DEVELOPMENT MANAGEMENT COMMITTEE

21st April 2010

Present: Councillor M Williams (Chairman)
Mrs G Hayward and Mrs F Lanc, Messrs JS Allen-Mirehouse, JA Brinsden, D Ellis, RR Evans, HM George, RN Hancock, SL Hancock, R Howells, M James, RM Lewis, PJ Morgan and WL Raymond.

(NPA Offices, Llanion Park, Pembroke Dock: 10.00a.m. – 12.15p.m.)

1. Apologies

Apologies for absence were received from Ms C Gwyther, Councillor ML Evans and Mr EA Sangster.

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7. Reports of the Head of Development Management

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(c) REFERENCE: 10/033
APPLICANT: Mr N Nicholas
PROPOSAL: Retention of building & completion of a dwelling & landscape proposals in accordance with plans submitted herewith (application made pursuant of Section 73A(1) and 62 of the Town & Country Planning Act 1990)
LOCATION: Bettws Newydd, The Parrog, Newport

In introducing the above-mentioned planning application, the Head of Development Management reported that Members had before them a comprehensive report on what was a complicated issue. She did not want to add more information, but unfortunately correspondence in respect of the proposal had continued unabated in the days leading up to the meeting and she referred in particular to a request from objectors that the Committee considered the revocation of the 2006 planning consent. In order that Members could fully consider the matter, she therefore circulated a Supplementary Report for consideration. In addition, she was aware that Members had also received a letter from the Chairman of the objectors' group regarding Condition 3 of the 2006 consent and the "fall-back" position. Legal Advice had been sought on the matter, and Counsel's Advice was also circulated at the meeting.

Prior to the Head of Development Management taking the Committee through the reports before them that day, the Head of Legal Services advised that Members were being asked to deal with complex issues of fact, law and judgement; they needed time to do this and shouldn't rush their deliberations. He emphasised that if any Member was unclear about any aspect, they were encouraged to seek clarification and explanation from the officers.

Turning to the reports before Members, the Head of Development Management stated that the matter was being discussed because, at their meeting held on the 21st October 2009, Members had agreed the service of an Enforcement Notice to demolish the house. However, Members also resolved (in line with Welsh Assembly Government advice) that the applicant be invited to explore whether the development could be modified to bring it into line with the 2006 permission, and/or to remedy the harm to amenity to an acceptable extent. The applicant had chosen to respond by making the current fresh application, although the proposal had not been submitted until January 2010.

She went on to say that many of the objectors had argued that further consideration of the matter was a waste of public time and money and that the Authority should not have accepted the current application. However, she advised that – once submitted – there was no mechanism for refusing to deal with an application.

As a result, Members had before them an application which, through the accompanying Design and Access Statement, analysed the site, looked at the policy framework, looked at advice on design, and itemised the differences between the 2006 consent and the "as-built" scheme. In this regard, the Head of Development Management pointed out that the exact siting of the "as-built" scheme was 5m closer to the western boundary of the plot and 5m to the south (away from the river, but further up the slope) than the footprint approved under the 2006 permission. In respect of the differences in levels, she referred to Paragraphs 2.3 and 2.4 in the report before Members that day, adding that the main levels highlighted had now been agreed. She wished to clarify, however, that whilst the report mentioned that there remained some discrepancies, the only discrepancy that now existed was the point at which the levels were agreed by officers on site in February 2007 (i.e. either the top of the step or the adjoining wall), which made a difference of some 200mm.

She went on to say that considerable work had also been done on comparing the visible elevations of what might have been expected from the 2006 scheme and the "as-built" scheme; the major one perhaps being the eastern elevation, which currently comprised the exposed lower ground floor elevation without the mitigation measures now proposed.

In order to try and address the amenity issue, a major earthwork and landscaping scheme had been submitted, which was included in the report before Members that day and displayed in the foyer prior to the meeting. The key elements of the scheme were listed at Paragraph 3.14 of the report, but the main points were the creation of two raised banks adjacent to the western and eastern elevations which would, when completed, endeavour to enable the house to be "embedded" into the landscape thus reducing its visual impact when viewed from the surrounding area. These were quite large structures and would extend north beyond the front of the house by some 15m on the eastern bank and approximately 30m on the western side. These were intended to assist the partial screening of the lower elevations of the dwelling from the north, north-east and north-west. This would require the importation of materials to the site equating to about 60-70 lorry loads. There would then be a considerable amount of planting which, as could be seen from the plans enclosed with the report, would be likely – over time – to have a considerable impact on the setting of the house.

The Head of Development Management wished to point out at this stage that, in answer to issues put forward by objectors, the landscaping scheme was not designed to "hide" the house, but to give it a setting which, it was claimed, worked in other locations and could work in this context.

Turning to the policy issues, the report made it quite clear that a view could be taken that to approve the dwelling as a replacement for the original wooden bungalow would be contrary to the policies in the Joint Unitary Development Plan and, more particularly, Policy 56 which required such dwellings to be no more visually intrusive than the original. In addition, Policy 76 required development to be of a form, etc. that respected the contextual relationship of where it was, Policy 68 required adequate landscaping, etc., whilst Policy 78 stated that development could only be carried out where it did not impact on amenity, and Policy 79 required development adjoining a Conservation Area to preserve and enhance that area. Of these, the Head of Development Management considered that there was now an adequate landscaping proposal, although she accepted that the development was more visually intrusive than the original dwelling and, as such, could be refused as contrary to Policy 56.

The 100 or so objectors to the scheme – about half of whom were "local" to north Pembrokeshire – picked up this point in their written comments to the Authority, whilst their other objections were listed in Paragraph 6.1 of the report. Newport Town Council also objected to the proposal. She stated that the Town Council was represented at the

meeting that day and that its current view would be made known to Members.

However, she advised that the Committee also had to consider other material considerations and in particular what she described as the "fall back" position, and she again referred to the Advice that had been sought and which had been circulated at the meeting. In simple terms, she reported that there was a live planning permission for the erection of a large well glazed house on the site – although as previously reported the current dwelling had not actually been built on the approved foot-print. That could still be built provided that the conditions were complied with and work commenced before the 17th October 2011. One of the conditions referred to concerned the agreement of levels, and questions had been raised as to whether the letter of the 26th July 2007 (Appendix 4 in the report) confirming a site visit in February 2007 was or was not binding on the Authority. However, officers took the view that what had been built thus far was unauthorised, therefore the applicant (if seeking to implement the 2006 consent) would have to agree levels with officers. However, as the level agreed was thought to be acceptable in 2007, the question would have to be asked as to what was different in 2010/11 to make that acceptable level now unacceptable. In the officers' view, therefore, the letter carried some weight and could not be ignored. In the circumstances, officers (and their advisers) agreed that the "fall back" position, i.e. the fact that the 2006 permission could still be implemented, could reasonably be considered to carry significant weight.

The Head of Development Management's summed up that, in view of the fact that the 2006 consent could still be implemented and the fact that she believed she had secured a comprehensive landscaping scheme in connection with the "as-built" dwelling, it was recommended that on balance consent be granted, subject to conditions to secure strict implementation with what was now being proposed.

(The meeting was then adjourned for 10 minutes for Members to have an opportunity to give careful consideration to the Supplementary Report and the Advice circulated at the meeting.)

The Head of Development Management then referred to the objectors' letter, which requested:

1. that the Committee refuse the application before them that day;
2. that the Enforcement Notice, which was being held in abeyance whilst the current application was being determined, be issued, and
3. that the 2006 consent be revoked.

She reported that the Supplementary Report circulated at the meeting only dealt with the third issue, as the first two issues were referred to in the original officers' report. As the Supplementary Report made clear there is power in the Town and Country Planning Act 1990 enabling a planning authority to revoke a consent (where the building work had not been completed), if it appears that is expedient, having regard to the development plan and any other material considerations, i.e any such action could only be justified on planning grounds. Further, any such action had to be confirmed by the Welsh Assembly Government unless all parties agreed in writing to the action. She suggested, although she had not discussed the matter with the applicant, that he would not agree to such an option, in which case there would be a Hearing held to deal with the revocation issue alone. It was very important, therefore, that – should the Committee get to that stage – the Authority had sound planning reasons on which to base its case.

The only reason put forward by the objectors was that it would not trigger the payment of compensation to the applicant as the dwelling was in breach of planning consent. However, given that it would be the consent that would be the subject of the revocation, this was not accepted at face value and, if Members were minded to seriously consider revocation, then this matter would have to be deferred to further investigate this element.

The Head of Development Management added that, given that there were no planning grounds for the revocation put forward by the objector, she had had to consider what might be thought a planning reason. To her mind, the 2006 application was considered by Members, who approved it in principle. The relevant policies were addressed in the report, and the application was publicised; she accepted that Members might not like what has actually been built, but that was not a reason to revoke the permission. In her view, there was no planning reason to revoke it.

In conclusion, she recommended that the objectors be advised that there did not appear to be expedient or adequate grounds on which to revoke the 2006 planning permission.

In seeking, in response to a question from Members, to clarify the Advice circulated at the meeting, the Head of Legal Services referred to the objectors' letter of the 16th April 2010 and commented that the objectors appeared to have over-interpreted what they believed the Authority was indicating with regard to the July 2007 letter, and officers accordingly welcomed the opportunity to clarify the position. In short the Authority were not claiming that the letter from the Planners was definitive because it formed a part of a planning permission that had been validly

implemented. Quite the contrary – in fact both the main Report before Members and Counsel's Advice made it clear that the 2006 consent had not been lawfully commenced, and so that the dwelling as built was unauthorised.

However the 2006 consent remained a fall-back position. And should this application be refused and enforcement action be taken, the applicant would still be able to demolish the existing building and revert to a strict implementation of the 2006 consent. In those circumstances he would have to comply with the conditions attached to that consent. In relation to condition 3 (that relating to levels) the main Report anticipated that there would doubtless be argument concerning the effect of the 2007 letter agreeing levels. No concession was made as to the formal legal effect of that letter (it not being necessary to determine that at present); but it was considered that Members should be aware, as a matter of practicality, that it might be difficult to argue in the future that those levels were now unacceptable, when they had previously been found to be acceptable. But it was stressed that the point made in the Report was no wider than that.

Mr P Harries of Newport Town Council then addressed the meeting. He stated that the Town Council had indicated in 2006 that the proposal had been provisionally accepted, subject to modifications being made. However, the modifications, together with several other points of detail had not been met. The Town Council considered that the Committee should be determining a new application, which should be considered against the Joint Unitary Development Plan; he was aware that consent existed but that it should be for a similar building to the original and not for what now existed. Any new application would be considered on its merits, and this proposal would be contrary to Policy 56 as it was more visually intrusive than the original dwelling.

Mr Harries added that the application was retrospective, which was contrary to the Town Council's policies, and was unsympathetically sited; it was also not well designed in terms of scale, bulk and – in particular – height. Many comments had been made about the existing structure, in particular that it was considered to be a modern day carbuncle and similar to a motorway service station. He added that mistakes had been made with regard to the exact siting of the property and to its height and these needed to be investigated. He concluded by saying that the Town Council had resolved to recommend that the application be refused.

Ms L Bellamy then addressed the Committee, saying that decisions had to be taken for sound planning reasons and not because of the weight of objections received. However, she hoped that numbers might mean something to Members and that she was addressing the

Committee on behalf of the "man in the street" – the person who would never normally countenance writing to the National Park Authority. She stated that, in the summer of 2007, few interested people had seen the drawings, but that it was looked upon as a modern, somewhat large, building but not totally unacceptable. She made the basic assumption at the time that the dwelling would be built in accordance with the submitted plans, but now the dimensions were suddenly apparent to all.

She went on to say that she had gathered support with two petitions that were placed in shops in Newport, where over 100 signatures had been collected to express their disquiet. Feelings were running high in the area as could be seen by the establishment of an Opposition Group. She asked Members not to let everybody down.

Mr N Paul stated that he had not expected to be addressing the Committee again on this issue; he raised concerns that Members were merely considering a new landscaping scheme, with the only difference being that yet more lorries would be used to import materials to add to the many lorry loads that were used to increase levels on the site and the 50 tonnes of concrete that had been used in the foundations. He was of the opinion that the whole development was an ecological disaster, and that the developer had paid no attention to the conditions of the planning permission. He urged Members to refuse the application.

Mr R Atkinson reminded the Committee that a similar retrospective application, which had been recommended for approval at the time by officers, was refused by Members in June 2009. Also, in October 2009, the Committee considered a report in which officers reported that the development unacceptably affected public amenity. He was disappointed that the current application was merely in connection with a landscaping scheme, as the dwelling remained the same and was still, therefore, not in accordance with the submitted plans. He circulated plans at the meeting which highlighted the comparative positions and footprints of the original, approved, and "as-built" dwellings. He stated that the officers agreed that the "as-built" structure was not in compliance with the submitted plans and he contended that a landscaping scheme would not change that.

Mr H Williams was of the opinion that the conditions of the 2006 planning permission should have been met, and the current proposal glossed over that fact. He informed Members that many trees and shrubs had been removed from the site, the stream had been culverted and protected wetlands had been removed. The topography of the site had been changed completely and the dwelling had been erected in the wrong place; all of which had a tremendous effect on Mr Williams' property, which was now prone to flooding. He added that other properties had

also experienced similar problems and he had observed large amounts of water running onto the Coast Path since work had taken place on the site. He considered that the report before Members that day was an affront to their intelligence and integrity and asked the Committee to refuse the application.

Mrs S Bayes referred to the plans submitted with the 2006 planning application and questioned whether Members realised when they resolved to delegate the decision to officers that the end result would be the "as-built" structure. In her opinion, the difference between the 2006 drawings and the "as-built" dwelling was very marked; it had not been built in the right place and increased its visual intrusiveness as a result. The approved 2006 drawings showed the dwelling to be sunk into the ground, but this was now found to be not the case and the "as-built" structure was a storey higher than it should have been. She added that massive amounts of soil had been imported in to the site.

She then referred to the time, in 2007, when the foundations were built and the steel structure erected, and when officers said that the building was higher than expected. She emphasised that the "fall back" position was very different to what had been built.

Mr C Draper then addressed the Committee. He too reminded Members that a retrospective application had been refused in 2009 and that expert opinion sought at that time concluded that the right decision had been made. He stated that a further period had been granted to the developer to make adaptations but all that had been received was a landscaping scheme, which did nothing to modify the "as-built" structure. He asked Members to refuse the application before them that day and to endorse the enforcement notice without any more time elapsing.

Mr R Manson stated that he had lived next door-but-one to the site until some 18 months previously. He appreciated the Chairman allowing Members and the public the opportunity to consider the Advice received from Counsel. He referred to the comments of the Head of Development Management, when she stated that the objectors had failed to suggest planning grounds for revoking the 2006 permission. However, he was of the opinion that the Committee had been advised that a 1-2 storey dwelling would be built and that it would have a south-facing aspect. He also contended that Members were led to believe that the ground floor would be sunk into the landscape. He stated that everyone made mistakes, but Members now had an opportunity to address the situation by revoking the 2006 permission.

He then referred to the officers' letter of the 26th July 2007, stating that this was the first time that the letter's significance had been highlighted,

and he urged the Committee to heed the Advice given by Counsel and to refuse the application.

The applicant's agent, Mr R Williams, then addressed the Committee. In the first instance he wished to remind the Committee that his client had the benefit of an extant planning consent, therefore he could legally demolish the current dwelling and rebuild an almost identical building, albeit at a significant cost to himself. He then pointed out that there were, in his opinion, only minor differences between the "as-built" dwelling and the 2006 permission and that any changes had been brought to the attention of the National Park Authority all along.

He stated that the front elevation, which faced out to sea, was 1.4m narrower than the original, whilst the eastern elevation was 0.9m longer and the ridge height was 20-40cms higher in order to comply with Building Regulations. He added that he believed that the "as-built" dwelling had less impact when viewed from the sea than would have been the case with the 2006 permission.

He then went on to say that his client had employed Wales' leading landscape architect to look at developing a scheme for the site and that officers had acknowledged that the scheme was much improved. He considered that one of the positives to be taken from this was that the development would be set in an improved landscape scheme.

Finally, he acknowledged that the objectors had been very thorough and had left no stone unturned in respect of their case. Despite this, however, Members should consider the application before them on planning grounds only and not on the strength of the opposition. He asked the Committee to approve the application.

Mrs F Lanc was concerned that the development was in conflict with several of the Joint Unitary Development Plan's policies, but in particular Policy 68 (Development and Landscaping/Habitat Enhancement). She feared that the original wetland habitat had been lost by the work carried out on the site. The Head of Development Management replied that the landscaping scheme as now submitted had been designed to restore the wetland area and to increase its size, although Mrs Lanc contended that the habitat would never be the same as it was originally.

Mrs G Hayward was of the opinion that the landscaping scheme was inappropriate for this exposed site, which faced strong winds blowing in from the sea. In addition, the land had been made up from imported material, which would make it more difficult for a scheme to prosper. She added that she, too, was concerned about the loss of the original habitat.

Councillor RR Evans reminded Members that he had proposed at the last meeting that planning permission be refused; in his opinion, circumstances had not changed in the interim and the "as-built" dwelling remained the same. The only thing that was different was the landscaping scheme, which he countered would not prosper. Other Members agreed, adding that the "as-built" structure was bigger than the 2006 permission, and this had been exacerbated by the fact that the ground levels had been altered in the interim. They stated that the dwelling did not sit well in the landscape and should, therefore, be refused.

The Head of Legal Services then went on to sum up for Members the legal context for the decision to be made that day. What was before the Committee was an application under Section 73A of the Town and Country Planning Act 1990, i.e. an application for retrospective consent for development which had already been carried out. Such an application had to be treated as though it were a fresh application and be determined in the light of the planning circumstances existing at the time the matter was considered. The decision had to be made (as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004) "in accordance with the Development Plan, unless material considerations indicate otherwise".

The Development Management Officer's Report before Members that day confirmed that the current application was contrary to policy. But it also highlighted that the 2006 consent was a significant material consideration. Members were consequently required to carry out a balancing exercise. However, he considered he should clarify that what had been built to date was not in accordance with the 2006 approval, and so remained unauthorised. That was the basis of the Committee's decision in October 2009 to take Enforcement Action, and it was still open to the Authority to pursue enforcement.

The 2006 consent, however, remained implementable, and that was the applicant's "fall back" position, which represented a material consideration which the Committee needed to take into account. In the light of this "fall back" position, her assessment of the differences between the current application and what had already been approved, and also the enhanced landscaping scheme submitted by the applicant, the Head of Development Management, on balance, had recommended approval of the amended application. The Head of Legal Services added, however, that the decision was for Members to make.

Another debate ensued, whereby certain Members expressed concern at the fact that the "as-built" dwelling was significantly different to what was agreed in 2006. They considered that the dwelling was contrary to

adopted local and national planning policies and did not blend into the landscape. Other Members questioned whether the differences were so great as to merit refusal, particularly when considering the extant planning permission that was still in place.

The Chairman then reminded the Committee that a request had been received from objectors that the 2006 planning permission be revoked, to which the Head of Legal Services advised that Members would have to identify material planning reasons for so doing. Mr R Howells then stated that, if the Committee was minded not to revoke the 2006 permission, it did not alter the fact that the "as-built" dwelling did not comply with that consent. The Head of Legal Services replied that Members may indeed consider it appropriate to distinguish between the exceptional step of revoking an existing consent, and deciding whether to take Enforcement action against works that did not comply with that consent. The Head of Development Management added that, if the Committee decided to revoke the 2006 permission, then the applicant could lodge an appeal against that decision and an Inquiry would then be held to determine the matter.

Upon the matter being put to the vote, it was **RESOLVED** unanimously not to revoke the 2006 planning permission.

In view of the above-mentioned decision, the Committee was then asked to determine the planning application currently before them. Upon being put to the vote, it was **RESOLVED that planning permission be refused for the following reasons:**

1. The dwelling as constructed does not achieve an acceptable level of integration with the land form and setting of the site. As a result it is significantly more prominent and visually intrusive than both the original dwelling and the replacement dwelling approved under permission NP/06/076 it does not reflect the proportions of the then buildings on The Parrog and it is therefore contrary to the following policies of the Joint Unitary Development Plan:

<u>Policy 56 – Replacement Dwellings</u>
Planning permission will only be granted for the replacement of a dwelling if:

i) the present dwelling has a lawful residential use: and
ii) the present dwelling is not the result of a temporary permission; and
iii) the new dwelling is sited to preclude retention of the dwelling it is to replace or there is a condition or planning obligation to

ensure the demolition of the latter upon completion of the new dwelling; and

iv) the new dwelling is no more visually intrusive than the original dwelling.

In that it conflicts with criterion (iv).

<u>Policy 67 – Conservation of the Pembrokeshire Coast National Park</u>
Development and land use changes will not be permitted where these would adversely affect the qualities and special character of the Pembrokeshire Coast National Park by:

i) causing significant visual intrusion; and/or
ii) being insensitively and unsympathetically sited within the landscape; and/or
iii) introducing or intensifying a use which is incompatible with its location; and/or
iv) failing to harmonise with, or enhance the landform and landscape character of the National Park; and/or
v) losing or failing to incorporate important traditional features.

In that it conflicts with criteria (i) and (ii) and (iv).

<u>Policy 76 – Design</u>
Development will only be permitted where it is well designed in terms of siting, layout, form, scale, bulk, height, materials, detailing and contextual relationship with existing landscape and townscape characteristics. The effects of layout and/or resource efficiency in building such as orientation, water conservation, adaptability and the use of environmentally sensitive materials will also be important considerations in the evaluation of planning applications.

<u>Policy 78 – Amenity</u>
Development will only be permitted where it does not have an unacceptable impact on amenity, particularly where:

i) the development is for a use inappropriate for where people live or visit; and/or
ii) the development is of a scale incompatible with its surroundings; and/or
iii) the development leads to an increase in traffic or noise which has a significant adverse impact; and/or
iv) the development is visually intrusive

In that it conflicts with criteria (ii) and (iv).

2. Notwithstanding the fall back position encompassing planning permission NP/06/076 to the extent that it is relevant the proposed landscaping scheme will not reduce the visual intrusion such that the conflicts identified in Reason 1 will be satisfactorily mitigated.

In view of the Committee's refusal of planning permission, the Head of Legal Services invited Members to consider making a formal resolution confirming instructions to officers to take Enforcement Action against the unauthorised building. This was proposed and seconded, but at this point the Authority's Monitoring Officer advised that as there was already, from the October 2009 meeting, a substantive resolution to take Enforcement Action, a further resolution was not needed (and may cause a measure of confusion) – to which Members assented.