation for construction

workers at the Wylfa B nuclear power station. Up to 315 lodges are proposed. Following their use as temporary construction workers' accommodation, they are to be converted to form an extension to the Penrhos Coastal Park Leisure Village. Again, there is to be a range of supporting sports and leisure facilities. The proposed residential development of up to 315 new houses at Kingsland is also to be used initially as temporary accommodation for construction workers. Following construction of the power station, those units are to be converted to form a residential development with ancillary facilities.

9. The change of use element of the planning permission comprises the grant of full planning permission for the change of use of existing estate buildings in the following terms –

“Full detail for the change of use of the existing Estate buildings at Penrhos Coastal Park, London Road, Holyhead including the change of use for: The Bailiff’s Tower and outbuildings at Penrhos Home Farm from a cricket clubhouse to a visitors information centre, restaurant, café, bars and retail; Home Farm Barn and Cart Buildings from farm buildings to cycle and sports hire centre; The Tower from residential to a Managers accommodation and ancillary office; and Beddmanarch House from residential to a visitors centre”.

10. The planning permission was granted subject to 94 conditions. The conditions are set out in five sections – sections A to E. In the decision notice, the conditions are preceded by a table of defined terms introduced as follows –

“The following definitions form part of and are incorporated into the Planning Permission”.

11. Section A of the conditions imposed on the grant of the planning permission sets out 61 conditions applicable to the three sites at Penrhos Coastal Park, Cae Glas and Kingsland. Those 61 conditions are introduced as follows on the decision notice –

“The following Outline Planning Conditions are applicable to all 3 application sites outlined in red on the plan Enclosed as Appendix 1 of this decision notice. These planning conditions should be read in conjunction with those listed in Sections B, C, D and E below of this decision notice.

The planning permission should be read in accordance with the Definitions contained within the above table”.

12. Condition 1 permitted the development approved by the grant of the planning permission to be delivered on a phased basis. Conditions 2, 3 and 4 are in the following terms –

“2. No development of any Phase or component part of the development shall commence until the Reserved Matters in respect of that Phase or component part of the development has been approved in writing by the Local Planning Authority.

3. The first Reserved Matters approval 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.

4. The development hereby permitted shall commence no later than whichever is the later 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”.*

13. Sections B, D and E imposed further conditions on the grant of outline planning permission which applied only to the development at Penrhos Coastal Park (section B – 8 conditions), development of land at Cae Glas (section D – 10 conditions) and development of land at Kingsland (section E – 11 conditions) respectively. Each of sections B, D and E was introduced as follows in the decision notice –

“The following outline planning conditions....should be read in conjunction to/with the general outline planning conditions listed in Section A of this decision notice which is applicable to all 3 sites”.

14. Section C imposed 4 conditions (conditions 70 to 74 inclusive) on the grant of full planning permission for the change of use of existing buildings. The decision notice includes the following introduction to section C –

“The following full Planning Conditions are only applicable to the existing buildings identified on drawing No. 020 attached as Appendix 2 and situated within the Penrhos Phase which is defined in the definitions forming part of this decision notice and delineated with green hatching on the plan enclosed as Appendix 1 to this decision notice”.

15. The “Penrhos Phase” is defined as meaning -

“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 on the plan enclosed as Appendix 1 to this decision notice”.

16. Section C includes conditions 70 and 71, which are in the following terms –

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

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 provisions of outline planning permission 46C427K/TR/EIA/ECON”.

17. The Bailiff's Tower is one of the existing estate buildings identified on drawing 020 and situated within the defined Penrhos Phase to which conditions 70 and 71 apply. In order to comply with condition 70, it was necessary for the change of use of the Bailiff's Tower authorised by the planning permission, from use as a cricket clubhouse to use as a visitor information centre, to have taken place by 19 April 2021.
18. Compliance with condition 71 depended upon the implementation of the first "*Reserved matters application approval*" in respect of the Penrhos Phase. The first such approval was given by the Defendant under reference RM/2018/6 on 7 August 2020 [**the RMA approval**]. Amongst the operations approved was the installation of a pathway adjoining the existing car park at Penrhos Coastal Park.
19. Having discharged certain pre-commencement conditions, on 15 April 2021 the Interested Party submitted two reports to the Defendant with a view to establishing that the development authorised by the planning permission and the RMA approval had been commenced and the change of use implemented.
20. The first report was entitled "*Penrhos Coastal Park, Commencement of Approved Works*" [**the Works Report**]. It stated that the Interested Party had installed a section of the approved pathway, approximately 15 metres in length, comprising of a compacted stone path with timber edging. A further short section of raised walkway had also been installed. Photographs showing the extent of the works carried out by the date of submission of the report were included within it. The Interested Party stated that this was clear evidence that works authorised by the planning permission and the RMA approval had begun prior to 19 April 2021.
21. The second report submitted by the Interested Party on 15 April 2021 was entitled "*Penrhos Leisure Village Implementation of Change of Use*" [**the CoU Report**]. It stated that the Interested Party had taken steps to change the use of the upper floor of the Bailiff's Tower to use as a visitor information centre. The CoU Report said that the building was suitable for that use and required only internal decoration and refurbishing. The works undertaken for the purpose of adapting the Bailiff's Tower for use as a visitor information centre were identified as cleaning, painting, filling and decorating, installation of a carpet, signage, tables and chairs. An ecologist had inspected the building for the presence of bats but found no evidence of them. Again, contemporary photographs were included within the report as supporting evidence. The CoU Report concluded with the following paragraphs –

"The owner regards this report to adequately evidence the implementation of Change of Use by establishing this Visitor Information Centre within the Bailiff's Tower building at Penrhos.

Please note: at the date of this report, 15th April 2021, the owner understands that Welsh Government Covid 19 restrictions do not allow the public to access Visitor Information Centres as within the same use group as libraries and museums. This Penrhos Visitor Centre, although established ready for use, cannot be accessed by the public until easing of this restriction is confirmed by the Welsh Government".

The decisions under challenge

22. On 30 January 2023, the Claimant’s solicitors (then acting on behalf of “*a group of concerned residents who have consistently objected to the development and monitored the various steps in relation to it*”) wrote to the Defendant raising the question whether the planning permission had been lawfully implemented. That letter contended that “*the outline permission...should have been implemented by 7 August 2022*” but had not been so implemented. It was contended that the works to instal the pathway carried out in April 2021 had not been effective in law to commence the development authorised by the planning permission, which had accordingly lapsed by virtue of the operation of condition 4, which required development to have begun within 2 years of the date of grant of the RMA approval on 7 August 2020.
23. On 28 March 2023 the Defendant’s solicitors responded refuting the Claimant’s solicitors’ contentions and asserting the Defendant’s position that the planning permission had been lawfully implemented within the period stated in condition 4. On 3 April 2023, the Claimant’s solicitors responded repeating their contentions.
24. Meanwhile, the Interested Party had applied to the Defendant for approval of certain matters in accordance with the terms of the section 106 Agreement. On 3 May 2023, those applications came before the Defendant’s Planning and Orders Committee [**“the Committee”**] with a recommendation by officers for approval. However, the Committee resolved to refuse the applications on the basis that it appeared to be unclear whether the planning permission had been lawfully implemented. As that resolution was contrary to officers’ recommendation, under the Defendant’s constitution the applications were deferred until the following meeting of the Committee, to allow time for officers to respond to the Committee’s reason for its resolution to refuse them.
25. On 7 June 2023 the applications were again reported to the Committee for approval. During the intervening period, the Claimant’s solicitors had submitted to the Defendant a report from a planning consultant which concluded that neither the installation of the pathway nor the fitting out works to the Bailiff’s Tower had been sufficient to implement the planning permission in accordance with its conditions. For its part, the Defendant had obtained advice from Leading Counsel on those issues.
26. Officers’ advice and recommendations were set out in three reports submitted to the Committee in advance of its meeting on 7 June 2023. It is necessary only to refer to the report [**“the officers’ report”**] which concerns the Interested Party’s application for approval of the community liaison group scheme required under the provisions of schedule 8 to the section 106 Agreement.
27. The officers’ report addressed two main issues. Firstly, whether the works to instal the section of pathway described in the Works Report had been sufficient for the purpose of commencing the development in accordance with condition 4 of the planning permission. That issue formed the subject matter of those grounds of challenge for which Eyre J refused permission on 27 February 2024. It is unnecessary, therefore, for me to set out the detail of the advice given by officers on that question. It is enough to note that the advice was that those works were indeed sufficient for those purposes. At their meetings held on 7 June 2023 and 6 September 2023, the Committee proceeded on the basis that the development had been commenced in accordance with condition 4 of the planning permission.

28. The second main issue considered in the Officers' Report was whether the works described in the CoU Report had been sufficient lawfully to commence the change of use of the Bailiff's Tower in accordance with condition 70 of the planning permission. On that question, the advice given to the Committee was as follows -

“Whether the change of use to Bailiffs Tower has commenced prior to the expiration of 5 years from the date of the original permission (being the 19th April 2021).

...

In respect of compliance with Condition 71, commencement of the change of use is subject to prior implementation of the First Reserved Matters Application (RM/2018/6) which was implemented between the 24th March and 2nd April 2021. Pre commencement conditions had to be discharged prior to the implementation of permission RM/2018/6 and this was approved on the 1st April 2021 (application DIS/2020/92). The change of use had to commence before the 19th April 2021 in accordance with Condition 70.

As detailed in the [CoU Report], the works to change the use of Bailiffs Tower to a 'Visitor Information Centre' was implemented before the 19th April 2021. The building is suitable for this use, requiring only internal decoration and refurbishing to adapt to this purpose, hence avoiding the need for further Planning approval or Listed Building Consent.

As detailed in the report, the works included:

- *Cleaning*
- *Painting, filling and decorating*
- *Installation of carpet*
- *Installation of signage, table and chairs.*

Section 56(4)(a) defines “material operation” for the purposes of section 56(2) as “any change in the use of the land which constitutes material development”. Unlike operational development, this expression is in practice definitive since any change of use outside this definition cannot sensibly be regarded as commencement. “Material development” is defined in section 56(5) as subject to certain exclusions which do not appear to be engaged.

In circumstances where no actual use has changed, ordinarily it could be said to be doubtful that a change of use which constitutes ‘material development’ would have occurred. However, this is in the context that it is difficult to see what more could have been undertaken, at least in respect of the building in question, given the Covid-19 restrictions in place at the time (April 2021) which prevented people from visiting the site.

Leading Counsel advised that it is possible to argue that the associated steps with the purported change of use, in particular signage, should therefore be regarded

as sufficient to demonstrate material development in circumstances where physical occupation is precluded (as a result of Covid-19 restrictions).

Counsel went on to state that in any event, he considered that the elements of the permission consented in full (section C of the permission) is likely to be regarded as in practice severable from the other permissions and even if it had lapsed, that would not affect the validity of the other permissions. In other words, if the applicant has failed to implement the change of use of Bailiffs Tower, this element of the permission (i.e. the full planning permission included in Section C of the original permission) is severable from the outline elements of the permission (included in Sections A and B of the permission). If the change of use has not been lawfully implemented these elements of the permission would fall away but the rest of the permission would remain.

However, the applicant believes that a change of use has occurred (as detailed in their Report) before the expiration date of 19th April 2021. The Council have no reason to challenge this view given the evidence presented and due to the Covid-19 restrictions in place at the time. The Council is aware however that Bailiffs Tower has not been used as a Visitor Information Centre since the lifting of the Covid-19 restrictions.

Given the evidence presented by the applicant on the 15th April 2021, the Covid-19 restrictions at the time and the severability of these elements of the permission in any event, Officers do not consider this to be a valid reason for refusal. The s.106 requirements relate to the wider permission and not specifically the change of use, therefore this is not a valid reason for refusal”.

29. At their meeting held on 7 June 2023, the Committee resolved to grant the applications for approvals under the section 106 agreement. Following receipt of a letter before action sent on behalf of the Claimant, officers provided further advice which was considered by the Committee at a subsequent meeting held on 6 September 2023, including supplementary advice on the question whether failure to comply with condition 70 would result in the planning permission as a whole having lapsed -

“In the present case, the permission as a whole has been validly implemented through the implementation of the works contained in the first RMA. The fact that the change of use authorised in the full part of the permission had not been undertaken within the five-year time period stipulated within Condition 70 would not change this. The developer was entitled to elect not to effect the change of use at all. All it would mean is that the change of use could no longer be implemented pursuant to that permission, and a fresh grant of planning permission would be required for the same if the developer ever wished to effect the same change of use at a later date.

Consequently, even if, contrary to the advice the Council has received, the change of use had not been effected before the expiry of the five-year period set out in Condition 70, this would have no bearing on the Council’s entitlement to deal with the discharge applications before it”.

30. The Committee again resolved to grant the applications, which were formally issued by the Defendant on 19 September 2023.

31. On 23 October 2023, the Defendant declined the Claimant's request to open an enforcement investigation into whether the planning permission had been implemented.

Legal Framework

General principles

32. The principles upon which the court acts when faced with an allegation that a planning committee has been misled by advice provided by officers were summarised by Lindblom LJ in *R (Mansell) v Tonbridge and Malling BC* [2019] PTSR 1452 at [42]. In particular, the court will not read a planning officer's report with undue rigour, but with reasonable benevolence, bearing in mind that such reports are written for councillors with local knowledge. The question for the court will always be whether, on a fair reading of the officer's report as a whole, the officer has misled the committee in a material way on a matter bearing on their decision, and the error has not been corrected before the decision under challenge was made. It is only in such a case that the court is able to conclude that the decision itself was rendered unlawful by the officer's advice.

Relevant legislation

33. The making of a material change in the use of buildings or other land is a species of development that requires planning permission. See sections 55(1) and 57(1) of the 1990 Act. By virtue of subsection 55(2)(a) of the 1990 Act, the carrying out of works for the maintenance, improvement or other alteration of a building which affect only its interior are deemed not to involve development.
34. Section 91 of the 1990 enacts a general condition limiting the duration of planning permission. The material words of subsections 91(1), (2) and (5) are as follows –

“(1) Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of—

(a) the applicable period, beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or

(b) such other period (whether longer or shorter) beginning with that date as the authority concerned with the terms of planning permission may direct.

(2) The period mentioned in subsection (1)(b) shall be a period which the authority consider appropriate having regard to the provisions of the development plan and to any other material considerations.

...

(5) The applicable period –

...

(b) in relation to Wales, is five years”.

35. Section 92 of the 1990 Act makes provision for the duration of outline planning permission. The material words of subsection 92(2) are as follows –

“(2) Subject to the following provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the effect –

(a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and

...

(c) that, in the case of outline planning permission for the development of land in Wales, the development must be begun no later than –

(i) the expiration of five years from the date of the grant of outline planning permission, or

(ii) if later, the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved”.

36. Section 56 of the 1990 Act makes provision for the commencement of development. The material words are as follows –

“(2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

(3) The provisions referred to in subsection (2) are sections...91, 92...

(4) In subsection (2) “material operation” means –

...

(e) any change in the use of any land which constitutes material development.

(5) In subsection 4(e) “material development” means any development other than -

(a) development for which planning permission is granted by a general development order, a local development order or a Mayoral development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted;

(b) development of a class specified in paragraph 1 or 2 of Schedule 3; and

(c) development of any class prescribed for the purposes of this subsection”.

Case Law – Change of Use

37. In *Impey v Secretary of State for the Environment* (1980) 47 P&CR 157, the Divisional Court was asked to consider whether the Secretary of State was correct in law in concluding that the mere carrying out of internal works to convert a building formerly used as dog kennels into two residential units, with a view to their use as dwellings, was insufficient to constitute the making of a change from their former use to use for residential purposes. The Secretary of State had decided that *“notwithstanding that [Mr Impey] envisaged the use of the converted kennels for residential purposes, an allegation of the change of use to two residential units cannot be sustained when on the evidence no such change of use has yet been undertaken”*.

38. The Divisional Court held that the Secretary of State’s approach was not a correct statement of the legal position. Actual residential use was not a legally necessary prerequisite for the making of a material change in the use of the former dog kennels to residential use. At pages 161-162, Donaldson LJ said –

“Change of use to residential development can take place before the premises are used in the ordinary and accepted sense of the word, and [counsel] gives by way of example cases where operations are undertaken to convert premises for residential use and they are then put on the market as being available for letting. Nobody is using those premises in the ordinary connotation of the term, because they are empty, but there has plainly, on those facts, been a change of use.

The question arises as to how much earlier there can be a change of use. Before the operations have been begun to convert to residential accommodation plainly there has been no change of use, assuming that the premises are not in the ordinary sense of the word being used for residential purposes. It may well be that during the course of the operations the premises will be wholly unusable for residential purposes. It may be that the test is whether they are usable, but it is a question of fact and degree.”

39. At page 163 in *Impey’s* case, Donaldson LJ referred to a passage in the judgment of Upjohn LJ in *Howell v Sunbury-on-Thames UDC* (1964) 62 LGR 119 –

“I agree that development by works and development by user are different matters and must be considered separately, but when one is considering whether there has been a material change in the use of buildings or land one must first consider the site as a whole and then, as a matter of common sense, compare the user before the critical date and after the critical date. When doing that, any changes in the physical state of the land must be taken into account as an element, for, if this is ignored, the user before and the user after cannot be properly assessed and compared. In some cases, and I think in this case, the change in the physical state of the land must be an important element; in other cases it may be entirely unimportant; but it seems to me you cannot, as an element, disregard the physical state of the land before and after”.

40. Donaldson LJ continued –

“Applying that to this case, I would say that the physical state of these premises is very important, but it is not decisive. Actual use or intended use or attempted use is important but not decisive. These matters have to be looked at in the round”.

41. The Supreme Court referred to Donaldson LJ’s approach in the much more recent case of *Welwyn Hatfield Council v SSCLG* [2011] UKSC 15; [2011] 2 AC 304, the well-known planning enforcement case involving a hay barn which had been secretly fitted out for use as a residential dwelling. Having set out Donaldson LJ’s reasoning at pages 161-162 of *Impey*, at [29] in *Welwyn Hatfield* Lord Mance JSC said –

“As a matter of law, I consider that the approach taken by Donaldson LJ was correct and is to be preferred to the doubt expressed in Backer. Too much stress has, I think, been placed on the need for “actual use”, with its connotations of familiar domestic activities carried on daily. In dealing with [subsection 171B(2) of the 1990 Act] which speaks of “change of use of any building to use as a single dwelling house”, it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is. As I have said, I consider it artificial to say that a building has or is of no use at all, or that its use is as anything other than a dwelling house, when its owner has just built it to live in and is about to move in within a few days’ time (having, one might speculate, probably also spent a good deal of that time planning the move)”.

42. In *Hedges v SSHCLG* [2021] EWHC 2392 (Admin); [2022] JPL 522, the issue was whether an inspector had erred in law in concluding that the mere stationing of caravans on farmland without any evidence of their actual use was insufficient to support a finding that a material change in the use of the land from agriculture to camping and caravanning use. At [26]-[28] of his judgment, His Honour Judge Jarman QC (sitting as a High Court Judge) upheld the inspector’s conclusion, explaining how the circumstances differed from those in *Impey* and *Welwyn Hatfield* -

“26. In my judgment...[the Inspector] did not overly focus on use on a day to day basis. To the extent that he did so focus, then on the particular facts of this case, he was entitled to do so. The reason for Lord Mance’s warning [at [29] in Welwyn] about such focus in dwelling cases was that, dwellings are often left empty without any question of abandonment. That observation is not as apposite where the use in question is camping or caravanning.

27. Moreover, it is clear in my judgment that in the case of a dwelling, Lord Mance observed that such cases usually fall to be viewed against a background of previous active use. However, in the Welwyn case, the builder had just built the building to live in and was about to move in in a few days’ time. It was in that context that Lord Mance made his comments about actual use and concluded that on those particular facts it was artificial to find any use of the building other than as a dwelling.

28. In the present case, there was no building ...”.

Case law - commencement of development

43. In *Malvern Hills District Council v Secretary of State for the Environment* (1983) 46 P&CR 58, 70, Eveleigh LJ provided the following analysis of the legislative intention behind the statutory predecessors of sections 56, 91 and 92 of the 1990 Act, namely sections 43, 41 and 42 respectively of the Town and Country Planning Act 1971 –

“Sections 41 and 42 seek to ensure that land will not be held undeveloped for an indefinite period in the hands of speculators whose only intention is to sell the land at some future propitious date at the enhanced value that development permission attracts. Section 43 seeks some earnest intention to develop. The specified operations are not necessarily very extensive. Very little need be done to satisfy the section. That which is done, however, must genuinely be done for the purpose of carrying out the development. Section 43 is a benevolent section that aims at avoiding hardship to a developer who is genuinely undertaking the development”.

At page 72, Watkins LJ expressed the same opinion.

44. In *Riordan Communications Ltd v South Buckingham District Council* [2000] 1 PLR 45, the issue was whether the subjective intention of the developer was legally relevant to the question whether development had been begun in accordance with section 56 of the 1990 Act. Having reviewed the case law in both England and Scotland, David Vaughan QC (sitting as a Deputy High Court Judge) held that it was unnecessary in law for the developer to establish that at the time of the work relied upon as a *“material operation”* they intended to continue with and to complete the development. Having referred to the *Malvern Hills* case and another which had mentioned *“intention”*, at page 54 the Deputy Judge said –

“There is nothing in either of those cases that suggests that there has to be any intention at the time the works are carried out that they will be carried out to completion or that the works will be continuous”.

45. In *Cynon Valley Borough Council v Secretary of State for Wales* (1987) 53 P & CR 68, 76, the Court of Appeal held that where the required planning permission is granted for the making of a material change in the use of a building, the permission given is to change from use A to use B; it is not merely a permission to use the building for use B for the indefinite future. Consequently, as the Court of Appeal went on to say at pages 76-77, where the change from use A to use B has taken place, the planning permission is *“spent”*.

Ground 1

46. The issue under ground 1 is whether the Defendant erred in law in concluding on the basis of the works evidenced by the CoU Report that, by 19 April 2021, the use of the Bailiff’s Tower had changed from use as a cricket clubhouse to use as a visitor information centre.
47. For the Claimant, Mr Ben Fullbrook submitted that the Defendant’s conclusion was wrong in law for two reasons. Firstly, the Defendant had applied the wrong legal approach to the question whether the change in the use of the Bailiff’s Tower authorised by the planning permission had taken place. Secondly, in concluding that the change in the use of the Bailiff’s Tower had taken place, the Committee had failed

to have regard to material considerations or reached a decision which was otherwise irrational.

The wrong legal approach - submissions

48. In support of his first submission, Mr Fullbrook said that the relevant question was whether, in the light of the evidence, there had been a change in the use of the Bailiff's Tower from use as a cricket clubhouse to use as a visitor information centre. The correct approach was to consider matters in the round, having regard to actual use, the physical state of the Bailiff's Tower and its intended use.
49. It was submitted that the Committee had been misled into legal error by the advice given in the Officers' Report. Instead of being advised to consider and compare the use of the Bailiff's Tower before April 2021 and thereafter, the Committee had been asked to decide whether the Interested Party had done all that could be done to bring about the change of use from cricket club house to visitor centre. The Officers' Report had advised that it was "*difficult to see what more could have been undertaken... given the Covid-19 restrictions in place*" in April 2021 which made it unlawful for people to visit the centre.
50. Mr Fullbrook said that the Covid-19 restrictions were not a relevant factor in comparing the use of the Bailiff's Tower before and after 19 April 2021. Alternatively, insofar as those restrictions were relevant, it was submitted that they were a factor which told against rather than in favour of a finding that a change of use had taken place, since they indicated that there could have been no actual use made of the Bailiff's Tower as a visitor information centre whilst they were in effect.

The wrong legal approach - conclusions

51. In my judgment, the advice given to the Defendant's Committee in the Officers' Report was correct in its approach to the question whether by 19 April 2021, the use of the Bailiff's Tower had changed from use as a cricket clubhouse to use as a visitor information centre. The officers' advice was in accordance with the guidance given by the court in *Howell v Sunbury-on-Thames UDC* (1964) 62 LGR 119 and *Impey v Secretary of State for the Environment* (1980) 47 P&CR 157 to which I have referred in paragraphs 37 to 40 above.
52. On the authority of *Howell* and *Impey*, in considering whether the use of a building has changed from its former use to a new use, the decision-maker can and should take into account both the physical state of the building and (to quote Donaldson LJ) its "*actual use or intended use or attempted use*". Each of those matters is capable of being relevant to the question whether the use of the building has changed from its former use to a new use. The relative importance of any or all of those matters to the resolution of that question will depend on the circumstances of the given case.
53. In *Howell*, Upjohn LJ emphasised that whatever its importance in the circumstances of the case, the physical state of the building or land before and after the date on which the change of use is said to have taken place cannot be disregarded. In *Impey*, Donaldson LJ emphasised that evidence of actual use (in the sense of active day to day use of the premises) is not a necessary pre-requisite in law to a finding that a change of use has taken place. That approach was endorsed by Lord Mance in

Welwyn Hatfield. The absence of actual use is one of the factors which the decision-maker must consider in reaching an overall view as to whether a change of use has taken place. Whether that is the case is a question of fact and degree, to be determined upon consideration of both the physical state of the building and its actual use before and after the relevant date.

54. In order to comply with condition 70 of the planning permission, it was necessary for the change of use of the Bailiff's Tower from use as a cricket clubhouse to use as a visitor information centre to have taken place by 19 April 2021.
55. In the CoU Report submitted on 15 April 2021, the Interested Party had informed the Defendant of the changes made to the physical state of the Bailiff's Tower for the purpose of making the building suitable for use as a visitor information centre. The Interested Party's position was that as at 15 April 2021, the visitor information centre on the upper floor of the Bailiff's Tower was "*established ready for use*".
56. The CoU Report had also informed the Defendant about the actual use of the Bailiff's Tower as at 15 April 2021. Although ready for use as a visitor information centre, the Bailiff's Tower was not actually in use for that purpose. The CoU Report explained why. The visiting public was not at that date able lawfully to gain access to the information centre and would not do so until easing of then current Covid-19 restrictions imposed by the Welsh Government.
57. The advice given to the Defendant's Committee in the Officers' Report was founded on the information provided by the Interested Party in the CoU Report. The officers considered both the changes made to the physical state of the Bailiff's Tower and the position in respect of its actual and intended use.
58. Dealing firstly with the physical state of the premises, officers reported that the Bailiff's Tower as a building had been suitable for use as a visitor information centre, requiring only internal redecoration and refurnishing to ready it for that use. Details were given of the internal works and fitting-out undertaken and the signage installed by the Interested Party for that purpose. I note that the planning permission itself had stated that it did not authorise any changes to the external appearance of the Bailiff's Tower, which is a listed building.
59. Dealing with the question of actual use, officers advised that ordinarily the absence of actual use of the premises would raise a doubt as to whether a change of use had occurred. However, in the present case, there was particular reason why the actual use of the Bailiff's Tower as a visitor information centre had not begun by 19 April 2021. Officers reported the position as being that the Covid-19 restrictions in place in April 2021 prohibited members of the public from visiting the site at that time.
60. It is not in dispute that at the time of submission of the CoU Report, it was unlawful for indoor visitor attractions in Wales to be open to members of the public. That was the effect in the period prior to 19 April 2021 of regulations 4(6A) and 42 of and schedule 3A to the Health Protection (Coronavirus Restrictions) (No.5) (Wales) Regulations 2020 (2020 SI 1609 (W.355)). By virtue of those statutory restrictions, the visitor information centre at the Bailiff's Tower, although fitted out and ready to do so, was not lawfully able to admit visitors prior to the expiry of the period imposed by condition 70 of the planning permission.

61. In these circumstances, I cannot see any basis in law for excluding the impact of the Covid-19 restrictions on the actual use of the Bailiff's Tower in April 2021 from the Committee's consideration of the issue that was before them for determination. On the contrary, it seems to me to be obvious that in considering in the round whether the change of use from cricket clubhouse to visitor information centre had taken place, the fact that the visiting public were not at that time permitted by law to enter the newly fitted out information centre was a relevant factor.
62. In particular, the existence of the Covid-19 restrictions and their effect in restricting the admission of the visiting public to the newly fitted out information centre were relevant to consideration of the intended or attempted use of the Bailiff's Tower for that purpose. On the evidence before the Defendant's Committee, it was the existence and effect of those restrictions which alone had prevented the Interested Party from moving from a state of readiness to actual operation of the visitor information centre in April 2021. There had been no actual use, but that was not through choice or inaction on the part of the Interested Party. The Interested Party had taken the necessary steps to make the Bailiff's Tower ready for use as a visitor information centre. The statutory prohibition on its actual use for that purpose explained the absence of such use. It shed light both on the intended use of the building for that purpose and the degree to which any attempt had been made to bring that use into operation prior to 19 April 2021.
63. It follows from these conclusions that the Claimant's criticism of the particular advice given in the Officers' Report that "*it is difficult to see what more could have been undertaken...given the Covid-19 restrictions*" is no more than a complaint about the officers' choice of language. Read in context, the officers' point was that in the circumstances of this case as they were in April 2021, the fact that the Bailiff's Tower had not been brought into actual use as a visitor information centre should not be taken to rule out a finding that the change of use from cricket clubhouse to use for that purpose had nevertheless taken place. That advice discloses no legal error of approach. On the contrary, it is in accordance with *Howell*, *Impey* and *Welwyn Hatfield* in proceeding on the basis that the absence of actual use of the building for use B is not necessarily fatal to a finding that a change of use from use A to use B has taken place. Or applied to the present case, that the absence of actual use of the Bailiff's Tower as a visitor information centre did not rule out a proper finding that the use of that building had changed by 19 April 2021 to use for that purpose.
64. Although *Impey* and *Welwyn Hatfield* were both cases involving changes of use of buildings converted or designed internally for residential use, it was not suggested that the approach stated by Donaldson LJ at pages 161-162 of *Impey* and later approved by Lord Mance in *Welwyn Hatfield* was confined to residential cases. In my view, that approach should rightly be seen as being of general application, albeit that the relative importance of physical changes as against evidence of actual use of the land or building under consideration will vary depending on the circumstances. See, for example, the case of *Hedges* to which I have referred earlier in this judgment.
65. In summary, in my view, the Defendant followed the correct approach in law. The Committee properly took into consideration the physical state of the subject building in April 2021, the physical changes made to make the building ready for the new use authorised by the planning permission, and the fact that it was not, at that time, open to the developer to bring the premises actively into use as a visitor information centre

because of statutory restrictions which made such use illegal. The Covid-19 restrictions were relevant because they offered a clear explanation for the lack of actual use of the Bailiff's Tower as a visitor information centre. Those restrictions did not necessarily lead to a finding that the change of use authorised by the planning permission had not taken place. On the contrary, the existence of the Covid-19 restrictions enabled the Defendant properly to conclude that the absence of actual use of the visitor information centre was nevertheless consistent with the intention to commence that use in April 2021. Given those restrictions, the Interested Party's attempt to realise that intention and bring the Bailiff's Tower into actual use as a visitor information centre within the time limit set by condition 70 of the planning permission must necessarily be limited to making the premises ready for that purpose.

An irrational decision - submissions

66. Mr Fullbrook advanced four submissions under this heading.
67. Firstly, he submitted that it was irrational of the Defendant to have concluded that the use of the Bailiff's Tower had changed to use as a visitor information centre in April 2021, in circumstances where members of the public were not able lawfully to visit the information centre and the Interested Party had at the time clearly indicated that it would not open the visitor information centre for as long as the applicable Covid-19 restrictions remained in effect.
68. Secondly, he submitted that the Defendant had failed to have regard to the fact that only part of the accommodation at the Bailiff's Tower had been fitted internally for use as a visitor information centre, a single room on the first floor. The remainder of the building was unchanged from its former use as a cricket clubhouse. The Defendant had failed to consider whether the use of the building known as the Bailiff's Tower had changed to use as a visitor information centre, which was the change of use authorised by the planning permission.
69. Thirdly, Mr Fullbrook referred to evidence given on behalf of the Interested Party in response to his claim that, although the door to the visitor centre had been left open (with the premises themselves not being staffed) for approximately one week between 14 April 2021 and 20 April 2021, the door had thereafter been locked and the premises had remained closed. It was submitted that these facts were relevant to the question whether the change of use of the Bailiff's Tower from cricket clubhouse to visitor information centre had been intended or had actually taken place in April 2021. It was contended that the Defendant's Committee was not advised of these facts either in June or September 2023, which resulted in their failing to have regard to a material consideration.
70. Fourthly, it was submitted that the physical works carried out in a single room of the Bailiff's Tower were minimal in nature and very limited in extent. None of those works constituted operational development for planning purposes, since all were internal only and fell within the scope of section 55(2)(a) of the 1990 Act. Aside from the signage and internal notice boards, the redecorations and furniture and fittings were just as consistent with the continuing use of the Bailiff's Tower as a cricket clubhouse as its use as a visitor information centre. The cricket club sign remained in place on the outside of the building after April 2021.

An irrational decision - conclusions

71. I do not consider that any of these four contentions is well-founded.
72. Firstly, as I have explained above, *Impey* and *Welwyn Hatfield* are authority for the proposition that evidence of actual use for use B of a building or land is not a necessary prerequisite in law to a finding on the facts that the use of that building or land has changed from use A to use B. I have rejected the Claimant's argument that the reason for the lack of actual use of the Bailiff's Tower as a visitor information centre was legally irrelevant to the Defendant's determination whether, considering matters in the round, the change of use authorised by the planning permission had taken place in April 2021. If, as I have found, the Covid-19 restrictions on the use of the Bailiff's Tower were a relevant factor for the Defendant to take into account for that purpose, the conclusion that the change of use had taken place was reasonably open to the Defendant. On the evidence before the Defendant's Committee, the building had been made ready to operate as a visitor information centre and its intended use for that purpose was only prevented at that time by reason of the obligation on the Interested Party to comply with the then current Covid-19 restrictions. It was a reasonable response to that evidence for the Committee to conclude, applying the approach stated in the case law to which I have referred, that the change of use of the Bailiff's Tower authorised by the planning permission had taken place prior to 19 April 2021.
73. As to the Claimant's second contention, the CoU Report stated in clear terms the extent of the works carried out at the Bailiff's Tower upon which the Interested Party relied as evidence of having established the visitor information centre –
- “Following submission of the application to discharge Change of Use conditions related to existing buildings at Penrhos, the owner implemented the Change of Use of the upper floor of the Bailiff's Tower as a ‘Visitor Information Centre’.*
- This building is suitable for this use, requiring only internal decoration and re-furnishing to adapt to thus purpose, hence avoiding the need for further Planning approval or Listed Building Consent”.*
74. That narrative of the works undertaken in the building was supported by photographs showing a freshly decorated and carpeted room furnished with a desk and numerous chairs, and information boards with pictorial displays. There were also photographs of a sign board which had been placed at the foot of the staircase leading to the upper room which had been fitted out as the visitor information centre.
75. The Officers' Report drew the Committee's attention to the content of the CoU Report as providing the detailed information submitted by the Interested Party in order to show that the change of use of the Bailiff's Tower to use as a visitor information centre had been implemented in accordance with the planning permission. In my judgment, there is no force in the Claimant's contention that the Defendant failed to have regard to the fact that the visitor information centre had been established in only a single room on the upper floor of the building.
76. Nor do I find any force in the argument that the establishment of the visitor information centre in only part of the building was insufficient properly to justify the

Defendant Committee's conclusion that the change of use authorised by the planning permission had taken place. By virtue of subsections 56(2)-(4) of the 1990 Act, for the purposes of implementing the planning permission in accordance with condition 70, it was necessary for the Interested Party to begin to carry out a material operation. Such an operation included a change in the use of the Bailiff's Tower which constituted "*material development*". It was not suggested by any party that the matters relied upon by the Interested Party in the CoU Report fell within any of the exceptions to "*material development*" stated in subsection 56(5) of the 1990 Act.

77. In this case, the Interested Party sought to implement the change in the use of the Bailiff's Tower authorised by the planning permission through establishing a visitor information centre ready for use in part of that building. In my view, the Defendant was able reasonably to conclude that sufficed as material development for the purpose of implementation in accordance with section 56 of the 1990 Act. In *Malvern Hills* Eveleigh LJ said that very little need be done to satisfy the commencement provisions now found in section 56 of the 1990 Act, provided that what is done is genuinely done for the purpose of carrying out the development. In my judgment, the Defendant was able reasonably to conclude that by establishing a visitor information centre ready for use on the upper floor of the building, the Interested Party had carried out material development for the genuine purpose of implementing the change of use authorised by the planning permission; and that the actions evidenced by the CoU Report were sufficient to commence that development for the purposes for section 56 of the 1990 Act. On the authority of *Malvern Hills*, it was not necessary for the Interested Party to have converted the whole building to use as a visitor information centre in order to discharge condition 70. That being the case, it is unsurprising that some indicia of its former use as a cricket clubhouse would for the time being remain.
78. The Claimant's third contention seems to me to confuse matters. The question for the Defendant to consider and determine was whether the actions taken by the Interested Party in April 2021 had been sufficient to implement the change in the use of the Bailiff's Tower authorised by the planning permission, from cricket clubhouse to use as a visitor information centre. If the Defendant was satisfied on the basis of the evidence provided by the CoU Report that those actions sufficed for that purpose, it was immaterial that the Interested Party had not thereafter kept the visitor information centre in active operation. As was stated in *Riordan Communications Limited*, there is no authority in the case law for the proposition that in order to satisfy the commencement provisions of section 56 of the 1990 Act, it must be shown that the developer intends at the time that the material operation is carried out that the development will be carried out continuously thereafter.
79. In his second witness statement signed on 12 April 2024, Mr Richard Garner of the Interested Party explains why the visitor information centre was subsequently closed

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"The Visitor Information Centre was subsequently closed (i.e. doors were locked) on 20 April 2021 on the basis that it was not being used due to a combination of factors, namely the impact of COVID Restrictions...the limited number of visitors to this part of the Penrhos Coastal Park, and whilst further investment in the Penrhos phase of the development was awaited ...In addition, there had been an ongoing problem with vandalism of buildings across the Site, including the Bailiff's Tower..."

80. That explanation shows that, having taken the steps evidenced by the CoU Report to implement the change of use of the Bailiff's Tower by 19 April 2021 for the purpose of discharging condition 70 of the planning permission, the Interested Party had understandable reasons thereafter for closing the day to day operation of the visitor information centre until circumstances made it worthwhile to bring it back into active use. Had Mr Garner's explanation been before the Defendant's Committee in June and September 2023, it is obvious that it would not have affected the Committee's consideration of the question whether the change of use authorised by the planning permission had been implemented by 19 April 2021.
81. Finally, I cannot accept the Claimant's contention that the Defendant's Committee was unable rationally to find that the works identified in the CoU Report were sufficient evidence to justify the conclusion that the change of use authorised by the planning permission had been implemented. As I have noted above, the Bailiff's Tower is a listed building. Page 71 of the decision notice clearly stated that in granting consent for the change in the use of that building to use as a visitor information centre, the planning permission did not authorise any works to the external appearance of the building. Given that the building was suitable for conversion to use as a visitor information centre, it was to be expected that the physical changes needed to adapt it for that use would be internal and relatively limited in extent.
82. It may be, as the Claimant asserts, that the physical works undertaken in *Howell* and in *Impey* were more extensive. Nevertheless, in neither of those cases was it suggested by the court that any particular significance should attach to the fact that the changes made to the physical state of the building in order to adapt it to its new use do not involve operational development. It was for the Committee to consider the extent of the physical changes attested to by the CoU Report and to form a judgment whether those works were sufficient evidence of adapting the Bailiff's Tower in readiness for its use as a visitor information centre. In my judgment, the CoU Report provided sufficient evidence to enable the Committee reasonably to make that judgment.

Ground 1 – overall conclusion

83. For the reasons I have given, I reject ground 1.

Ground 2

84. In the light of my conclusion on ground 1, it is strictly unnecessary for me to consider ground 2. If, as I have found, the Defendant was correct in deciding that the change of use of the Bailiff's Tower authorised by the planning permission had been lawfully implemented in accordance with condition 70 and section 56 of the 1990 Act, there is no basis for the argument that the planning permission is incapable of further implementation.
85. Nevertheless, as ground 2 was the subject of full argument (and in case I am wrong in my conclusions on ground 1), I should briefly state my conclusions on ground 2.
86. Mr Fullbrook characterised the issue under this ground as one of interpretation: does the planning permission, properly interpreted, require that both the outline and the change of use elements be implemented before the planning permission as a whole

can properly be said to have been implemented? Put another way, must it be shown that the developer has discharged both condition 4 and condition 70 of the planning permission in order to show that the development authorised by the planning permission has begun?

87. It seems to me that Mr Fullbrook was correct to characterise the question in that way. As to approach, I was referred to the comprehensive analysis by Lang J of the principles governing the interpretation of a planning permission and of planning conditions in *Patel v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 2115 (Admin) at [57]-[62]. The essential principle was stated by Lord Carnwath JSC in *Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33; [2019] 1 WLR 4317 at [19] –

“In summary, whatever the legal character of the document in question, the starting-point - and usually the end-point - is to find “the natural and ordinary meaning” of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense”.

88. Here, the issue really resolves down to the interaction between conditions 4 and 70 of the planning permission. It was common ground before me that the planning permission should be read as a single grant of planning consent. In other words, the grant of full planning permission for change of use should not be seen as “severable” from the grant of outline planning permission. I agree with that position.
89. That being the case, the question is whether commencement of the development authorised by the outline element of the planning permission is governed only by condition 4 or depends also upon commencement of the change of use element in accordance with condition 70.
90. Condition 4 provides the commencement dates which apply to “*the development hereby permitted*”. The reason given for its imposition is to comply with section 92(2) of the 1990 Act. Its terms are consistent with those statutory requirements as they apply to the grant of outline planning permission in Wales. Within the overall structure of the planning permission, the context for condition 4 is stated by the preamble to conditions 1 to 61 which identifies those conditions as “*Outline Planning Conditions*”.
91. Condition 70 provides the commencement date which applies to “*the change of use hereby permitted*”. The reason given for its imposition is to comply with section 91(1) of the 1990 Act. Its terms are consistent with those statutory requirements as they apply to the grant of planning permission in Wales. Within the overall structure of the planning permission, the context for condition 70 is stated by the preamble to conditions 70 to 73 which states –

“The following full Planning Conditions are only applicable to the existing buildings identified on drawing No. 020 attached as Appendix 2 and situated within the Penrhos Phase...”.

92. In my judgment, the ordinary and natural meaning of the words of condition 70 is that it applies only to the change of use of existing estate buildings at Penrhos Coastal

Park which is authorised by the grant of full planning permission. Condition 70 does not apply to the grant of outline planning permission for operational development at Penrhos Coastal Park, Cae Glas and Kingsland.

93. Condition 70 is expressed to govern the commencement of “*the change of use hereby permitted*”. That phrase is inapt to extend condition 70 to govern the commencement of the outline elements of the planning permission, each of which authorises extensive operational development the details of which are to be submitted for approval as reserved matters. That reading of the limited embrace of condition 70 is reinforced by the preamble to conditions 70 to 73 in section C which states that the following full planning conditions are “*only applicable to the existing buildings (etc)*”. It would be flat contrary both to the terms in which condition 70 is expressed and the way in which it is introduced on page 70 of the decision notice to read it as extending to the entirety of the development authorised by the planning permission.
94. Conversely, to read condition 4 alone as governing commencement of those elements of the development granted outline planning permission involves no strain on the wording of that condition. That reading of condition 4 is consistent with the way in which it is introduced on page 50 of the decision notice as one of a number “*outline planning conditions*” which are applicable to the 3 sites which are to be developed in accordance with the grant of outline consent. I acknowledge that the same introduction states that “*These planning conditions should be read in conjunction with those listed in Sections B, C, D and E below of this decision notice*”. In my view, that enjoiner presents no difficulty. To read condition 4 in conjunction with condition 70 is simply to recognise that they sit side by side – the one regulating commencement of the outline elements of the development and the other regulating the change of use of existing buildings for which full planning permission is granted. Even if it were thought that this sentence introduces a degree of confusion, I am satisfied that the express terms of conditions 4 and 70 respectively are sufficiently clear to avoid any real doubt as to their application.
95. For these reasons, I would reject the Claimant’s contention that implementation of the outline elements of the development is dependent upon the commencement of the change of use of existing estate buildings authorised by the planning permission in accordance with condition 70. In my judgment, a failure to comply with condition 70 would have resulted in the expiry of the full element of the planning permission. It would not have affected the developer’s ability to carry on with implementation of the outline elements of the planning permission, whose commencement is regulated by condition 4 and not subject to condition 70. Condition 4 has been complied with. In my view, the Defendant’s officers were correct in the advice which they gave to the Committee on 6 September 2023 which I have set out in paragraph 29 above.

Ground 3

96. In the light of my conclusions on grounds 1 and 2, the Defendant’s refusal on 23 October 2023 to open an enforcement investigation was a decision that it was reasonably able to make. Ground 3 fails for that simple reason.

Disposal

97. This claim is dismissed. I have refused the Claimant's application for permission to appeal. My brief reasons for doing so are recorded in the order of the court dismissing the claim. I am very grateful to Mr Fullbrook, Ms Clutten and Ms Hall for their clear and succinct written and oral submissions. I also thank those who assisted them in preparing for the hearing of this claim.