

**CORRESPONDENCE (DECEMBER 2009) IN WHICH THE HEAD OF DEVELOPMENT MANAGEMENT EXPLAINS THE REASONS FOR ALLOWING A NEW APPLICATION AND OTHER ITEMS.**

----- Original Message -----

**From:** REG ATKINSON

**To:** Cathy Milner

**Cc:** michaelw; Ifor Jones ; David Prescott ; John Parsons ; Cllr Robin Evans **Sent:** Sunday, December 06, 2009 11:01 PM

**Subject:** Bettws Newydd:Enforcement

Dear Mrs Milner,

We have not heard from you following your meeting with the Authority's Consultant and Mr Nicholas' Planning and Legal Team.

We are writing because we recall that the DMC was told in October that it "*was intended to give the applicant one month in which to advise the Authority as to whether there was any way in which the development could be modified and it was hoped that a further report would be brought to the December meeting of the Committee.*"

You will remember that the resolution, which had almost unanimous support, also stipulated

i) to invite the applicant to explore modifications to the development "*to bring it into line with the 2006 permission and/or to remedy the harm to amenity to an acceptable extent*" and

ii) If this could not be achieved then an "*Enforcement Notice should be issued*".

The steps in such an Enforcement Notice were also agreed in draft.

You subsequently wrote to the Bettws Newydd opposition Group saying of the applicant, "*I have given him one calendar month to submit any such scheme*" and that in your view this would have to be considered by the Committee.

However, in your more recent email to us, which was sent prior to your meeting with the Consultant and the Applicant, you said, "*If a new application is submitted...which is, as far as I can see at the moment, the only way that they (the applicant) could present a further scheme to the Authority*" ... it will be subject to normal publicity etc.

We do not concur with a view that such proposed modifications may only be considered by means of a new and yet further planning application.

It is our view that any such application for planning permission is a separate and wholly different exercise as compared to the submission of modifications by the developer to an existing set of draft steps in an imminently prospective Enforcement Notice, the issue of which is wholly within the discretion and control of your Authority.

Indeed, it is our view that proceeding in such a manner would be a retrograde and indeed **unlawful** procedural measure, which would result only in conceding the initiative back to the developer.

The question as to how to address the situation, with respect to the current acknowledged position of the unauthorised development on the site, has now progressed well beyond consideration by way of yet a further planning application.

An application for retrospective permission has already been considered and refused. The issue of proceeding by means of an Enforcement Notice has been considered and approved in principle. All that is left is to reach a view on any modifications that have been proposed by the developer, within the resolved timeline limits, to the steps as set out in that Enforcement Notice, and proceed accordingly.

We are writing now to say that we fully expect that you will be reporting to the December DMC whether such modifications have been submitted, and if so, the view of Officers as to their appropriateness towards a satisfactory resolution.

We also expect that, if the DMC does not approve any such modifications as appropriate if they have been made, or if they have not been made, then the Enforcement Notice as approved in draft last October will be issued with some urgency.

Yours Sincerely,

R.W. Atkinson,  
Chairperson,  
for and on behalf of BNOG  
Bettws Newydd Opposition Group

----- Original Message -----

**From:** Catherine Milner

**To:** Reg Atkinson **Sent:** Wednesday, December 16, 2009 8:45 AM

**Subject:** Bettws Newydd

Dear Mr Atkinson,

I refer to your recent email, signed as Chairperson to the BNOG, regarding the above matter.

You are I think raising two issues, the fact that I have not responded to the Bettws Newydd Opposition Group since my meeting with the team appointed by Mr Nicholas and the procedure that we are currently following.

In respect of my contacting you, or others, following my meeting I have not done so because I have had nothing concrete to report. Following Mrs Bayes' representation the Authority's own Planning Consultant has looked again at the various figures quoted in the October committee report (as I promised) and he agrees that there are some inconsistencies which need to be resolved. In particular he has advised that there is a need for both parties to satisfy themselves that any figures (particularly levels) put now into the public arena should either be specifically agreed between the two parties or, if there remain differences, they should be clearly itemised as such. To this end Mr Nicholas' planning consultant has been provided with a copy of the Authority's current figures, we have had a detailed discussion that has identified where the potential problems lie, and I await his confirmation of the position. When they are available I will advise you so that you are aware of what has been agreed or otherwise. I would stress that this is

common good practice as recommended by the Welsh Assembly Government as it is essential that we enter any potential appeal process with a Statement of Common Ground which, in this case, must seek to resolve as much as is reasonably possible what were the original, the 2006 approved, the 2009 refused, and the "as-built" site and floor levels.

**In respect of procedure I confirm that the Authority is acting in accordance with the advice received from its barrister.**

I must firstly point out that enforcement is always the court of last resort as confirmed by TAN9 para 5 which states that "...enforcement action is discretionary and should be used as a last resort and only when it is expedient...". The initial requirement of any authority is therefore to explore with the developer what steps if any could be taken to reduce the adverse effects on public amenity to an acceptable level (para 8) . We are currently in that process and, whilst it is taking longer than I hoped, that of itself is not a reason to serve an enforcement notice.

You will recall that the resolution of the Committee was to "explore whether the development can be modified to bring it in line with the 2006 permission and/or to remedy the harm to amenity to an acceptable extent". If the works were/are outside the first part of that resolution - it could not be bought back in line with the 2006 position - then any additional modifications would have to be subject to a planning application. If we set aside that for a moment and consider simply serving an enforcement notice which was appealed against, then Ground A of an appeal would be "that permission should be granted" for exactly what is currently built. What is currently being considered is whether such remedial works can be identified and undertaken which would satisfy the Authority as being an improvement on the existing. If such a scheme can be identified, and it is for the developer to do so not the Authority, then the resultant position will be a scheme that is more acceptable than that completed at present. That is what I understand the developer and his advisers are working on at present and, so as to conform to Government advice, it is appropriate that they are given a reasonable period of time to do so.

In exercising its discretion the Authority must be mindful of this situation and to ensure that, where possible, additional costs in staff and consultants time etc is not wasted. Thus whilst I do not disagree with your letter the practical position is that enforcement action may not achieve the improvement that further negotiation with the applicant may well achieve.

The applicant is seeking to satisfy the second part of the October Committee's first resolution - to remedy the harm to amenity to an acceptable extent - and has indicated that it is intended to submit a further planning application within the next week. I am anticipating, therefore, that I will at least be able to advise members at their December meeting that it has been received though obviously there can be no discussion or consideration of its merits or demerits at that time. That application will be publicised in the normal way and you will have the opportunity, should you so wish, of making representations to the Committee before a decision is made.

If that application is refused then the appellant has the right of appeal. If that happens the Authority, notwithstanding that action, will review the decision in respect of Enforcement Notice at the October Committee meeting and can serve an Enforcement Notice at that stage. If that happens and the applicant appeals that as well will endeavour to persuade the Inspectorate to deal with both appeals together at a single inquiry. Whilst such a process no doubt appears laborious it is necessary to reflect Government advice and to avoid a successful legal challenge of the Authority's processes and procedures.

I anticipate being in a position to confirm progress shortly, therefore, and sincerely hope that the above is helpful to you in the circumstances.

Yours sincerely.

Cath Milner