

BRECON BEACONS NATIONAL PARK AUTHORITY
PLANNING ACCESS AND RIGHTS OF WAY COMMITTEE
DEVELOPMENT CONTROL RELATED MATTER
ADDITIONAL REPORT

GILESTONE FARM: PROPOSED ACTION

Part One of this report is a sequel to the preliminary report considered at the meeting of this committee on 19 August 2008, and should be read in conjunction with that report. This report sets out the material considerations which Members must consider in taking a decision about what to do about the current operation of a caravan and camping site at Gilestone Farm. It concludes with specific recommendations for Members to consider. Part Two of this report is a confidential report dealing with matters of valuation and compensation.

1 The Issues

1.1 The interim report set out three procedural issues facing the planning authority, summarised as:

Is the original consent valid?

Are the conditions imposed capable of enforcement?

Should the consent have been granted in the first place?

1.2 Validity

This report is written on the basis that the consent referenced P20617 issued in June 2005 is probably valid, notwithstanding the maladministration involved in the processing of the application. The matter is well out of time for a successful application for a judicial review of the processes leading to a grant of consent. The landowners have proceeded to make significant investments in the belief that they enjoyed a valid consent. For all practical purposes, the consequences of any demonstration of invalidity would therefore appear to be similar to those entailed in the BBNPA seeking to regularize the current situation through the use of s.102: i.e. the payment of compensation, albeit that the legal processes needed to reach a settlement might be different.

1.3 Enforceability of Conditions

Similarly, this report is written on the basis that the key conditions attempting to control the numbers of caravans and tents, and the extent of the land on which they may be sited are flawed, and probably incapable of enforcement, at least without extensive and expensive legal debate. The practical consequence is that to regain effective control, the BBNPA will have to impose fresh conditions using s102 TCPA90.

1.4 Should the consent have been granted in the first place?

The original application was predicated on the pre-existence of a consented campsite on fields in the flood plain. At best this appears to have been no more than the availability of permitted development rights to hold camping rallies of limited duration. The proposal should therefore have been treated as an entirely fresh proposal, and the relevant policy considerations are set out in full below. In my view, having weighed and balanced these policies, a well screened site with strictly limited numbers on a limited area would properly have been capable of a positive recommendation. Nevertheless, it should have been an “on balance” recommendation, and decision makers could properly have reached a different conclusion. I have also considered whether the original proposal as then understood should have been advertised as a departure from the development plan. The test is set out in the TCP (Development Plans and Consultation)(Departures)Directions 1999, and requires the local planning authority to notify the Welsh Assembly of, amongst other things, “ any development which by reason of its scale or nature or the location of the land, would significantly prejudice the implementation of the development plan’s policies and proposals.” I do not think that the original proposal as understood from the supporting statement would have significantly prejudiced the development plan, although I consider that a still smaller site would fit better with the provisions of the plan.

1.5 Current situation

However, the campsite at Gilestone is operating well beyond the restraints intended to be imposed by the planning consent granted in June 2005, in respect of the number of touring units (caravans, auto homes and tents) accommodated at any one time, in respect of the areas occupied (see Figure 1), and by virtue of organised events such as a funfair. This extended operation gives rise to the following physical concerns, evident from inspection or raised by members of the public:

- Landscape impact
- Flood risk
- Pedestrian and vehicle traffic generation
- Noise

The policies pertaining to these concerns are set out in section 2. In my view, the current operation does significantly prejudice the development plan, and therefore any explicit decision to do nothing about Gilestone would need to be referred to the Assembly as a departure.

1.6 Landscape impact

This was a concern when the original consent was being considered and the planning application was accompanied by an analysis of the issues and proposals for ameliorating the visual impact of the caravans and tents by the provision of bunding and planting. These proposals have been largely implemented (aside from some concern about the species used, which are not all native to the area), but do not screen the areas of the site being used outside the areas originally proposed for caravans. The result is a wide area of unscreened fields containing eye catching brightly coloured vans, evident both from the A40 and from elevated positions on both

sides of the valley. (see photograph 1) The current visual impact is incompatible with National Park policy.

1.7 Flood Risk

The description of the original planning application was “relocation of existing campsite out of flood zone”. The events of Friday 5th September amply demonstrated the risk of sudden flooding from the River Usk, and the attached photograph 2 shows areas that had been used for caravans and camping this summer under water, and indeed some stored caravans actually in the floodwater. This represents a risk to life and is highly material to any planning decision. Flood risk is the subject of Welsh Assembly Government planning advice contained in TAN 15. Caravan parks are classified as “highly vulnerable development” which should not be permitted within the extreme flood outline defined by the Environment Agency.

1.8 Pedestrian and vehicle traffic generation

The original planning consent sought to limit the scale of operation to 50 caravans and 50 tents. There is independent evidence that at bank holidays, there were well over 200 caravans and tents on the site. (No register is maintained by the site operator to monitor numbers.) This scale of activity generates commensurate activity on local roads, with vans arriving and departing, day trips being made by car, and pedestrian visits to Talybont village, which is classified in the UDP as a “visitor pressure area”. The issue is material to a planning decision. The weight to be given to it should be assessed in relation to members’ views on whether or not the impact on Talybont of a campsite at Gilestone at any given scale is unacceptable, in the light of their own experience and consultation responses. A total of 50 caravans and 50 tents was acceptable to the highway authority on road safety grounds provided sightline conditions were met, and on the understanding that campers would use an off highway footpath access to reach the village. The intensification of use of this path past residential properties has been a matter of concern to some objectors, and the additional numbers visiting the village at peak holiday periods has concerned others.

1.9 Noise

The original consent recognised that noise might be an issue, and sought by condition to prohibit the use of sound amplification equipment. This condition has not been complied with, and the site operators have themselves on occasion, (with the benefit of an entertainment licence) organised events involving amplified music. There have also been private parties related to individual caravans. This activity has generated significant objection from residential properties in the vicinity. Because of the shape of the valley, noise propagates readily up the hillsides, and because ambient background noise levels are low, the noise of activity from the campsite is evident. Noise monitoring under public health legislation is the responsibility of Powys CC., and while noise measurements have been made, no action in respect of statutory noise nuisance has been taken. From a planning point of view, the issue is material: the weight to be accorded to it depends on an assessment of whether the change from the ambient background is serious enough or frequent enough to require attention: clearly the amount of noise will to a significant extent be a function of the number of visitors

present on the site. In the event of any modified consent, any noise conditions would need to be objectively measurable.

2. Policy issues

The starting point for considering any planning decision is the development plan. In this case, the formality is that the adopted development plan is the National Park Local Plan of May 1999. However, the Unitary Development Plan was approved by the NPA in March 2007 for use for development control purposes following statutory consultation and a public inquiry. It is therefore material and should be accorded very significant weight. This section refers to the relevant policies from both documents, and for member's ready reference, the full text of these policies is reproduced at appendix one.

2.1 Local plan

The following policies from the Local Plan are relevant to the Gilestone caravan and camp site.

G3 is a general policy which lists eleven criteria that must be satisfied before any development can be approved. In my view, the current scale of the operation at Gilestone does not fully meet six of these criteria. Its scale siting and appearance are not appropriate to its surroundings and do not respect the quality and character of the Park's landscape. For this reason it may impair the enjoyment of the Park's special qualities. It may also increase the loading on local roads that may be unsuitable because Talybont is already a visitor pressure area. It is reported to have increased noise pollution, and as a result to have been detrimental to the amenities of the occupants of nearby properties, and the species mix in the landscaping is not confined to native plant species. A substantially reduced operation with enforceable conditions could in my view meet these criteria.

G4 requires an environmental statement to be submitted with proposals for major development. None was supplied or requested.

G7 requires high standards of building design. To date, two amenity buildings have been erected under the permitted development rules applying to licensed campsites. These are timber clad structures appropriate to their settings.

G10 requires flood risk to be addressed.

CB4 requires that proposals do not adversely affect the setting of a listed building. In this case Gilestone farmhouse is listed (grade 2), and its wider setting is the farm which surrounds it. This setting has been much altered by the current scale of the campsite, which at peak periods occupies five of the traditional field enclosures. Nevertheless the immediate setting of the farmhouse is its domestic garden, which is separated from the campsite by high hedges and mature trees. For this reason, a

substantially reduced campsite operation would not so adversely affect the setting as to justify complete discontinuance.

AG1 makes the protection of the higher quality grades of agricultural land a material consideration. The land at Gilestone is classified as grade 3, and so falls within the policy. However, apart from the roadways and hardstandings constructed within the core part of the site, the use of the fields for parking caravans and pitching tents does not prejudice the intrinsic quality of the soil.

AG3 requires that the change of use of land for farm diversification should remain subsidiary to the farm enterprise. The current scale of employment at the campsite at Gilestone indicates that it is probably now dominating the farming enterprise in terms of income generation, with five fields now being devoted to the campsite.

R1 states that the compatibility of a proposal with the road hierarchy will help to inform decisions. Gilestone is well located in relation to the A40 trunk route, and can be accessed from the primary road network without traffic needing to pass through intervening settlements. On the other hand its proximity to the pressure point of Talybont will inevitably increase that pressure to a degree directly related to the scale of the campsite.

PU8 states that proposals affecting sites notifiable to HSE on health and safety grounds will not be permitted unless the NPA is satisfied that there is no risk. The local plan proposals map shows a gas pipeline notification area running through the campsite at Gilestone. So far as I am aware, this issue was not considered during the original processing of the application, and may therefore constitute a seventh area of maladministration in addition to the six identified in my interim report. The notification area of 45m from the pipeline not only impinges on the consented area, but the pipeline itself actually runs beneath fields currently used for camping.

T1 sets out five criteria to be satisfied by tourist related development. The current operation at Gilestone does not entirely satisfy four of these. It is not appropriate to its setting in terms of scale, it will increase visitor numbers to a pressure area, it will place additional tourist traffic onto pressure routes and complaints suggest that it has compromised existing residential amenity.

T7 sets out six criteria to be satisfied by new or extended sites for touring caravans, camper vans or tents. The current operation at Gilestone fails to satisfy three of these, in that it adversely affects the landscape, the amenity of existing buildings, and cannot be effectively screened from public vantage points. (However, it is appropriate to reflect that given the requirement under R1 to relate to the main road network, which is usually located in the bottoms of valleys, it will be very difficult to find any caravan sites which comply with R1 which can also be completely screened from public vantage points high on the valley sides. The issue then becomes the degree to which a proposal impinges on the view from public vantage points.)

T8 deals with new facilities at existing sites and sets out three criteria to be met, including a requirement to demonstrate that there will be no adverse effect on the vitality and viability of existing shops and businesses. The existing operation at Gilestone contains a shop in temporary accommodation. In my view this does not enjoy permitted development rights by virtue of any licencing requirement. The shop does not have the benefit of planning consent, and is the subject of proposals for relocation into permanent accommodation in the new application. In my view it is unlikely that visitors from outside the campsite will be attracted to use this shop, whereas some visitors from the campsite are likely to use existing shops and businesses in Talybont. On balance, therefore, I would not expect there to be any adverse impact on existing businesses, provided the scale of the campsite shop, and the nature of the goods sold are limited so as to avoid attracting customers from outside the site.

Section 5 of the plan deals with specific issues within the Talybont community. Para 5.31 states that “because of its location and the large number of facilities for visitors, Talybont has two ‘pressure areas’, in Talybont village itself and at Torpantau. Talybont reservoir is a “vulnerable area”. Tourism development should not be encouraged which would cause harm to these. Otherwise, small scale tourism enterprises that meet the requirements of policy T1 will be supported by the NPA.” This is not a policy, but a supporting statement. Nevertheless there is no evidence that the judgement required to deal with this issue as it is affected by Gilestone was ever exercised. In my view, the scale of the existing operation is likely to add to these concerns to an unacceptable degree

2.2 Unitary Development Plan

To a considerable degree, the Unitary Development Plan continues the policy provisions of the local plan, amplifying and revising where necessary. The relevant policies are set out below.

Part 1, policy 1 states that “ In considering all proposals for development, the NPA will give great weight to conserving and enhancing the Park’s special qualities and its natural beauty, wildlife and cultural heritage which the designation is intended to protect.” The special qualities” are then defined in para 2.1 as:

Landscape and natural beauty

Peace and tranquillity

opportunities for walking and access to open country

open spaces and qualities of remoteness

traditionally managed farmland, and

wildlife.

The Gilestone caravan and campsite therefore needs to be judged fundamentally upon its impact on the landscape, the tranquillity of the valley, and on traditionally managed farmland. Again, it is the scale of the current operation that gives rise to unacceptable impacts on these measures.

Part 1, policy 4 states that “proposals which enable access to opportunities for enjoyment of the National Park will be permitted where the proposal is sustainable in terms of its impact on both the environment and the community in which it is located, and there are no unacceptable impacts on areas which are vulnerable to recreational pressure.” This clearly requires the same sort of judgements as those required by para 5.31 of the local plan, set out above.

G3 sets out thirteen criteria to be met by all development in the Park. It is very similar to policy G3 in the local plan. The additional criteria relate essentially to the protection of water resources, waste recycling and mobility issues. The judgements required are the same as those set out under G3 in the local plan.

G6 deals with design, and is significantly more developed than the equivalent G7 in the local plan. It contains nine criteria. The campsite at Gilestone fails to meet the second which requires development to “sustain or enhance character in townscape and landscape by responding to and reinforcing, where appropriate, locally distinctive patterns and form of development, landscape, culture and biodiversity.

Q16(setting of listed buildings) replicates CB4 in the local plan. The issues are the same as those set out above.

Q20 deals with development relating to the enjoyment of the National Park. It sets out four criteria to be met. These are the same as those in T1 of the Local Plan, and the current operation at Gilestone does not meet them.

Chapter 4 of the UDP develops concerns about sustainability not found in the Local Plan. The text refers to the need where possible to re-use land and to avoid waste. While the policies were clearly not drafted with possible discontinuance in mind, the fact remains that discontinuance and clearance would lead to a waste of resources.

Para 5.18 considers the provision of sites in the wider countryside needed to ensure economic vitality and diversity. It states that recreation, tourist or commercial facilities that are out of scale and unrelated to the landscape or resources of the Park are unlikely to be acceptable.

Para 5.19 goes on to consider expansion of rural businesses: “The NPA recognises that once established, rural businesses may be under pressure to expand to maintain their viability. However, there may come a time when further expansion on the site has an unacceptable effect on the natural beauty, wildlife and cultural heritage of the Park or local resources. The NPA will look critically at this aspect when determining any application for expansion.” In my view the expansion of the campsite at Gilestone is a very clear example of this concern.

ES11 (Protection of Agricultural Land) almost replicates AG1 in the Local Plan, except that Grade 3a land can only be developed if overriding need is demonstrated. Without detailed analysis, it is not known whether the land at Gilestone is grade 3a or 3b: the currently available information is only at a generalized reconnaissance level.

ES17 (Farm Diversification) sets out five criteria to be met by change of use proposals, including the need to comply with ES7 and ES8 which encourage the reuse of existing buildings. The operation at Gilestone fails to meet three of these criteria: the facilities buildings are not located in existing buildings (but see discussion in the interim report about permitted development rights relating to site licences), the diversification is not of an intensity of use which is appropriate to and reflective of its environment and setting within the National Park, and would appear to prejudice the efficient functioning of surrounding agricultural land

ES19 (Storage of Caravans) requires them to be placed in an existing building, or otherwise fully integrated into the landscape. Three further criteria deal with screening, access and related maintenance activity. The storage of caravans at Gilestone manifestly fails to meet the requirements of this policy.

ES21A (New or Extended Sites for Touring Caravans, Camper Vans and Tents) is similar to T7 in the local plan, and sets out seven criteria to be met. The Gilestone operation does not meet two of these because it is not fully integrated into the landscape, and because on site facilities have not been provided by the conversion of existing buildings.

H2 (Development and the Risk of Flooding) picks up the requirements of TAN 15 and prohibits highly vulnerable development on land at a high risk of flooding.

H4 (Notifiable Installations) repeats the requirements of PU8 in the local plan. The UDP proposals map continues to show a consultation area related to a high pressure gas pipeline crossing the Gilestone campsite.

3. Review of Options available to the Planning Authority.

3.1 Do nothing

As set out in my interim report, this would be a clear signal to the site operators that continued expansion is to be tolerated and would prejudice consideration of their new application (if that remains in the hands of BBNPA following consideration of this report) However, consideration of the policy background, an examination of what is actually happening on site and the aspirations for further expansion set out in the new application lead me to conclude that doing nothing would not be a responsible action for the BBNPA. It would also require notification to the Assembly that the planning authority was consciously accepting a departure from the development plan.

3.2 Attempt to enforce the conditions on the existing consent

As mentioned above in section 1, I do not consider that this can be achieved without prolonged and expensive legal debate, the outcome of which is at present uncertain. Since the current situation is prejudicial to policy, timely and effective remedial action is needed, and the use of the existing conditions would not provide that. I therefore conclude that no reliance should be placed on the existing conditions as a means of controlling the camping operation at Gilestone.

3.3 Attempt to revise the conditions on the existing consent

If Members consider, having reviewed the policy issues set out earlier in this report, that a camping operation, either on the scale originally proposed (see fig.2), or somewhat smaller is in principle acceptable, then the use of s.102 to secure revised conditions would be appropriate. It would attract significant compensation payments to the landowners only if they could prove rights in planning law to the use for camping of the more extensive areas used during the past summer. (see fig. 1). However, in the event that this was proved, it is a risk applying to all options for effective control. The possible sums that might arise as compensation are set out in the confidential Part 2 of this report.

3.4 Attempt to secure the discontinuance of the Gilestone Caravan Park.

If Members consider, having reviewed the policy background, that no form of campsite is appropriate at Gilestone, they might wish to consider discontinuance. However, before adopting this course of action, they ought at least to consider the exposure to statutory compensation that would arise, and the consequential impact that this would have on the overall operation of the land use planning function of the NPA, across the whole of its area. The potential sums involved are set out in the confidential Part 2 of this report, because as a matter of public interest they should not be declared prior to any negotiation and subsequent adjudication in the Lands Tribunal. However, if the planning minister at the Welsh Assembly gave consent for discontinuance on planning grounds, the finance minister at the Welsh Assembly would also need to be minded to give consent for the capitalization of the required sum (in a competitive environment for such sanctions). Only then could funds be raised within the rules for prudential borrowing, and/or by selling land assets. The subsequent capital and interest payments would without doubt have a severe impact on the ability of the NPA to carry out its wider statutory planning duties. The precise nature of this impact could only be worked out through a complete budget review following a Lands Tribunal Adjudication and subsequent negotiation of terms with, for example, the Public Works Loans Board.

The certainty of such a severe impact on the wider planning service should in my view be material to the decision, because much wider planning consequences would arise throughout the Park as a result of discontinuing the campsite at Gilestone. Members are however cautioned that this view has not been tested in law, and no directly comparable precedents are available. There is no duty to serve a

discontinuance notice: it may be done if it appears expedient to the authority, having regard to the development plan and to any other material considerations and it is discretionary: a notice may be served.

3.5 Human Rights

Also prior to determining to discontinue the planning consent, Members would need to consider any issues arising under the Human Rights Act. However, while article 8 provides for respect for home and family life, it is not considered that the exercise of planning powers in the way envisaged would infringe this right. While any possible rights to home based employment need to be considered, the caravan site is in policy terms required to be subsidiary to the farming operation, which would remain unaffected, and there is any event a margin of appreciation allowing public bodies to exercise their statutory functions. In respect of the article 6 right to a fair and independent hearing, s103 provides for discontinuance orders to be confirmed by the Welsh Assembly, if necessary after a hearing before an independent inspector.

3.6 Discontinuance coupled with a fresh consent

If Members consider that a smaller campsite operation at Gilestone would be acceptable in policy terms, then it would be possible to discontinue the present consent and replace it with a fresh consent with clear boundaries and enforceable conditions, again by means of s.102. Statutory compensation under s115 would then be based on an assessment of the difference between the current consent and any new consent, and would be substantially less than that arising from discontinuance without any fresh consent. In my view this approach is to be preferred, rather than trying to tidy up the existing consent, especially if a smaller area were to be consented.

My reasons for reaching this view are that a campsite confined to two relatively small, tightly defined and screened field parcels would in large measure meet the landscape protection policies in the adopted development plan. Farm diversification and employment would be maintained, albeit at a scale substantially reduced from recent peak activity levels. Activity on the site, and hence related pressure on Talybont would be reduced to levels acceptable in policy terms. The visually and aurally intrusive marquees would be replaced by the conversion of a solid existing building to the rear of the farmhouse, thus better containing generated noise, which would be further controlled by enforceable conditions.

4. Conclusion

Having considered the problems in construing and enforcing the existing consent, the existing site conditions, the way that the site has been operated since 2006 and the problems and objections that have arisen, together with the policy background and means available to rectify an unsatisfactory situation, I conclude that the best way forward would be to discontinue the existing permission and to issue a fresh

conditional consent. (Such a consent should not be confused with the much larger campsite sought under the new application currently being processed.)

5. Proposed new consent

In order to meet the landscape objectives set out in a range of development plan policies I consider that this fresh consent should relate only to two field parcels (see plan at Fig. 3) with caravans confined to the lower field near the farm house and only tents (with their lesser visual intrusion) allowed on part of the upper field near the canal. This arrangement would allow the continued use of the amenity buildings already erected under permitted development rights. The facilities currently housed in visually intrusive marquees (shop and café) would be removed into converted farm buildings in a manner similar to that proposed by the site operators in their new planning application, albeit that the scale of facility needed would be reduced. This solution would restrict the number of caravans to the hard pitches already installed in the lower field (approximately 50), but would deny the use of approximately thirty pitches established in the adjacent field. (The spacing of the pitches would be a matter for the site licencing under the Caravan Sites Act) The redundant pitches and roadway would be removed as part of the discontinuance.

Very careful consideration would have to be given to the mechanism for such a consent in relation to formal environmental assessment, because the existing regulations were not written so as to envisage action under Section 102.

6. Conditions of Consent

Besides the standard conditions, conditions would be required to address the following matters:

- to limit the number of caravans and tents on site at any time, and to exercise control by means of a site register.
- to prevent permanent residential occupation
- to prevent year round occupation
- to prevent the storage of unoccupied vans other than in existing farm buildings.
- to clearly identify the provision of appropriate facilities for parking, hardstanding, lighting, landscaping, and waste disposal both liquid and solid,
- to clearly identify the amenity buildings required (the two timber clad shower and toilet blocks, and a farm building conversion for shop and café.)
- to secure the maintenance of the landscaping
- to establish a regime for noise control by reference to pre-existing background noise levels and by setting appropriate limits for day time and night time to be measured at designated reference points by the use of established methodologies.

7. Withdrawal of Permitted Development Rights

In order to further remove any ambiguity about permitted development rights for camping on other field parcels, I consider that a direction under Article 4 of the General Permitted Development Order 1995 should be made by BBNPA, removing all

permitted development rights for camping and development related to camping, such as temporary toilets, electrical hook-ups, and recreational facilities including fairground equipment, from all other parts of the farm. This action would require confirmation by the Welsh Assembly and would in principle be compensatable, in addition to compensation arising from the reduced planning consent. The justification would be related to flood risk, landscape protection, noise control and the need to limit pressure on the village of Talybont.

8. Recommendations

Members ought not to reach a conclusion on this open planning report before they have also had an opportunity to consider the material financial considerations related to compensation and legal processes set out in the confidential Part 2 report.

My formal recommendations will therefore be tabled after Members have returned to open session having considered the Part 2 report.

Martin Hooker, on behalf of the Brecon Beacons National Park Authority,
September 23, 2008

LIST OF RELATED DOCUMENTS AND ILLUSTRATIONS

Documents

1. Preliminary report to PAROW dated August 12, 2008
2. Appendix One, containing the full text of relevant Local Plan and UDP policies
3. Part 2 report (Confidential) covering valuation and compensation matters

Photographs

1. [Gilestone landscape setting viewed from the Allt](#)
2. [Flood event, 5/6 September 2008](#)
3. [Satellite coverage, showing campsite](#)

Plans

1. [Extent of current campsite operation](#)
2. [Extent of original proposal \(P20617 \)](#)
3. [Proposed revised consent boundary](#)