

DEVELOPMENT MANAGEMENT COMMITTEE
23rd March, 2011

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

OTHER PLANNING MATTERS:

BETTWS NEWYDD, NEWPORT

Purpose of Report

To respond to a request raised by the Bettws Newydd Opposition Group (BNOG) to make an order under Section 102 of the Town and Country Planning Act 1990 requiring the discontinuance of use of and/or removal of the as-built dwelling at Bettws Newydd, Newport. (ref NP/10/033)

Introduction/Background

The Inspector's decision to allow the retention and completion of the dwelling at Bettws Newydd, Newport and to quash the enforcement notice in respect of the same was made on the 10th December 2010 and a full copy of that decision has been provided to members previously. The decision to allow the appeal was based on the fact that there was a fallback position in the 2006 approval of a dwelling on the site. This fallback position was considered to be a material consideration of sufficient weight to justify a decision contrary to the development plan.

A letter was sent to the Authority from the BNOG on the 29th December 2010 but due to the Christmas holidays was not received until 4th January 2011. The letter requested (amongst other things) that the Authority seek legal advice on the prospects for mounting a successful court challenge to the Inspector's decision; and/or in respect of making an appeal through the courts against the decision or to allow the BNOG the benefit of such legal advice should the group proceed to challenge the decision themselves. The letter also requested that consideration be given to making a discontinuance order under Section 102 of the Town and Country Planning Act 1990.

In respect of the request to challenge the Inspector's decision and/or to disclose legal advice on this matter to the BNOG, the actions taken in respect of these matters have been fully explained in the Chief Executive's report to the Development Management committee meeting on 26th January 2011, with the outcome that no challenge was undertaken..

Members were advised at the January meeting that the request for the Authority to make a discontinuance order would be brought to a future meeting of the DM committee, and this report no responds to that request.

Reasons for Request for a Discontinuance Order

The BNOG has requested that a discontinuance order be made on the grounds that as it is accepted that the building is not in compliance with Development Plan policies, the Authority could now issue an Order, under Section 102 of the Planning Act, requiring the removal of the as-built building, even though the development has only just received retrospective consent.

BNOG argues that the Authority owes this much to the people of Newport and Pembrokeshire and to the very many visitors to the area who, they add, have been distressed by this development and will continue to be so, unless such action is taken. The group therefore asks that this possibility be given very serious consideration.

Discontinuance Orders and their Uses

For members information, Section 102 of the Town and Country Planning Act 1990 enables Local Planning Authorities to make discontinuance orders “If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—

- (a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land; or
- (b) that any buildings or works should be altered or removed, they may by order—
 - (i) require the discontinuance of that use, or
 - (ii) impose such conditions as may be specified in the order on the continuance of it, or
 - (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,

A discontinuance order can be made in relation to either lawful or unlawful uses of land/buildings. Section 115 of the Town and Country Planning Act 1990 requires compensation to be paid to any person that has suffered damage in consequence of the order:

“(a) by depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it, or

(b) by being disturbed in his enjoyment of the land or of such minerals”.

Discontinuance Orders are ineffective until they are confirmed by the Welsh Ministers.

Legal Advice

Advice has been sought from the barrister who represented the Authority at the appeal Inquiry (Mr Graham Walters). He has responded to the request for the making of a discontinuance order and stated:

- 1. Any decision would have to be on the basis that all extant permissions were lawful but that it would be expedient to make an order. The evidential basis would be the inspector's findings as to policy and the development plan. The effective basis would be that the use of the site as per the 2006 decision is not in the interests of proper planning. That was not of course the decision made in 2006. It is difficult to identify any significant and relevant policy change to support a decision now to differing effect although there are changes in particular regarding sustainability.*
- 2. A decision clearly cannot be taken for the improper purpose of avoiding the findings on the s174 and s78 appeals. However in the case cited below it was held proper to defer a s102 decision whilst enforcement decisions were firmed up. My concern in this respect is however that the 2006 decision has throughout been accepted as effective and discontinuance now would be on the basis of that decision being inexpedient and therefore whether that is a justifiable planning decision in the wider public interest.*

3. *In R (on the application of Usk Valley Conservation Group) v Brecon Beacons National Park Authority [2010] EWHC 71 (Admin) [2010] 2 P. & C.R. 14 it was held that section 102 of the 1990 Act involved a decision as to whether a discontinuance order was expedient in the interests of the proper planning of the area. The development plan and any other material considerations guided the decision on what the interests of the proper planning of the area were. The authority then had to decide whether it was expedient, in those interests, to take one or none of the decisions which the section provided for. An expedient decision necessarily required attention to be paid to the advantages and disadvantages of taking one or other or none of the available steps under s.102. Local authorities owed a duty of prudence in respect of the public money they received. Where public money was at stake because the statute had made compensation part of the statutory scheme being invoked, it was obvious that its cost was a consideration relevant to expediency in the absence of clear contrary words. Once it was accepted that it was relevant to a decision under s.102 that compensation would be payable if a discontinuance order was made, it would be absurd to hold that it was only the fact that compensation would be payable that was relevant whereas the potential amount of that compensation was not.*

4. *The above is clearly highly material and various costs were given in the evidence of Mr N Nicholas to the Inquiry and the sums are substantial.*

5. *In simple terms the letter from R Atkinson refers to non compliance with the development plan so as to require removal of the existing building saying that the Authority owes it to the people of Newport and visitors. The test is as stated above and it is not referred to in the letter and the authority must form its view as to planning expediency balancing different elements of public interest and should consider all permissions for the site and the cost implications.*

This report has been prepared in the light of that advice and embraces full consideration of the relevant provisions and considerations.

Analysis

As stated by the Authority's barrister, the test in deciding whether it is expedient to make a discontinuance order is whether, having regard to the development plan and any other material considerations, it appears to the LPA that it is expedient in the interests of the proper planning of the area (including the interests of amenity) that the dwelling should be removed. Whilst the Authority has adopted a new development plan since the original decision was made in 2006 to allow a replacement dwelling on this site, there has been no significant or relevant policy change since this time to suggest that this site is not suitable for a single residential dwelling. As such it is not considered that it would be expedient

to take action under criterion a of Section 102 as set out above which relates to the *use* of land. Furthermore, as the use of the site as a residential site is not considered to be harmful to the proper planning of the area, it is not considered that there are any conditions that should be imposed in relation to this continued use.

In respect of criterion b, this relates to the expediency of making a discontinuance order in respect of any buildings or works. It is the building works themselves that have been in dispute rather than the principle of the re-development of this site. In considering the “test” of whether making an order would be in the interests of the proper planning of the area, the development plan and any other material considerations would clearly provide the decision on what the interests of the proper planning of the area are. In this respect, the Local Development Plan (LDP) has a number of mainly generic policies pertinent to this development; these being policies relating to the National Park’s special qualities (policy 8), the conservation of the National Park (policy 15) sustainable design (policy 29) and amenity (policy 30). These by their nature are not prescriptive and do therefore contain some subjective elements. However, the principle of a single dwelling replacing a single dwelling continues to be acceptable subject to this protecting the special qualities and natural beauty of the National Park and the adjacent Conservation Area.

The view of the Inspector in relation to the 2010 application was clearly that this development contravened the adopted development plan in relation to its impact on the landform and landscape character of this area and in relation to the level of amenity enjoyed by local people. As such it was the Inspector’s view that the development should not proceed with regard to the development plan alone, although it will be noted that the Inspector was clearly of the view that implementation of the amended landscaping scheme now proposed will mitigate the visual impact of the completed development and will reduce the present perception of the scale and bulk of the existing building. In addition, in considering other material considerations, the 2006 permission for a dwelling has been accepted as being relevant and operative and one that can be implemented as a fall back position and as such justified the granting of permission for the 2010 alternative. Similarly, making a discontinuance order against the current structure should be considered with regard to the fall back position of the existing 2006 consent.

In this respect, the making of a discontinuance order, whilst being effective in removing the current development, would not achieve the removal of the possibility of the 2006 permission being implemented. In allowing the appeal the Inspector stated that “I am bound to attach considerable weight to the fact that there is an extant planning permission for a new dwelling on the site; a dwelling that would only be slightly different from the building subject of these appeals”. It is your officer’s view that the making of a discontinuance order on the current building works would achieve little in the light of the fallback position which has been found by an Inspector not to be materially different to the building currently under construction and it is therefore not considered that it could be in the

interests of the proper planning of the area to proceed with a discontinuance order alone as a very similar building would be likely to be constructed on site.

Revocation

Accordingly it is appropriate to consider in addition the powers of the authority to revoke the 2006 permission.

Revocation Orders and their Uses

Section 97 of the Town and Country Planning Act 1990 enables Local Planning Authorities to serve an order to revoke or modify a planning permission. Section 97 states:

(1) If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

There is a requirement to pay compensation (here under s107 of the Act) equivalent to that applicable under s115 on discontinuance.

Analysis

The relevant consideration therefore in determining whether it is expedient to make a revocation order is similar to that of making a discontinuance order; i.e. with regard to the development plan and any other material considerations (this being the same as for the determination of any planning application).

It is evident that in reaching a decision on the 2006 application, regard was had to the development plan policies in place at that time and planning permission was granted. In this regard, it is a matter of fact that the application was granted with

regard to the then adopted policies. It has however been conceded after careful consideration that the 2006 development was more visually intrusive than the original dwelling on the site; a criterion in the then policy 56 in relation to replacement dwellings.

In addition it is evident that the appeal decision in respect of the 2010 application makes comparisons with the 2006 permission and concludes that the 2010 application would not meet the newly adopted LDP policies and as a stand alone proposal with no “fallback” position would not have gained approval. By inference in light of the minimal change in policy in respect of this development between the UDP and LDP, it would be consistent to accept that the Inspector equally considered the 2006 permission would have failed to meet the the UDP policies and would now fail to meet the LDP policies (the latter being the development plan for present purposes).. However, whilst this may be the case, consideration must be given to the wider impact of this proposal and whether it is expedient to make a revocation order. . In this respect, it is not considered that the granting of permission for this single, replacement dwelling house significantly undermines the development plan or is in conflict with its principles to such an extent that it prejudices furtherance of the plan. The test here does not expressly refer to the interests of the proper planning of the area (including amenity) which is the test for discontinuance under s102 but if and insofar as material it is not considered that revocation is expedient in this respect.

Furthermore, whilst the 2006 dwelling may be more visually intrusive than its predecessor, its impact in the wider National Park needs to be considered. It is not considered that the impact of this dwelling has more than a localised impact and does not cause such sufficient and damaging harm to the overall special qualities and landscape character of the National Park to justify revocation of permission. It causes no direct harm of sufficient weight to other individual properties and in view of the issues that this case has raised and the actions that it has instigated in working practices, it is not considered that any precedent has been set that would cause any greater impact in the National Park and thus wider implications that would not be in the public interest.

Compensation

It is also necessary to consider that both Sections 97 and 102 of the Town and Country Planning Act require compensation to be paid where a discontinuance or a revocation order is made. The normal measure of compensation is based on the depreciation in value of the interest in the land and the expenses relating to compliance with the orders. In this instance, the owner presented various relevant costs at the Inquiry and these are in excess of half a million pounds.

The courts have held that local authorities owe a duty of prudence in how they spend the public money they receive. The key issue for consideration is whether the cost to the public purse of making a discontinuance or revocation order is worth the gain to the public arising from this course of action. In this case for the reasons stated above, it is not considered expedient to serve either a

discontinuance or revocation order with regard to the development plan and any other material considerations. Even if a contrary view were to be taken, in deciding whether action is expedient the fact that compensation would be payable should be taken into account and in light of the substantial amounts that would be payable, it is not considered that taking this course of action with the associated costs to the Authority meets the required test of expediency, or would be in the wider public interest.

Conclusion

In conclusion therefore, it is not considered that it is expedient:

- (a) to make a discontinuance order (in respect of the 2010 as built development)
- (b) to make a revocation order (in respect of the 2006 permission).

In reaching the conclusions regard has been made to the development plan and other material considerations including the compensation requirements should such action be taken.

Recommendation

That members resolve that it is not expedient to make a discontinuance order relating to the as built development or a revocation order relating to the 2006 planning permission in respect of Bettws Newydd, The Parrog, Newport.

ROAD SIGNAGE

At the meeting of the Development Management committee on the 23rd February 2011 the issue of the proliferation and clutter of street signage and its impact in the National Park was raised. It was agreed that contact would be made with the Head of Highways at Pembrokeshire County Council to find out how this problem can be dealt with and what measures were in place to minimise the visual impact to the National Park.

In response to this enquiry I have been advised of the following:

“There is understanding that people want to see sign clutter removed. We used St David’s as a pilot to look into the signage clutter. Unfortunately, when we did this, we couldn’t find an awful lot of excessive signage. For example, I think some were hoping we could clear away virtually all signage. But what we’ve reviewed is:

- *Some of the signage is related to statutory restrictions – one-way, parking, give-way, etc. It’s not easy to remove some of this (e.g.: cars going the wrong way, accidents because people weren’t aware of features, unable to enforce so congestion, etc).*
- *In some cases, the above signage has had to be “reinforced”, e.g.: the no entry to one way on New Street has now got bright yellow backing plates – because motorists were missing the signage and driving against the one way (some people might say “so what”, that’s their fault – but it was raised to us from the community as a road safety issue). This sort of requests comes via the community.*
- *There is direction signage – this seems to be important for local businesses and communities, particularly in the tourist areas, as they use this to direct their customers / friends where to go, plus people use them to know where to go*
- *There are brown signs – these are provided more “on demand”, but again reflect business demand: and are a means of doing away with informal sign clutter.*

In addition, in general terms, we have been actively seeking to drive down accidents in the County. This appears to have been very successful – the accident rate has significantly dropped. Education, training and publicity is one way of reducing accidents (through “hearts and minds”), but clearly, engineering is another strong approach. In a number of cases, the “engineering” involves simple signs and lines – such as verge marker posts, additional or high viz signs, or additional road markings / hatchings. These might be a source of the “clutter” – but they also seem to be directly influencing driver behaviour and driving down accidents.

Another source of additional signage has been new infrastructure - such as cycleways, bus platforms & stops (linked with improvements in sustainable travel), the development of the Pembrokeshire Trail (and associated signage),

etc. All these new developments (a number linked with sustainable travel and tourism) come with some signage – directional, informational, etc.

In summary, therefore, although we're very mindful of the desire to remove "clutter", the actual definition of what this means has proven difficult to pin down. I am sure individual examples of "clutter" exist (such as numerous signs on one signpost) – but these are probably individual fixes, and there don't seem to be enormous numbers of these. If anyone has got a "definition" of what they mean by clutter (against a context of the bullet points I referred to above), I'd welcome this".

In light of the request for feedback on the concerns regarding proliferation it would be useful for members to provide some examples to forward to PCC. Members are therefore requested for their comments on this.