

VALE OF GLAMORGAN BOROUGH COUNCIL
TOWN AND COUNTRY PLANNING, ACT, 1971
THE TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER 1977

REFUSAL OF PLANNING PERMISSION

Miss Meirir Ilewellyn,
per Messrs. Percy Thomas Partnership,
104 Walter Road, Swansea.

On the 23rd August 1985
you made application in writing to the Council for permission to develop land at Sully Island, Sully.

short particulars of the development being as follows:-

NAME OF APPLICANT	DESCRIPTION OF PROPOSED DEVELOPMENT
Miss Meirir Ilewellyn.	Health and holiday hydro.

TAKE NOTICE that the Vale of Glamorgan Borough Council in pursuance of its powers under the above-mentioned Act and Order **REFUSES TO PERMIT** the proposed development for the following reasons, namely:-

1. The proposal would constitute an undesirable intrusion into an area of coast which the Local Planning Authority considers should remain free of development.
2. The proposal conflicts with the policies of protection and conservation for the Island as contained in the approved Local Plan for the Barry/Penarth Coastal Area (Policies 1 and 6).
3. The proposal conflicts with approved Structure Plan policies relating to conservation and the protection of the countryside.
4. There is no satisfactory means of vehicular access to the site under the control of the applicant.

Dated this 15th day of October, 1985


Chief Executive. 

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES ON THE REVERSE SIDE OF THIS FORM.

NOTES

1. It will be most helpful if the application number shown overleaf is quoted in all correspondence.
2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for Wales in accordance with Section 36 of the Town and Country Planning Act 1971 within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Welsh Office, Summit House, Windsor Place, Cardiff.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements *, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him.
3. If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for Wales and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the district in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
4. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 169 of the Town and Country Planning Act, 1971.

* The statutory requirements are those set out in Section 36(7) of the Town and Country Planning Act 1971, namely sections 29(1), 30(1), 67 and 74 of the Act.

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Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
AS AMENDED BY THE HOUSING AND PLANNING ACT 1986
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
APPEAL BY MISS M M LLEWELLYN
APPLICATION NO 85/0788

1. As you are aware, I have been appointed by the Secretary of State for Wales to determine this appeal against the refusal of the Vale of Glamorgan Borough Council to grant planning permission for the erection of a Health and Holiday Hydro on Sully Island, South Glamorgan. I held a local inquiry into the appeal on 30-31 January and 14-15 March, 1990. At the inquiry, applications for costs against your client were made on behalf of the Borough Council, the Nature Conservancy Council and the Glamorgan-Gwent Archaeological Trust Ltd. I deal with these matters separately below.

THE APPEAL

2. The appeal site and its surroundings. The appeal site is located at the westerly end of Sully Island which is separated from the mainland by a rocky causeway some 350 metres wide which can be crossed on foot at low tide. At high tide, the Island is cut off by the sea and notices point to the dangers of attempting to cross on the incoming tide. The Island extends to some 5 hectares and is uninhabited. The central area is low lying and marshy in parts but rises towards its rocky eastern and western ends. The seaward side is marked by cliffs but, on the landward side, there is a stoney beach east of the causeway. The majority of the island is covered with grass with some scrub or trees. There has been some disfigurement of the turf, much of which would appear to have been caused by the military in their recent search for unexploded shells. Otherwise the island appears in an unspoilt state. My inspection, on a fine day, confirmed the evidence given at the inquiry that the Island is visited by small numbers of people, particularly anglers, who walk over when the tide permits. I also noted that part of the appeal site above the cliffs at the western end, was strewn with blocks of mudstone following recent storms. The Island has no gas, water or electricity supplies.

3. The aforementioned causeway links to a part of the mainland known as Swanbridge, where developments comprise several houses, 2 caravan sites, a restaurant and a public house. These are approached most directly from the B4267 by Beach Road which terminates at the car park to the public house.

4. The Proposal. It is intended that the Hydro would provide convalescent services and a whole range of physiotherapy and remedial treatment for recreational, occupational and rehabilitation needs. Medical and nursing services would be available in "a serene and tranquil retreat". The application, dated 22 August 1985, was made in 'outline' but only access and landscaping are to be held over as reserved matters. At the inquiry, it was agreed that access would be gained from the sea with visitors and goods conveyed by a landing craft which would ply between the Island and Barry Docks some 3 miles distant. The vessel would have a bow-loading ramp and passengers would disembark on the beach and be conveyed to the Hydro entrance in a Land Rover or similar vehicle. Such arrangements would, in all probability, necessitate the provision of a driveway formed of pre-cast concrete grass-pavers. Essential services would be provided underground from the mainland.
5. Essentially, the Hydro would provide accommodation for some 25 guests and residential staff. In addition to a kitchen and dining room, there would be a lounge, library, games room, gymnasium, swimming pool, sauna and physiotherapy and medical consulting rooms. A centre, advising on the enjoyment and protection of the island, together with a shelter and emergency telephone, would also be provided.
6. In order to minimise the visual impact of the development when viewed from the mainland, the 2-storey building would be set into the ground in the form of a 'bunker' and grassed over. The building would be some 5 metres removed from the cliff margins and there would be extensive fenestration on this southerly elevation to provide sea views and natural lighting.
7. Policy Considerations. Both the initial Structure Plan, and the recently approved Review thereof, contain policies to promote tourist facilities in the County subject to environmental and land use safeguards which are embraced by other policies. These policies generally reflect long established national planning policies in relation to development in the countryside. More specifically, the approved Barry-Penarth Coastal Area Local Plan identifies a Coastal Conservation Zone, which embraces Sully Island. The Plan makes it clear that in this Zone the aim will be to protect and conserve the areas of geological, ecological or landscape significance and that the only developments which will be permitted will be those which are necessary in the interests of public safety and to check coastal erosion. It is also emphasised that such restrictions will apply particularly to Sites notified as being of Special Scientific Interest.
8. In this connection, the geological interest of Sully Island has long since been recognised and the south-eastern part of the island was designated as a Site of Special Scientific Interest in 1965 under the National Parks and Access to the Countryside Act of 1949. Subsequent surveys of the Island identified its importance as the main high tide roost for wading birds which winter in the area and feed on the mudflats of the Taff/Ely and Rhymney estuaries. Accordingly, in 1986, the whole of the Island was notified as a SSSI following consultation with the appellant who, by that time, had purchased the site.
9. Additionally, at the eastern end of the Island, there is a promontory fort and a Bronze Age burial ground which are scheduled as an Ancient Monument. Whilst it is clear that the proposed Hydro building would not impinge on the scheduled area, Circular 61/81 points out that the effect of development on the setting of an ancient monument is a material consideration.

10. The Central Issue. In the light of the foregoing and the evidence before me I consider that a decision in this case turns on the effect the proposed development would be likely to have on the intrinsic qualities of the Island.

11. Conclusions. Whilst the Island and neighbouring coastal area have not been afforded any special landscape status, it is nevertheless an attractive and largely unspoilt coastline which has been identified in the approved Local Plan as worthy of protection against non-essential development. Whilst this Plan acknowledges the presence of an intensive recreation area in the vicinity of Swanbridge, developments here are concentrated within a relatively small area which is readily distinguishable from the remainder of the undeveloped coastline. Indeed, following my inspection, I am left in little doubt that the views of the Island attainable from Swanbridge contribute significantly to the attraction of visitors to this area.

12. Although it is intended that the proposed 2-storey building would be set below the existing ground level and the roof grassed over, there are no levels on the submitted plans to demonstrate that this could be achieved without introducing a significant alteration to the existing ground profile of the Island. Furthermore, it is inevitable in my view that the entrance on the landward side would have to be illuminated during the hours of darkness and this, together with an attendant increase in human activity, would serve to detract from the visual character of the Island which is presently derived from its totally undeveloped state.

13. In addition to its purely visual qualities, the whole of Sully Island has been notified as a Site of Special Scientific Interest in view of its geological and ornithological significance. With regard to the geological features which were identified in the citation for the SSSI notification and described in further detail in evidence, there was no significant disagreement of fact. However, it was argued on behalf of your client, that these features would not be placed at risk by the development.

14. However, this assertion is made not only in the absence of any detailed ground investigations but, as already indicated, in the absence of any information in respect of site levels. On the evidence that is to hand, it appears to me that there is indeed a very real risk that any excavations in such close proximity to the cliffs on the seaward side would give rise to destabilization. In this connection the cliff exposures at the westerly end of the Island indicate a top soil several inches deep overlying layers of Triassic mudstone (some 4" thick) which vary in depth up to a maximum of approximately 1 metre. It would therefore seem likely that any excavations would result in the removal of these Triassic sediments down to the harder Carboniferous Limestone, as the mudstone is relatively soft. Furthermore, as the mudstone is laminated, it appears to me that its removal by conventional methods to provide foundations would lead to fracturing which would extend either side of the 'cut' but, more significantly of course, in the direction of the cliffs which are already fractured and subject to erosion from the sea. Not only would this expose the development itself to risk but it would clearly accelerate the erosion of geological features which, it was accepted, are of significant scientific interest.

15. With regard to the ornithological value of the SSSI, it was common ground that the number of Dunlin and Redshank overwintering in the Severn Estuary meet the criteria for designation as a Special Protection Area and Ramsar site. Furthermore, it was conceded that counts taken on Sully Island on behalf of your

client did not form a reliable basis for challenging MCC's assertion that Sully Island provides the main winter roost for waders feeding in the Taff/Ely Estuary. Indeed, it was acknowledged that Dunlins were present in internationally important numbers and that they are easily disturbed. It was also accepted that such birds generally roost on the leeward side of the island where visitors would make their approach and departure in the landing craft.

16. In the light of the foregoing I am in no doubt that the proposed development would be likely to give rise to a significant increase in human activity which would be incompatible with ornithological interests. Whilst Sully Island is clearly not the only roost for waders from the Taff/Ely estuary, on the evidence available, it would appear to be the closest, and at present, the least exposed to disturbance. As such it forms an extremely important roost within the Severn Estuary system and should be protected from disturbance.

17. With regard to the promontory fort, this is logically sited on the highest part of the Island to reflect its former defensive role. In the absence of detailed investigations or ground/floor levels I am unconvinced that the proposed Hydro and attendant earthworks would not dominate the setting of this historic monument.

18. In these circumstances I am satisfied that the development proposed would be likely to cause demonstrable harm to those features of the Island correctly identified as being of acknowledged importance. It is therefore necessary for me to consider whether there are any overriding factors which would justify my setting aside such objections.

19. If successful, I would accept that the proposed Hydro would be likely to create additional employment and provide a specialised leisure facility presently not available in the area. However, there is no evidence of any market research for the project and there has been no assessment of viability. Whilst I would accept that an island location would be an attraction, it was conceded that it is not essential and indeed none of the other health farms to which reference was made are so located. Furthermore, whilst it is clearly intended to provide a "5 Star" service for those who can afford to relax in comfort, it appears to me that those in need of convalescent services, including a whole range of physiotherapy and remedial treatments, may find the approach to the proposed facilities somewhat rigorous. There is also to be borne in mind the practicality of siting a single aspect building close to a cliff margin which, following heavy weather, was strewn with mudstone fragments.

20. In the light of these considerations it appears to me that the project is not only speculative but in some respects impracticable. Whilst clearly there is nothing wrong with speculation, it does however follow that the economic benefits which it is alleged would accrue are also uncertain: they do not, therefore, provide a sound basis for setting aside the compelling objections I have previously identified.

21. I have considered all of the other matters raised, but none are of sufficient weight to override the factors which have led me to my decision. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

APPLICATIONS FOR COSTS

APPLICATION ON BEHALF OF THE VALE OF GLAMORGAN BOROUGH COUNCIL

22. On the basis of the advice contained in Circular 5/87 the appellant has acted unreasonably in that it should have been obvious from official statements of policy that the appeal had no reasonable prospect of success; it should not therefore have been necessary for the appeal to have been brought before the Secretary of State.

23. The most relevant statements of policy are clearly set out in the Local Plan for the Barry-Penarth Coastal Area (Policies 1 and 8) adopted in August 1983; only 2 years before the submission of the application. Indeed as early as 1982, when the Local Plan was in an advanced stage of preparation, the appellant's agents were informed quite categorically that the Council would not be minded to permit any building development on the island. Despite this categorical rejection no attempt has been made to challenge the protective policies, contained in the Local Plan and the Structure Plan, at any stage.

24. Only when it was clear that the appellant intended to pursue the proposal, did the Council seek further information but this was denied in 1986 on the basis that any such information would be made available to the Inspector. However, at the appellant's request the appeal was held in abeyance for an unusually long period.

25. At the inquiry, considerable importance was attached to siting the building 'underground', but no information in respect of ground levels has been produced. There has been no serious challenge to the fact that the island has quite correctly been identified as an SSSI. It has simply been maintained that the island has become a litter ground disturbed by motor cyclists and that the development would check such misuse. Comparisons with the Acropolis and the top of Snowdon indicate a far fetched state of mind. The proposal is unresearched and lacks any firm foundation.

APPLICATION ON BEHALF OF THE NATURE CONSERVANCY COUNCIL (NCC)

26. The NCC is a statutory consultee within Schedule 18 of the General Development Order 1988 and it has been established that Sully Island is a site of exceptional concern. It has been designated as an SSSI because of its geological and ornithological interest, work is proceeding in respect of its designation as a Special Protection Area/Ramsar site and there is an Ancient Monument adjacent to the site. In these circumstances it should have been obvious to the appellant that the appeal had no prospect of success.

27. Furthermore, the manner in which the proposal has been promoted is unreasonable. The most apparent flaw in this approach is that the application has continually been described as being in 'outline' when, in reality, the application is a hybrid with only 2 items 'reserved'. This failure to appreciate and consider the true nature of the application is all the more unreasonable when account is taken of the fact that the proposals first emerged in 1982 and the application submitted in 1985. Indeed the document entitled "Sully Island Health Hydro - An Approach to Development" (August 1982) stressed that the appellant was fully aware of the unique qualities of the Island and that advice and consultation would be actively sought with the NCC and other relevant agencies.

28. In the event we have had:

i) a failure to carry out any detailed surveys particularly by engineers/engineering geologists;

ii) no information regarding the running of services to the Island or the likely impact of the development on the stability of the cliff margins and other geological features;

iii) no input into the proposal by experts in geology and ornithology;

iv) notwithstanding the provisions of Circular 52/87 or common sense and professed intentions, no consultations with NCC of any consequence;

v) a witness on ornithological matters who conceded that:

he was not an 'expert', and that his bird counts were unrepresentative;

the landing craft would disembark in the middle of the roosts;

the birds would be easily disturbed;

casual visitors cause little disturbance at present;

the best future management would be to leave the birds alone;

no account was taken of the Special Protection Area/Ramsar proposals.

vi) a witness on geological matters who agreed that:

certain geological features on the Island are 'unique';

the impact on such features could not properly be assessed in the absence of detailed investigations/proposals.

29. Paras. 26-27 of Circular 52/87 require a balance to be drawn between the impact on features of scientific interest and the importance of the development, either locally or nationally, in terms of recreational needs. On this score we have had:

no evidence of need at all;

no costings or evidence of viability;

reliance only on an article from the 'Times';

no market research;

a building sited within the range of rocks thrown up in stormy conditions;

visitors/patients arriving by landing craft and Land Rover.

In the circumstances it was unreasonable to expect a proper assessment of a proposal which has been so poorly researched and prepared.

30. The NCC therefore seek their whole costs, or alternatively, a partial award of costs for calling ornithological evidence particularly bearing in mind the lack of consultation and the fact that the appellant's challenge of the SSSI notation under this head collapsed under cross examination.

APPLICATION ON BEHALF OF THE GLAMORGAN-GWENT ARCHAEOLOGICAL TRUST LTD. (GGAT)

31. The appellant has acted unreasonably in that she has not commissioned her own assessment or even consulted with the free advisory services offered by both Cadw and the Trust. Both would have recommended an assessment.

RESPONSE ON BEHALF OF THE APPELLANT TO THE APPLICATIONS

32. The appellant was fully entitled to exercise her statutory right of appeal and explain the proposal in front of an Inspector appointed by the Secretary of State. The Council rejected the proposal essentially on policy grounds alone and, examined in the light of such policies, the outcome is not inevitable. In this context Circular 5/87 indicates that it is only obvious that there is no prospect of success where stringent policies, ie Green Belt, apply or where previous appeal decisions in respect of like developments clearly militate against a proposal. Neither considerations apply here and a decision will only flow from a fine balancing exercise.

33. Whilst it is accepted that considerable time has elapsed since the appeal was first lodged, there is no evidence to suggest that this has involved the Council in any unnecessary expense and they have not established any other feature of unreasonableness.

34. With regard to the other applications, Circular 5/87 makes it clear that costs are only awarded to 3rd parties in exceptional circumstances and that applications which relate to the substance of the case will generally not be appropriate. If it were to be otherwise, prospective developers could clearly be discouraged from appealing by the sheer weight of the numbers of objectors. The application by the NCC is particularly unrealistic as, if they had genuinely thought that the appellant's proposal was without merit, they would not have felt the need to rebut it.

CONCLUSIONS

35. In determining these applications for costs I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are only awarded on grounds of unreasonable behaviour. Accordingly, I have considered the applications for costs in the light of Circular 5/87, the appeal papers, the evidence submitted to the inquiry by the parties, and all the relevant circumstances of this appeal.

36. With regard to the application made by the Borough Council, it is clear that the proposal ran contrary to policies contained in an approved development plan. Furthermore, as my decision on the appeal indicates, I am satisfied that these policies, are relevant to the proposal and should not be set aside without sound justification. However, as is made clear by Circular 38/85, development plans are one, but only one, of the material considerations that must be taken into account when dealing with planning applications.

37. Having said that, I have to accept that the evidence drawn on behalf of the appellant, by way of challenge to the assumptions on which such policies were based, was woefully lacking. Furthermore, the arguments advanced in support of setting aside such policies were somewhat tenuous and there was a conspicuous absence of detailed information which one would normally expect to accompany a proposal of such scale, particularly bearing in mind the sensitivity of the location.

38. However, it is apparent that the Council did not seek any additional information in respect of the proposal until jurisdiction had passed to the Secretary of State, by which time the appellant was entitled to reserve her position until the inquiry. Indeed, this stance was adopted on the basis of professional advice which Miss Llewellyn had sought from the outset and subsequently she was represented at the inquiry by Counsel and professional witnesses. Whilst, in the event, I found the evidence presented on her behalf to be unconvincing and to some extent misguided, I am unconvinced that the appellant acted unreasonably in pursuing the matter to inquiry. In many respects the proposal was 'unique' and, particularly having been faced with a categorical rejection after only preliminary discussions, her wish to have an exhaustive examination of the project was understandable, albeit, in the event, misconceived.

39. With regard to the applications made by third parties, whilst their contribution to the inquiry in respect of specialist matters was extremely helpful, they were of course under no obligation to attend. Indeed, if as alleged, the appellant's case was so weak as to be unworthy of consideration at an inquiry, then a written statement might well have sufficed. In saying this I do not wish to imply any lack of appreciation of the contribution made by both the NCC and the GGAT, but in my view their allegations in respect of lack of substance and failure to consult do not constitute unreasonable behaviour on behalf of the appellant.

FORMAL DECISION ON COSTS

40. For the above reasons, and in exercise of the powers transferred to me, I hereby determine that the 3 applications for awards of costs against your client be refused.

I am Gentlemen
Your obedient Servant



R Pierce DipTP(Manc) FRTPI
Inspector