



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 1/03/22

gan Iwan Lloyd BA BTP MRTPI

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 16.01.2023

Appeal Decision

Site visit made on 1/03/22

by Iwan Lloyd BA BTP MRTPI

**an Inspector appointed by the Welsh
Ministers**

Date: 16.01.2023

Appeal Ref: CAS-01515-G4Y1D3

**Site address: Land at Car Park Argos/Homebase, Plas Coch Retail Park, Plas
Coch, Wrexham, LL11 2BW**

**The Welsh Ministers have transferred the authority to decide this appeal to me
as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by McDonald's Restaurants Ltd against the decision of Wrexham County Borough Council.
 - The development proposed is erection of a freestanding restaurant with drive thru facility, car parking, landscaping, and associated works, including Customer Order Displays (COD).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. During the appeal, the appellant was notified that the development had the potential capable of increasing the levels of phosphates discharged into the catchment of the River Dee and Bala Lake Riverine Special Areas of Conservation (SAC). Whilst this issue was not identified by the Council as a reason for refusing the planning application it is a matter of importance in the determination of this appeal. This is because the proposed development's foul water would discharge to Five Fords wastewater treatment works (WwTw) which in turn flows into the riverine SAC. Natural Resources Wales (NRW) has published Compliance Assessments of Welsh River SACs against Phosphorus Targets and these in the identified SAC are currently failing to meet phosphates targets.
3. NRW has advised that applications for certain types of development within the catchment of the River Dee should be subject to screening under The Conservation of Habitats and Species Regulations 2017 (the Regulations), and where necessary, the undertaking of a Habitats Regulations Assessment (HRA).
4. This planning appeal has been identified as a development which required screening against the Regulations to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information

provided by the parties. Information has been sought from the appellant and the matter has been elevated to be a main issue in this appeal.

Procedural matters

5. The appellant has provided information in response to the screening request. The local planning authority and Dŵr Cymru/Welsh Water (DC/WW) responded to the information provided and to the request for additional information from PEDW. The appellant was given an opportunity to respond to the information provided and to give any further information which may be relevant to the issue of the impact of the proposal on the integrity of the River Dee and Bala Lake Riverine SAC. A formal consultation with NRW was undertaken on the available information provided as required by the Regulations. Its response has been considered in the determination of this appeal.

Main Issues

6. The main issues in this appeal are:

- The impact of the proposal on the integrity on the River Dee and Bala Lake Riverine SAC, and
- The effect of the proposal on highway safety, and
- The impact of the proposal on community health in terms of the location of the development in relation to a local primary school.

Reasons

The effect on the SAC

7. The River Dee and Bala Lake Riverine SAC is protected under the Regulations. NRW has set new phosphate standards for the SAC following the revised Common Standards Monitoring guidance updated in 2016 by the Joint Nature Conservation Committee. A compliance assessment, conducted by NRW, against these standards found that the River Dee and Bala Lake Riverine SAC was failing these standards.
8. Accordingly, new development within any part of the catchment which will increase the amount or concentration of wastewater effluent or organic materials discharged directly or indirectly into the catchment's waterbodies has the potential to increase phosphate levels within those waterbodies.
9. Consideration of the likely impact of the proposal on the integrity on the River Dee and Bala Lake Riverine SAC and whether 'likely significant effects' alone or in-combination with other plans or projects can be ruled out is set out in the HRA in Annex A of this appeal.
10. The HRA concludes that it has not been shown that the appeal proposal would achieve nutrient neutrality. The risk that the proposal would adversely affect the integrity of the River Dee and Bala Lake SAC cannot be excluded. In such circumstances, the Habitats Regulations would indicate that planning permission should be refused. The HRA has adopted the precautionary principle in carrying out the assessment. It is determined that the risks to the integrity of the qualifying interests and conservation objectives of the River Dee and Bala Lake SAC have not been addressed by appropriate mitigation. Accordingly, the proposed development would have a likely significant adverse effect on the ecological integrity of the European Site and therefore planning permission cannot be granted.

11. It would therefore be contrary to the Regulations and Planning Policy Wales (Edition 11) and would fail to comply with Policies GDP1(h) and EC6 (which have been referred to in the Council's submissions) of the Wrexham Unitary Development Plan 1996-2011.

Highway safety

12. The appeal site is located on the eastern side car park off the minor-arm road exiting the Plas Coch retail park roundabout travelling south which is situated opposite the car park which serves Argos and The Range retail department stores. The retail park can be accessed by traversing several roundabouts (when travelling from the A483), the Junction 5/A483 roundabout (traffic light controlled), the Berse Road/B5101/Mold Road roundabout (traffic light controlled), the Plas Coch roundabout and the Plas Coch retail park roundabout. These roundabouts regulate the flow of traffic to the retail park by holding and releasing traffic accordingly, particularly in relation to the traffic-controlled roundabouts which are larger and handle a larger proportion of traffic than the smaller roundabouts of Plas Coch and Plas Coch retail park roundabouts.
13. As part of the road network in the area these roundabouts work together to facilitate the flow of traffic generally and traffic to the retail park. The retail park on the northern section of the Plas Coch retail park roundabout incorporates supermarkets (Sainsbury's and Aldi and Sainsbury's petrol station), several large retail shops, coffee shop/drive through, Plas Coch public house and restaurant and leisure/health facilities. To the south-east of the appeal site is Glyndŵr University and Wrexham AFC. To the rear of the University a residential development is under construction. This was granted permission for 410 units but has subsequently been reduced to 90 dwellings and would access onto the Plas Coch roundabout which adjoins the appeal site.
14. The appellant's transport assessment has been reviewed by the transport agencies of the Welsh Government and the Council's Highway Authority's appointed consultants, all of whom raise no objection to the proposal. The appellant's transport assessment provided an assessment of weekday AM and PM peak and Saturday peak flows. The transport assessment considered committed/planned developments including the hotel, drive thru coffee shop, the 410 residential units at the University (reduced to 90 dwellings) and the 455 or so dwellings off Mold Road, Stansty, Wrexham (which is and outline application under consideration by the Council).
15. With these committed/planned developments in mind and the proposed development the standard industry modelling of the network junctions has been undertaken. The Plas Coch roundabout, the Berse Road/B5101/Mold Road roundabout would reach capacity in 2036 (based on the assumption that the full extent of the committed/planned development would come forward).
16. The Council is concerned that in the worst-case scenario in 2036 (Saturday peak) the queue would be up to 14 vehicles long on the link road between The Plas Coch roundabout and the Berse Road/B5101/Mold Road roundabout and would be close to theoretical capacity. However, it should be noted that the theoretical capacity is based on all committed/planned developments being built out. Appendix CMC 19.6 of the appellant's traffic assessment in any event shows the queue not reaching the Berse Road roundabout. The new pedestrian controlled light crossing would in conjunction with the traffic light controlled Berse Road roundabout operate in phases and the queues would not occur simultaneously.
17. The transport assessment indicates that in this worst-case scenario the queues would not adversely affect the road network or cause significant delays. The traffic assessment is based on a 2036 scenario which may not come to full fruition. The impact on highway

safety as it presents itself now shows that the proposed development would result in a small change in the level of queues and would have but a minimal impact on the present highway network. I also concur that the Stansty development of some 455 dwellings may not come forward and a scheme of mitigation on the highway network would be expected as part of that development.

18. The appellant makes it clear that the modelling does not factor in the traffic improvements to the A483 Junction 5 proposed by the Welsh Government. The proposed development is not relying on these proposed improvements to justify the proposal, the appellant states that this issue is not within the remit of this appeal. I would concur.
19. I am therefore satisfied that the proposal would not harm traffic flow due to the regulated control of movement by traffic-light controlled roundabouts and that the appellant has shown that there is sufficient capacity to cater for the proposed development's traffic demands. The traffic modelling has established that in future capacity scenarios when planned development may come forward queues would not adversely affect the road network. Even so, if there were issues arising from these planned developments there would be mitigation in-built in the approval to ensure that harm to highway safety should not arise.
20. I note the objection about the parking provision on the appeal site. However, the Council's Highway Authority indicates that the existing parking provision at the retail park is adequate to cater for the needs of the retail park. Across the two car parks and after the development of the site the residual parking provision would be 165 spaces. Inclusive of this number (165 spaces), 29 spaces would be provided for the proposed development. The Council's Local Planning Guidance Note 16 sets out a maximum requirement of 29 parking spaces for the development, which is met by the proposal. The appellant's parking surveys reveal that the maximum parking demand on a Saturday was 138 vehicles, which is below the total residual provision of 165 spaces should this development be permitted. The appellant has undertaken three separate parking surveys and there is no compelling evidence to indicate that these are not representative of the parking demands for the car parks in the area.
21. The proposal incorporates improvements to the network of pedestrian footways and a new pedestrian controlled light crossing which were identified through a Stage 1 Road Safety Audit. Three formal crossing points cater for the pedestrians coming from the University development site and walkways and zebra crossing facilities would be provided within the car park of the appeal site. I consider that this satisfactorily address concerns over accessibility for pedestrians in the area and caters for the increase in pedestrian footfall because of committed development and the development of the appeal site.
22. I have considered all other matters raised by residents and the Council on highway issues. These include the Welsh Government studies on the A483 carriageway, the roundabouts near the site and issues arising at Junction 5 of the A483. I am advised that the Welsh Government have raised no objection to the appeal development in so far as it relates to highway network concerns. Issues have been raised in relation to the parking demand and traffic flow figures from other restaurants in the chain that have been used as justification for the proposed development. The Highway Authority has indicated that the appellant's comparative restaurants studies are sufficiently robust to be relied upon. I have no reason to disagree with the submitted evidence. Other concerns relate to the match day scenarios in terms of traffic and pedestrian demand and the appellant accepts that specific management measures would need to be put in place to deal with these issues.

23. I therefore find that the proposal would not conflict with Wrexham Unitary Development Plan 1996-2011 Policies GDP1(d) and T8 and Local Planning Guidance Note 16.

24. I conclude that the proposal would not harm highway safety.

The impact of the proposal on community health in terms of the location of the development in relation to a local primary school

25. The Council objects to the proximity of the appeal development to Plas Coch Primary School which is reported to be within 400m of the boundary of the school contrary to Local Planning Guidance Note 9 (LPGN 9) Hot Food Takeaways. LPGN 9 is against allowing fast-food outlets within 400m of a school because of concerns about obesity and the consumption of an unhealthy diet amongst children. The appellant refutes that there is a categorical link between the school's proximity and obesity and there are many causal links that may be attributable to the issue of obesity and is not just a factor in relation to locational proximity.

26. However, in this instance the guidance which is not a development plan policy does not specify from which boundary that should be measured. In the light of this, in my view, it should be taken from where children and parents would walk from in relation to the school's entrance and not as a linear measurement where access is restricted by a fence boundary or landscaping. In this case the appellant has shown that the walking distance from the school to the proposed restaurant exceeds the prescribed distance in LPGN 9.

27. I therefore consider that the proposal is not contrary to LPGN 9. The proposal would not adversely impact community health due to the location of the development in relation to a local primary school.

Other Matters

28. Several (tree preservation order) protected trees are impacted by the development and a protected sycamore tree would be removed. However, in the final iteration of the proposed plans the Council's Tree Officer did not oppose the development since an acceptable selected tree replacement would be provided as it would ensure more benefit in terms of crown spread. All other arboriculture and landscaping aspects of the proposal were considered acceptable. I have no reason to disagree with this assessment.

29. I note several other concerns about air quality, litter, anti-social behaviour, noise and disturbance, but there is no compelling evidence presented that would outweigh my consideration of the main issues that I have identified above.

Planning Balance and Conclusions

30. I am required to determine this proposal in accordance with the development plan unless material considerations indicate otherwise. The starting point is therefore the development plan. I have found the development would comply with the development plan policies relating to highway safety and community health issues. These matters are neutral in the final balance as this is normally expected of all developments.

31. A HRA has been carried out and concludes that the proposed development would have a likely significant adverse effect on the ecological integrity of the European Site and therefore planning permission cannot be granted. As such the proposal would be contrary to the Regulations and Planning Policy Wales (Edition 11) and would fail to comply with Policies GDP1(h) and EC6 of the Wrexham Unitary Development Plan 1996-2011.

32. I attach great weight to the policies which seek to protect international and national protected sites because of the importance of those sites for nature conservation. Thus, the appeal proposal should be regarded as conflicting with the development plan when

taken as a whole, despite the matters where I have identified policy compliant. There are no other material considerations that are of sufficient weight to outweigh the conflict with the development plan.

33. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives to embed our response to the climate and nature emergency in everything we do.

34. I therefore dismiss this appeal.

Iwan Lloyd

INSPECTOR

ANNEX A

Habitat Regulations Assessment

Background

1. In January 2021 Natural Resources Wales (NRW) published the results of its Compliance Assessment of Welsh River Special Areas of Conservation (SAC) against Phosphorus Targets. The site lies within the catchment of the River Dee and Bala Lake SAC which is currently failing to meet the phosphates targets. The drainage from the development would flow into the river or its tributaries after first being treated at the Five Fords wastewater treatment works (WwTW).
2. The need for Habitats Regulations Assessment (HRA) is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into British Law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Minister, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
3. Whilst the Regulations provide strict protection, they are not a prohibition on new development or activities. Instead, they involve a case-by-case examination of the implications for each European protected site, its qualifying features, and its conservation objectives. There is no statutory method for undertaking an HRA and the approach can vary on a case-by-case basis. Nonetheless, guidance issued from the European Commission sets out a four-stage assessment process involving Screening; Appropriate Assessment; Assessment of Alternatives and Imperative Reasons of Overriding Public Interest (IROPI). Appropriate Assessment considers the implications of the proposal for the European site in view of its conservation objectives. Steps 3 and 4 are collectively known as derogation.
4. The purpose of this HRA is to report on the impacts of the scheme on the River Dee and Bala Lake SAC, which is a European protected site. The requirements of Regulations 63(3) and 63(4) indicate that regard should be had to the representations of NRW, the Local Planning Authority, the appellant, and the public in carrying out this assessment.

Integrity of the Features of the River Dee and Bala Lake Riverine SAC

5. The appeal site lies within the catchment of the River Dee and Bala Lake SAC. It hosts the following habitats listed in Annex I: tidal rivers, estuaries, mud flats, sand flats, lagoons, including saltwork basins, salt marshes, salt pastures, salt steppes, Inland water bodies, improved grassland and broad-leaved deciduous woodland. In terms of qualifying species the SAC lists: Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachion* vegetation; Atlantic Salmon; Floating water-plantain *Luronium natans*; Sea lamprey *Petromyzon marinus*; Brook lamprey *Lampetra planeri*; River lamprey *Lampetra fluviatilis*; Bullhead *Cottus gobio*; and Otter *Lutra lutra*.
6. The Conservation Objectives for the River Dee and Bala Lake SAC include, amongst other considerations, that the ecological status of the water environment should be sufficient to maintain a stable or increasing population of each feature. This will include elements of water quantity and quality, physical habitat and community composition and structure. The issues associated with maintaining the sites integrity include water quality and flow; river planform and profile; levels of nutrients and suspended solids; the impact

of natural limiting and artificial factors on the range of a feature; abstraction; and diffuse pollution or disturbance to sediments.

Screening

7. The development is described in the header of this decision and is situated on the car park of an established retail park in Wrexham. The proposal would provide a direct connection for foul water from the development to the Five Fords WwTW operated by DC/WW. This foul water is treated and discharged into the SAC river. Five Fords WwTW operates under a Permit limit which regulates the volume of treated foul water that is released into the river system.
8. In response to the screening criteria for assessing planning proposals which are likely to affect phosphorus levels in a riverine SAC the appellant confirmed on 27 January 2022 that the project would increase the volume of foul wastewater entering the WwTW, and that the project would not improve the quality of the wastewater discharges from the site. The third criterion that the foul water would be treated by a private treatment works was also not met and the appellant indicated that a HRA would be required.
9. For developments which do not clearly meet these criteria they cannot be screened out of HRA. The appellant indicates that there would be an increase in additional phosphorus because of this development and therefore a likely pathway for impacts on the riverine SAC. The project cannot therefore be screened out as not likely to have a significant effect on the SAC, nor is it functionally linked to the European site. From the evidence before me, I conclude that there would be likely significant effects arising from this development and therefore an Appropriate Assessment (AA) is necessary.

Appropriate Assessment

10. The appellant has provided information on how foul drainage would be managed on the appeal site as part of the drainage maintenance plan, the point of connection to the nearest main sewer with evidence that an application has been made to the sewerage undertaker for connection together with their formal response. DC/WW indicate that Five Fords WwTW can accommodate additional flows as well as phosphates within its existing phosphate consent.
11. In seeking to obtain further information clarification was sought from DC/WW and the local planning authority and the appellant whether there was treatment capacity at the WwTW in combination with other planned development. No response was received on the in-combination effects from other planned development from any of the parties involved in the appeal. The local planning authority did confirm that it had not undertaken an AA in this case, whilst DW/WW re-iterated its response that Five Fords WwTW could accommodate the foul flows/phosphates load within its existing discharge consent.
12. The local planning authority indicates that the Permit limit/discharge consent at the Five Fords WwTW could not be relied upon for the purposes of the HRA to conclude no adverse effect on the integrity of the SAC. This is because in the light of more stringent phosphates targets on the riverine SAC through its published NRW Compliance Assessment the existing Permit/discharge consent cannot be relied upon. To satisfy the Regulations any new development creating additional loading on the system would require full mitigation. Whilst NRW are currently reviewing Consents there is no certainty concerning timescales or whether this mitigation would be delivered. In the absence of any appropriate mitigation or workable assurances that the development would not result in any increase in harm, no matter how small, the local planning authority is of the view that the development could have an unacceptable impact on ecology of the Riverine SAC.

13. The appellant's response is that NRW's interim guidance and criteria have been met in that there is capacity at the receiving works to treat effluent and that reliance must be placed on the existing Permit/discharge consent imposed on the WwTW by NRW. In this case the appellant asserts that the Permit/discharge consent is legally binding to ensure discharge water quality achieves specified standards and the limit on volume discharges. The WwTW is operating below maximum capacity and there is 'headroom' capacity available, and the same Permit/discharge consent should be relied upon to constrain phosphorus concentration. Whilst the site is situated in Wales, in England, Consents are relied upon for the calculation of impact to receptors and subsequent mitigation calculations. In this case DC/WW has confirmed that the concentration of the nutrients within the discharge would not increase, and it is not clear what impact there would be that requires mitigation.
14. The appellant advises that in England a clear methodology has been provided for the calculation of potential impact from proposed developments, and commercial development are exempt from the need to demonstrate neutrality. The appellant contends that no such methodology has been developed in Wales. Residential development or overnight accommodation increase population to a catchment and are required to demonstrate nutrient neutrality but attempting to estimate the percentage discharged from a place of work or leisure is uncertain because it is assumed that people work and eat in the same catchment in which they live. The approach applied in this case would mean that customers and staff that would attend the proposed restaurant are highly likely to already be located within the catchment and it is therefore unlikely that there would be any increase in phosphorus because of the development.
15. The same scientific and sound logic and methodology developed in England should be applied in this case in Wales which is yet to produce guidance for this purpose. The confirmation from DC/WW of capacity at the Five Fords WwTW is line with NRW advice whereby the impact on the SAC is considered unlikely.

NRW's response to the consultation under Regulation 63(3)

16. NRW indicate that the current Permit/discharge consent was granted prior to the revised water quality target being adopted by NRW's Compliance Assessment. NRW indicate that this is a material consideration because the Permit review on the WwTW is likely to take place over the next 12-18 months. It is indicated that the Permit limit could be tightened and the implications for future capacity at the WwTW remains unknown. Therefore, NRW do not accept that it is appropriate to attempt to rely on the existing Permit/discharge Consent at Five Fords WwTW to determine capacity for the purposes of the AA.
17. NRW indicate that new development within any part of the riverine SAC catchment which will increase the amount of concentration of wastewater effluent or organic material discharged directly or indirectly into the catchment's waterbodies has the potential to increase phosphorus levels within those waterbodies, and as such would have a likely significant effect under HRA.
18. NRW do not consider that reliance should be placed on the existing Permit/discharge Consent. NRW refer to current available advice and indicate that a competent authority under the Habitat Regulations should examine the AA carried out in relation to extant environmental permits along with any new information or changes in circumstance to ensure that an adverse effect on the site integrity can be ruled out. NRW contend that the new tighter phosphorus targets for the waterbodies within the River Dee and Bala Lake SAC must be taken into account.

19. NRW has set new phosphorus targets following revised Common Standards Monitoring guidance and the riverine SAC needs to meet these standards to be considered to be in a favourable condition, and to make a full contribution to achieving favourable conservation status. The Compliance Assessment conducted by NRW, against these standards found a 38% failure rate for the river Dee. NRW contend that the recent baseline condition assessment of the SAC shows that sea, river and Brook lamprey, Bullhead, Atlantic salmon and Ranunculion habitat are all unfavourable within the Dee SAC.

Assessment

20. There can be no dispute that the latest scientific information obtained from NRW's Compliance Assessment that the River Dee and Bala Lake SAC is currently failing to meet its phosphates targets. The Riverine SAC is not in a favourable conservation status and NRW has set new phosphorus targets so that favourable conservation status can be met.
21. This category of development is caught by the requirement for an AA since likely significant effects cannot be excluded in accordance with the Habitats Regulations. In my view, it is not probable that customers of the proposed development would be only people that already reside in the catchment. The development would attract custom from a wide geographical area, for example, away supporters from football fixtures at Wrexham football club, those travelling and passing Wrexham on the A483, those visiting Wrexham for shopping and leisure activities and those people who travel in from other catchments to Glyndŵr University. It does not seem likely that the development would not increase phosphorus inputs into the riverine SAC. It would therefore not achieve nutrient neutrality as is required by NRW guidance, and no mitigation is being put forward by the appellant.
22. I place significant weight on NRW's consultation response that recent phosphorus targets on the riverine SAC should be preferred to the current Permit/discharge Consent on the Five Fords WwTW. This is because the latest scientific information should be followed in preference to a Permit/discharge Consent which was set prior to the Compliance Assessment being undertaken. The new phosphates target represents new information and a change in circumstance which now outweighs reliance on the current Permit/discharge Consent. Where the riverine SAC is already failing under current standards any increase in foul flows from a development which would worsen the impact on the integrity and conservation objectives of the SAC should be resisted.
23. Accordingly, I do not think that the available evidence provides sufficient certainty that the proposal would deliver nutrient neutrality over the lifetime of the development. Having regard to the precautionary principle, I cannot exclude the risk of a significant effect on the conservation objectives of the designated site, it is also necessary to consider the proposals alone and in combination with other plans and projects for which no evidence has been provided.
24. Therefore, it has not been shown that the appeal scheme would achieve nutrient neutrality. I cannot exclude the risk that the proposal would adversely affect the integrity of the River Dee and Bala Lake SAC. In such circumstances, the Habitats Regulations would indicate that planning permission should be refused, unless there were no alternative solutions that would avoid an adverse effect and there were imperative reasons of overriding public importance. There was no evidence on alternatives or imperative reasons of overriding public importance and it is unlikely that this proposal would meet those high tests. Accordingly, I have not sought further evidence on those matters.

Appropriate Assessment Conclusion

25. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this assessment. It is determined that the risks to the integrity of the qualifying interests and conservation objectives of the River Dee and Bala Lake SAC have not been addressed by appropriate mitigation.
26. Accordingly, I conclude that the proposed development would have a significant adverse effect on the ecological integrity of the European Site and therefore planning permission cannot be granted. This conclusion is predicated on the circumstances of the case based on the site's unique context and situation.

Iwan Llloyd

INSPECTOR