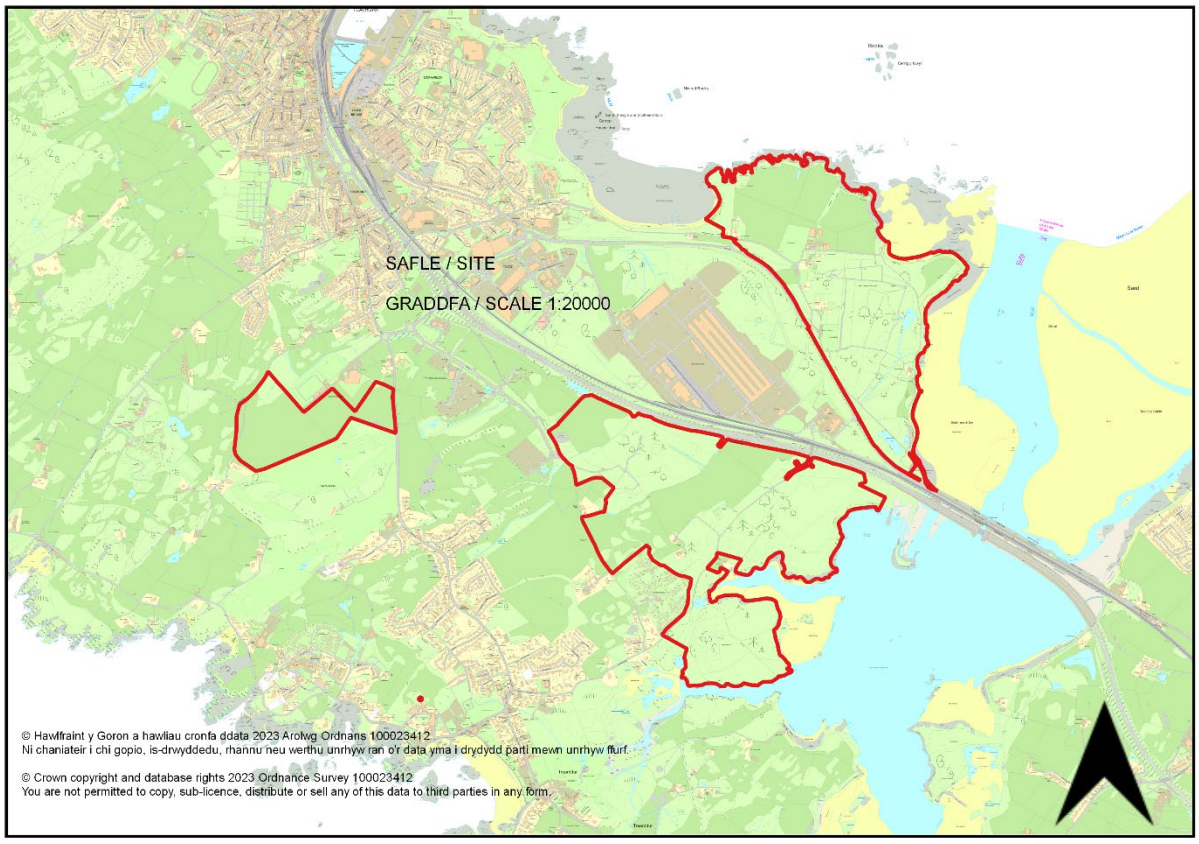
Planning Committee: 06/09/2023 **13.1**

Applicant: Land and Lakes Ltd

Site Address: Land and Lakes, Penrhos Coastal Park, Holyhead



Report of Head of Regulation and Economic Development Service (Rhys Jones)

Recommendation: That Members endorse the position as detailed in this report.

Reason for Reporting to Committee

Members should be aware that this matter has been brought back to Committee following consideration on 7 June in light of a letter received from solicitors (Richard Buxton Solicitors - "RBS") for a local resident alleging that the Committee were misdirected on a number of matters. Whilst officers are confident the matter was properly reported to Committee and the members were fully aware of the issues before them for consideration this opportunity is being taken to confirm the decision taken and the material on which that decision is based.

Main Planning Considerations

The first issue raised by RBS is to seek clarification whether the Committee's decision on 7 June was to resolve that the original hybrid planning permission (the Permission) was validly and lawfully commenced. In response to that question the officers' advice supported by its legal advisers is that no decision on implementation was made by the Committee on 7 June as the applications before them were

made (and the Committee proceeded) in reliance upon the underlying Permission being in existence and capable of being relied upon.

That is that same with all reserved matter or similar applications, which do not as part and parcel of them include the exercise of any statutory function of determining that the outline or similar permission has been lawfully implemented. In such cases, allegations may be made that the permission has lapsed, or is defective in some other way, which may be allegations the Council chooses to investigate (including by asking for more information) or they may be allegations the Council merely notes but does not accept or act upon. For the Council to act on such an allegation, it would need of its own motion, or at the instigation of a party that has standing to do so, to bring into operation any of the processes open to it that include determination of the lawfulness of the underlying permission. Enforcement by the Council would be an example of the former, Lawful Development Certificate an example of the latter.

None of this was done. The process of the Council satisfying itself as regards implementation of the permission (to the extent that it did so as a matter of fact, irrespective of whether it needed to) started as early as 19 December 2020 and appears to have been substantially complete by 30 June 2021 the outcome of which was confirmation communicated to the applicant in writing that the Council was satisfied there had been lawful implementation. Thereafter, all subsequent communications on the subject (including with RBS in September 2022) were merely confirmatory of a position already adopted by the Council. That applies equally to the Committee Meetings of 3 May and 7 June 2023 in which the officers reported the outcome of further advice taken which again was merely confirmatory of the position adopted previously by the Council in light of evidence already before the Council since 2021. The Committee's decision, now before them again for confirmation, again proceeds in reliance on that existing position, without any need to make any new judgement upon it.

The RBS letter then raises a number of issues on which it says the Committee were either misled or were wrong in the findings they made. None of these points raise any new facts for the Council to consider. They are, in effect, simple disagreement on a number of conclusions reached by the Council's legal advisers, that have previously been reported to Committee. The allegations have been considered but none cause the Council's legal advisers or your officers to change their advice or opinions reported to you so far and the issues they address have been adequately dealt with in the reports made so far.

Two of these points however could be read as raising concern over whether the members had material before relevant to conclusions reached by the Council's legal advisers and officers. Whilst both are confident that is not the case, for the avoidance of doubt clarification on both points is offered here:

1. Were the members given direction on whether the path works amounted to a material operation not as part of a road but as an alternative, unspecified material operation? The answer to that is yes, the legal advice obtained by the Council that in the event the path did not constitute a road or part of a road it could still constitute sufficient works to implement the development. This was reported in detail to the members in the report to Committee of 7 under the title *"Whether the works undertaken constitutes a material start*" in the Committee Report.
2. Were the members correctly directed on the possibility of the works to the Bailiff's Tower being severable from the remainder of the Permission? The answer to that is The Officer's Report to Committee and the oral presentation to Members both addressed the implications for the planning permission if the change of use to the visitors' centre had not in fact been implemented after the implementation of the first reserved matters approval ('RMA'), as required by Condition 71, but within the five-year period set out in Condition 70.

The Officer's Report stated:

"[Counsel] 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".

RBS, in its Pre-Action Letter, has argued that this position is wrong in law, on the basis of the decision of the Supreme Court in Hillside v Snowdonia National Park Authority [2022] 1 WLR 4077. In that case, the Supreme Court held that, where planning permission is granted for a multi-unit development, the permission is (absent some clear contrary indication) to be regarded as a permission for a single scheme of development, rather than as multiple permissions for independent acts of development. The effect of this is that a developer will not be able *"to combine building part of the development under that permission with building something different from and inconsistent with the approved scheme on another part of the site".*

The judgment in Hillside therefore principally addresses the question of whether a planning permission is, from a spatial point of view, capable of being severable into different permissions applicable to discrete parts of the site. That is not an issue that arises in relation to the Land & Lakes site.

The issue in the present case is whether, having already implemented the planning permission through the submission and implementation of a first RMA (as is required by Condition 71), the failure of the developer to thereafter effect the change of use within the five-year time limit would result in a conclusion that the whole permission (both outline and full elements) would lapse. The advice that the Council has received is that it would not.

Hillside confirms that a developer is under no obligation to complete all of a development authorised by a given planning permission, and a failure to implement a development in full will not render parts of the development completed at an earlier stage unlawful.

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.

Recommendation

That Members endorse the position as detailed in this report.