

Complaint alleging maladministration by Pembrokeshire Coast National Park Authority in granting consent for a replacement dwelling at Bettws Newydd, Newport (NP/06/076)

The complaint is summarised by the complainant as:

- (i) The development at Bettws Newydd, Newport, as sought departed from JUDP Policy 56, but was not dealt with accordingly.*
- (ii) As such it was irregular to delegate the decision to grant consent to the Chief Executive (National Park Officer).*
- (iii) The Development Management Committee was misled by the "Officers(sic) Report" on issues central to compliance with Policy 56 before accepting the Officers(sic) recommendation to delegate consent.*
- (iv) The National Park Officer failed to secure the amendment which was critical to Policy 56 before granting consent, so that the building now constructed is still not in compliance with Policy, setting a dangerous precedent.*

These points are set out in detail under 8 numbered sections in the letter of complaint, to which I set out my draft comments under the same 8 reference numbers.

I also refer where appropriate to further points raised in the large number of letters and emails sent to the Authority by the complainant, which commenced with a letter and attached report dated 17 August 2007.

Where I refer to JUDP Policy Numbers in my report I shall use the Policy Number of the adopted plan (thus the central policy dealing with replacement dwellings is referred to throughout as Policy 56, rather than Policy 54, its pre-adoption number).

- 1 Whilst 3 of the 4 criteria of Policy 56 ((i), (ii), and (iii)) can be objectively assessed, and were clearly met in this case, the fourth and crucial one, (iv), i.e. "that the new dwelling is no more visually intrusive than the original dwelling", requires a subjective judgement to be made.

The JUDP Inspector considered the definition of terms such as "visual intrusion" in relation to its use in Policy 67, Conservation of the Pembrokeshire Coast National Park. He concluded:

"I am satisfied that the specific policy criteria are sufficiently clearly expressed to enable proper consideration to be given to future development proposals. Policies of this sort, by their nature, require subjective judgements to be made and the present provisions assist in this exercise; any attempts to define certain key terms more rigidly, for example what amounts to "visual intrusion", would lead to an over-prescriptive policy which is neither reasonable nor appropriate".

The Officers in appraising the application identified this criterion as being a central determining consideration, and they reached a reasoned conclusion on it. I accept that their conclusion that the new dwelling would make a positive contribution to the site and its landscape setting is one that you, and many other people locally, would fundamentally disagree with, but I am satisfied that it was a reasoned conclusion that they reached (see also discussion below).

It is important to emphasise at this point that “visual intrusion” in JUDP Policy terms is about more than just “visibility”. The historic walled town of Tenby, for example, occupies a prominent cliff-top location and is highly visible within the landscape, but few people would view it as visually intrusive; rather it is seen as contributing to and enhancing the landscape in which it sits. This part of the Policy is about the acceptability visually of the proposed development in its landscape and/or townscape setting. It is a judgement that Officers and/or Members have to make, based on the individual circumstances of the particular case.

Nevertheless, I agree with the complainant that the issue of visual intrusion should be approached in a comprehensive, structured, way, and I would propose that written guidance be prepared to assist officers in addressing visual intrusion under Policy 56 and other relevant policies of the JUDP.

- 2 I do not consider that Officers misled the community, either knowingly or unconsciously. The Officers’ Report clearly identified the key issues relevant to the case, highlighting the requirement of replacement dwellings to be no more visually intrusive than the original dwelling.

The description of the original dwelling as a large, timber-clad property, while lacking precision, does not I feel fundamentally misrepresent the building or influence the outcome. I calculate from the block plan accompanying the application that the original dwelling had a footprint of 122.5 sq metres (including a 19.5 sq metres shed), which I would certainly not describe as small. The proposed replacement had a footprint I calculate of 185 sq metres, and it was very clearly a very substantial dwelling, as was made clear to Members, both from illustrations shown to them at the March 2006 Committee Meeting and the drawings attached to the Agenda Report itself.

Members were not shown the comparative footprints, and there was no specific reference in the Report to the comparative heights. These were not seen as critical to the acceptability of the replacement building proposed, much greater significance being attached to the “non-traditional” character of the original dwelling and the positive merits of introducing an “innovative, modern design to the area”. It is clear from the Report, that although elevations may have been incorrectly labelled, Officers in their oral

and written presentations were correctly referring to their actual orientation. The illustrations made available to Members clearly indicated that there was accommodation at three levels and two levels respectively, rather than the two and one referred to in the Report. The discrepancy would not have unduly influenced the decision reached I feel.

Nonetheless I do feel that there are good practice points arising from the complaint that the Authority should recognise and take action on. Specifically in the case for applications for replacement dwellings – and other redevelopment proposals – the Officers’ Report should make specific reference to the comparative siting, size and heights of the existing and proposed buildings as relevant contextual information. Where there are errors on plans they should be formally corrected as soon as they become apparent. I would propose to issue instructions to this effect.

- 3 Policy 56 of the JUDP and GE1 of the Local Plan were quoted as the principal relevant plan policies, in accordance with team practice at that time. This practice has in been reviewed since 2006, and today the Committee Agenda item would list and consider all policies that are relevant. That said, in this case the Report does correctly focus on the key determining issue, which concerns the requirements of Policy 56, replacement dwellings.

I am aware that issues have been raised locally in relation to Policy 76 of the JUDP which requires that proposals address resource efficiency and other sustainable design considerations. Policy 76 was not addressed in considering this application. My enquiries have established that at the time the application was appraised and reported to Committee in March 2006, this particular Policy of the Plan, unlike Policy 56, carried no material weight as there were still outstanding issues in relation to the Inspector’s examination of objections to the Plan. This Policy only became operational with adoption of the Plan in June 2006, but its provisions would not have been applied retrospectively, even though the application remained undetermined at that point. This application was treated no differently to other applications in this respect.

- 4 The application was not considered to be a departure from Policy 56 of the JUDP; the conclusion of Officers, accepted by Members at the March 2006 Development Management Committee Meeting, was that it reasonably met the criteria of that Policy. It is clear from the letter sent to the architect following the meeting that the Authority identified the height issue as one it wished to discuss further. Three facets of the design were identified for further discussion, as the complaint notes. I did not interpret the subsequent letters to the complainant as seeking to evade this point.
- 5 The letter to the architect uses the same language as that employed in the Committee Report and Minute – i.e. the need for

further discussion of the matters identified. I do not believe that the Committee had in fact instructed (the complainant's word) Officers to achieve particular outcomes on any of these items. I am satisfied from my interview with the Case Officer that the discussions that took place subsequently did consider the height of the building as well as the roof balcony and entrance elevations, and that she was satisfied that the amendments she negotiated, which did not include a reduction in height of the building, but did include amendments to the balcony and entrance elevations, were sufficient to make the scheme satisfactory, and thus to overcome the identified intrusiveness adjacent to the network of paths within the area. In particular she felt on reflection that any significant reduction in height would have unbalanced the proportions of the building, which would have detracted from rather than improved its overall appearance.

I am however concerned that these outcomes were not recorded in the file and not specifically covered in the Officer's Delegated Decision Report. The fact that amended plans had been received and consulted on is recorded, but it is only by inference that one can see that Officers now considered them acceptable.

I consider that in the interests of clarity and transparency it is essential that there should be clear file notes and confirmatory letters to architects, etc., setting out and explaining the conclusions and outcomes on outstanding issues, and that these should also be covered in the subsequent Report to Committee or Delegated Decision Report as appropriate. Instructions will be issued to staff to ensure adherence to this requirement in all cases in future.

- 6 I note from the complainant's correspondence with the Chief Executive and Development Management Officer that Officers have conceded that the building sits rather higher on the ground than they had expected. This highlights that Officers paid insufficient attention to the issue of levels in approving the application. They were clearly fully aware that the building was a substantial one, and there should have been absolute clarity over the ground level at which it would sit. Any shortcomings of the applicant in this respect should have been rectified during appraisal of the application. **I note that the Development Management Team recognises this failing, and that steps have already been taken to ensure that the question of levels is routinely considered in all cases. I shall look to this being incorporated as a practice note in the Staff Handbook.**

The building will thus be more prominent than might have been the case had Officers paid greater attention to this issue, but I do not consider that it would have fundamentally changed its visual impact, viewed either from near or far.

- 7 I do not agree with the Authority's previous letter which suggested that it had not addressed the height issue in the subsequent discussions with the architect. Rather, the position is that the issue was addressed, but no reduction in height was ultimately required. The Officer's letter does not correctly convey this. I agree with the Development Management Officer that honesty is the only acceptable approach, and there are clearly important practice lessons to be drawn from the concerns expressed by the complainant. The Authority is committed to doing so.

As noted under Section 1 above a decision on visual intrusion is always a matter of judgement on the circumstances of the particular case, and Policy 56 is not prescriptive in this matter.

The Officer correctly identified the key determining considerations, expressed a very positive view about the merits of the proposed design approach and its acceptability within the landscape, and sought and obtained Member support for that view. The Officers identified the need for further discussions with the architect over particular aspects of the scheme, and they negotiated an outcome which they considered reasonable. I do not consider that they have acted irrationally, or in a way that defies comprehension, or demonstrates flawed logic. **I agree that there should have been greater clarity, precision and transparency in recording the outcome of negotiations and the thought process behind them, and this failing will be addressed.**

If visual intrusion were merely an issue of degree of visibility then I would have drawn my conclusions differently, but I am clear in my mind that it is about more than just visibility.

- 8 It is a well established principle that each case should be determined according to its individual merits, and I do not believe that this one decision in any way binds the Authority to particular outcomes in any other cases.

The Authority has taken very seriously the widespread concerns expressed about the acceptability of the visual impact of the replacement dwelling. For this reason it has agreed to carry out an inspection on completion of the dwelling, in conjunction with Newport Town Council, to reassess its judgements in this case, and to reflect seriously on any conclusions it reaches. As has been noted previously, if there are on reflection further lessons to be learned, then the Authority will be determined to do so. I have indicated earlier that there are good practice points that arise from the complainant's concerns, and steps will be taken to apply them where they have not already been acted on.

Other Issues:

I have been disturbed to note that despite reminders over a long period the applicants have still not met the requirements of several of the conditions of consent, including that a landscaping scheme be submitted and approved by the Authority prior to commencement of work. It has been the practice of this Authority, as it is of most local planning authorities, to deal with landscaping requirements as a condition of consent. The consequence, sadly, has been that often applicants do not comply with the requirement to submit their scheme before work commences, leading to a wasteful expenditure of Officer time in pursuing the retrospective submission of the required information. **The Authority is no longer prepared to accept this, and it is reviewing its practices with the intention of introducing a comprehensive new planning application validation scheme, identifying those matters that it will expect to be dealt with in the application as submitted. I will propose that landscaping is included within these requirements, in recognition of the significant contribution it makes to the appearance and ultimate success of a scheme.**

There have been suggestions that the complaint had been targeted at an individual officer, something which the complainant has stressed is simply not the case. I have every confidence that the complaints were motivated purely by concern for conserving the special townscape and landscape qualities of Newport as well as the wider National Park.

I have also noted the issues concerning the requirements of Condition 3 of the planning permission, setting out for approval the external ground and internal finished floor levels. There is a note on file of the February 2007 site meeting at which the levels were agreed, which included the requirement to reduce the finished foundation levels from those pegged out at the meeting. There is no further record on file until a letter was written to the architect some 5 months later, confirming that the Authority was satisfied that Condition 3 requirements had been met. From my discussion with the Officers concerned I am satisfied that the actions agreed at the February site meeting were carried out, but it is not acceptable that there is no confirmatory note of this on the file. **I would propose to issue a reminder to staff on the need to maintain a clear file record of all key actions and outcomes of negotiations.**

Conclusions.

For the reasons set out in my report I conclude that the decision of the authority to grant planning permission for the replacement building at Bettws Newydd is not fundamentally flawed, but is one that was reasonably made, having regard to the procedures of the Authority, the policies of the development plan and other material considerations. I equally recognise the depth of local feeling questioning the soundness of the judgement that was exercised in this case.

The complainant's concerns highlight a number of failings and good practice points; some of these are matters that have already been acted on, but fresh action needs to be taken on others.

It is clear that there has been a loss of trust and confidence in the National Park Authority within the Newport community as a result of the granting of planning permission for what is seen by the complainant and others as an inappropriately designed and prominent building. The proposed visit by the Members of the Authority to view the completed property in association with the Town Council will provide an important opportunity to reflect on the scheme and to focus on the important challenges ahead in respect of achieving more energy and other resource efficient buildings.