

# DEVELOPMENT MANAGEMENT COMMITTEE

15<sup>th</sup> April 2009

Note: Abridged version, containing only the information regarding Bettws Newydd.

Present: Councillor JA Brinsden (Chairman)  
Ms C Gwyther and Mrs F Lanc, Messrs JS Allen-Mirehouse, JL Davies, D Ellis, RR Evans, DJH George, RN Hancock, SL Hancock, R Howells, RM Lewis, P Morgan, WL Raymond and M Williams.

[Councillor ML Evans arrived during consideration of planning application NP/06/159, Trefigin Quarry, Monington (Minute 7(m) refers)]

(NPA Offices, Llanion Park, Pembroke Dock: 10.00a.m. – 12.35p.m.  
1.15 p.m. – 3.05 p.m.)

## 4. Right to speak at Committee

*Removed all detail from this section except for the list of speakers regarding Bettws Newydd*

*(the interested parties are listed below against their respective application(s), and in the order in which they addressed the Committee):*

<b>Reference number</b>	<b>Proposal</b>	<b>Speaker</b>
08/361 (Minute 6(n) below refers)	Variation of Condition 2 of NP/06/076 under Section 73A & discharge of conditions 5, 6 and 7, Bettws Newydd, Parrog, Newport	Mr Byron James, Objector Mr Reg Atkinson, Objector Dr Brendan Blake, Objector Mr Christopher Draper, Objector Mrs Ann George, Objector Mr Richard Hughes, Objector Dr Hywel Williams, Objector Mr Nigel Paul, Objector Mrs Susan Potts, Objector Mr Robbie Manson, Objector Mr Richard Banks, Applicants' Agent



- (n) REFERENCE: 08/361  
APPLICANT: Mr & Mrs Nicholas  
PROPOSAL: Variation of Condition No. 2 on NP/06/076 under  
Section 73A & discharge of planning conditions 5, 6 and  
7  
LOCATION: Bettws Newydd, Parrog, Newport, Pems

Members were reminded that permission had been granted in 2006 for a replacement dwelling on this site in Newport, subject to a number of conditions. Following investigations by officers during the course of the construction of the dwelling, it was found that it had not been constructed in accordance with the amended plans as required by condition 2 of the permission. The current application sought consent to retain the development as built and therefore to vary condition 2. Conditions 5, 6 and 7 (relating to the submission of a schedule of external finishes, full details of all windows and doors etc and a suitable and comprehensive scheme for soft and hard landscaping of the site prior to the commencement of work) had also not been met and the application also included full details in respect of those conditions.

The application had first been reported to the Committee in November 2008 however a letter had been received at that time querying the form of the application and it was deferred. Counsel's advice had been sought and as a result the application was 're-registered' and was now to be determined under Section 73A of the Town and Country Planning Act which relates to a retrospective application for consent to develop land without complying with conditions previously imposed. This required the application to be determined in accordance with the current Development Plan unless material considerations indicated otherwise.

Newport Town Council did not support the application, and 41 letters of objection, together with a petition signed by 300 names had been received. The main issues were set out in the report but related mainly to the visual impact of the dwelling in the landscape. As a result of the issues raised, it was resolved at the Development Management Committee on 18<sup>th</sup> March 2009 that the application be deferred for one month to enable Members to carry out a site inspection – the minutes of which were reproduced separately in the Agenda.

The report before Members noted that the key considerations in dealing with the application were whether the development met adopted planning policies; or, should the development not meet those policies, whether there were any other material considerations that would indicate that the development should nonetheless be approved. Members were reminded that there was a valid planning permission relating to the site



and this would need to be taken into account in determining the application.

The most relevant Development Plan policy to the principle of the development was policy 56 which was directly concerned with replacement dwellings and required four criteria to be met in granting permission for a replacement dwelling. The original dwelling on the site had been a large, timber clad property which would have required considerable improvement works to bring it up to modern day standards. The dwelling had a lawful residential use and was not the result of a temporary planning permission. In addition the location of the new dwelling was partially situated on the original footprint of the former dwelling precluding the retention of the dwelling (which had now been demolished) and as such the proposal met criteria i, ii and iii of Policy 56.

The fourth criterion of the policy required the development to be no more visually intrusive than the original dwelling, and it was this criterion that was the subject of most of the objections to the development. While accepting that the new building was more visible than the previous dwelling, officers did not consider that the scale, form and massing of the building, together with its more contemporary detailing, was intrusive, but added to the already diverse set of the buildings along the Parrog and its surrounding area. They therefore considered that the proposal complied with policy 56. Although the site is outside the boundary of the Conservation Area, its proximity meant there was also a need to consider the application in relation to Policy 79 ("Development in a Conservation Area"). Officers considered this requirement was met for the reasons set out in the report before the Committee.

There had been some criticism of the development in terms of its sustainability and environmental contribution, particularly the extensive glazed area on the north side, however the building had been designed with an over specification of insulation to compensate for potential heat loss from the glazed area. Officers believed the proposal complied with Policy 76 (relating to design) and other more general policies against which it had been considered.

It was apparent that a former area of wetland had been badly damaged through work on site and the loss of this habitat and vegetation was considered to be contrary to Policy 66 of the JUDP and also to planning conditions attached to the 2006 consent. Officers stressed that this could not be condoned. However the application included a detailed landscaping plan which included measures for the re-creation of this area and it was considered that these mitigating measures would result in the development meeting the requirements of policies 66 and 68 in terms of making appropriate provision for landscaping and habitat creation and



enhancement, as well as re-introducing those features that had, regrettably, been lost.

The report concluded that the proposed dwelling complied with the detailed criteria of the policies set out, subject to the detailed landscaping proposals being carried out to ensure the re-generation of the wetland area.

Planning officers explained that, notwithstanding the policy considerations set out, planning permission had been granted in 2006 for a replacement dwelling and this was a material consideration that had to be considered when evaluating the current application. The differences between the approved dwelling and that now proposed were critical to ascertaining whether there was any material difference between the approved plans and the proposed. A set of drawings was included with the report showing approved and proposed elevations, and floor plans and drawings 'overlying' the proposals on the approved drawings were distributed to Members at the meeting. The revisions now sought had arisen due to a number of difficulties on site, the need to comply with Building Regulations, inaccuracies of the original drawings and for personal preferences that had emerged during construction, and the report set out the ways in which the current application deviated from the original approval given in 2006.

Officers were not of the opinion that the original concept for this modern dwelling was significantly altered by the changes set out, nor did the building become significantly more intrusive or visually prominent as a result. Although there had been much reference in the objectors' comments to the increased height, it was noted that the position of the ridge in the sky was only 400mm higher than the original approval; also the ground floor slab level had been approved by officers and was accurately constructed.

Objectors had also commented on the external ground levels, however the original survey drawing provided with the 2006 application, when compared to the spot levels provided on the current submission, did not deviate to any significant extent; the problem lay in the original elevational drawings on the approved scheme not accurately depicting the floor levels in relation to the external ground levels. In addition, the footings for the building had been lowered to meet Building Regulations requirements due to the ground conditions, resulting in a larger void area at basement level than originally anticipated. The current proposal included the use of the void area under the garage for storage etc, however it was considered that a condition be imposed restricting the use of these rooms to storage only, to reduce the need for additional buildings in the curtilage of the property.



Therefore it was considered that the alterations to the building and the levels did not deviate significantly from the original approval and were acceptable changes to the building.

In conclusion, therefore, officers considered that the proposal met current adopted planning policy and would be recommended for approval irrespective of the existing extant planning permission. Notwithstanding that conclusion, it was also considered that there was not a material difference between what was before the Committee and the existing planning permission which could be a 'fallback' position in the event of a refusal of the existing application. As such this existing permission might be considered to be a compelling material consideration to grant consent in this instance. The application was therefore recommended for approval.

Thanking the Planning Officer for her report, the Chairman then called the first speaker, Mr Byron James, who introduced himself as Chairman of Newport Town Council's planning committee. He noted that many of the houses on The Parrog had been built before the National Park came into being. He considered that if a property had been built larger than it had been granted permission for, it was only right that it should have to be put back as it was originally. He referred to a shed which had been erected on the mountain which the farmer had had to modify in accordance with National Park requirements. Finally he said that if permission were granted, the people of Newport would fight to make their voices heard.

The next speaker was Mr Reg Atkinson, who was also speaking on behalf of Mrs Sandra Bayes. He believed the plans submitted in 2006 were inadequate and insufficient – they showed no datum levels and incorrectly marked the points of the compass – but were still approved. Mr Atkinson stated that Mr Ifor Jones had previously accepted that this was poor practice and he questioned why Newport had to suffer for the National Park's mistakes. He then compared the profile of the original cottage to the new property, stating that the latter was 6m higher and of twice the footprint; this new building was more visually intrusive than the old one. Finally Mr Atkinson made reference to Policy 79 and the fact that the dwelling was adjacent to the Parrog Conservation Area and adversely affected views into it.

Dr Brendan Blake was next invited to speak. He explained that he was reporting on the content of the petition, which had now been signed by nearly 500 people, the majority of whom lived in and around Newport, who all asserted that Bettws Newydd was more visually intrusive than the previous building, and a monstrous violation of policies. He encouraged Members to read the petition, but went on to summarise the recurring



themes of the comments made. The most common of these was inequality of treatment, as so many more sympathetic or smaller developments had been turned down. The next most common was planning errors which led to a loss of faith in the planning process, e.g. loss of correspondence and failure to act. A further repeated concern was the precedent the application would set with many people wondering how other large and obtrusive buildings could be refused if the application that day were approved. The final point Dr Blake raised was one of undue influence with some people perceiving that an 'incomer' with plenty of money had succeeded in gaining permission.

The fourth speaker was Mr Christopher Draper who lived nearby who had visited the old property (Jimmy's) and was amazed that a building twice its size had been allowed. He was particularly concerned that the wildlife area and habitat had been destroyed when the National Park was there to protect. He felt that the hedges and trees should be replaced under the supervision of the National Park and the application turned down and the property re-sized to what it was before, otherwise a precedent would be set.

Mrs Ann George then addressed the Committee - she too was concerned with the precedent the application would set. It was only fair that everyone obeyed planning guidelines, but she considered that different rules applied to the little people. She believed that the Authority had the opportunity to correct this, and stated that it was an abuse to alter plans without consultation. She said that the progress of the building should have been checked and questioned whether permission had been obtained for culverting the watercourse.

The next speaker, Mr Richard Hughes, pointed out that the sun shone on the glass roofs and windows of Bettws Newydd and when viewed from a distance, the Parrog shore now had two rows of properties which looked like the beginning of urbanisation. He was also distressed at the loss of the wetland and hoped that the landscaping plan would restore the area and allow the wetland flowers to grow again.

Dr Hywel Williams then spoke, objecting to the present building as it was more obtrusive. He believed that if the application were approved that day it would give a green light to people to ignore planning conditions and not comply with JUDP policies. He stated that in this instance the conditions had not been discharged before work commenced and this had led to the destruction of a habitat. In constructing the foundations, a huge slab of concrete had been laid resulting in huge amounts of earth moving which had also changed the water courses on adjacent land. He had experienced an increase in standing water on his drive and had had to put in additional drainage to compensate. Dr Williams also referred to the



carbon footprint of the building, due to the huge amount of glass, concrete and steel involved in its building as well as its future energy consumption.

Mr Nigel Paul was the next speaker who believed that the people of Newport felt a loss of confidence in the Development Management service and that this had grown over time – there was much anger within the community and this would not simply disappear. He drew attention to the original sale brochure for the plot which contained a letter giving permission, without prejudice, for a replacement dwelling and asked whether this was normal practice. Mr Paul noted other properties which had been turned down due to their scale and visual intrusion and asked how had Bettws Newydd gained permission. He hoped the Committee would turn the proposal before them down.

Next to address the Committee was Mrs Susan Potts, a next door neighbour. While officers might not consider the dwelling to be intrusive, she said that it was intrusive to those who lived nearby. It blotted out the eastern view from the adjacent footpath and blocked the skyline. She considered that the Committee had been fed misinformation in the recommendation to allow extra height on what was already a towering urban style building, and asserted that extra shale had been added to the ground adjacent to the footpath. No one understood why the building had been allowed when others had had months of worry over fences and other minor details. Many thought there must have been either corruption or gross incompetence when officers maintained that the rebuild was no more visible, and she pointed out that the trees were leafless for six months of the year and so it would not be hidden by landscaping. She concluded that the developer had got one over on the Park, but the residents were not laughing.

The next speaker was Mr Robbie Manson, ex Town Crier of Newport who quoted from the report that officers did not consider there to be a material difference between what had been built and the existing permission. However he asserted that officers had not said whether the 2006 permission was a material consideration. He did not believe there was sufficient justification to depart from the Plan. He questioned what changes had been made to National Policy or the Development Plan to say that they had become outdated. He concluded that the 2006 permission might be a material consideration but not one that justified departure from the Development Plan.

The final speaker was the Agent, Mr Richard Banks, who repeated that the site benefitted from an extant permission and that if the house had been built to plan, the application would not have been before the Committee that day. He said that comments he had heard that day should have been directed to the Members in 2006, but at that point there



had been no objections – the residents had simply not liked what they had seen being built. He drew Members' attention to the drawings comparing the approved and proposed plans and outlined the changes that had been made. He said there had been no artificial raising of levels and the slab level had been checked by officers and deemed acceptable. The house was 80m from the nearest dwelling, and 140m from the road. He believed that the application complied with Policies 56 and 76 and noted that the Conservation Area Officer had not objected to the proposals. Finally he pointed out that there were other large buildings on the Parrog.

Before opening the debate, the Chairman wished to take issue with accusations of impropriety by officers or Members made by one of the speakers, and he also wanted to point out that preliminary advice was freely available to any member of the public prior to making a planning application, and that indeed the Authority encouraged such dialogue.

Councillor RR Evans opened the debate saying that Newport was a historic town and the fact that the committee had agreed this modern house on the coast had aggravated people. The National Park had been designated to conserve the coast, however the Authority was now allowing development there and this one had been a disaster. Councillor Evans considered that Members had to share the blame with officers, but argued that they had not been trained to read plans, only to look at policies.

When the Committee Site Inspection had taken place, Members had viewed the site from Newport Beach from where he considered the house stood out as a monstrously loud building – a modern day carbuncle that would be there for generations. He also expressed his disappointment at the poor turnout at the site inspection, and the fact that Members were now voting on something they had not looked at.

When officers had met with the Town Council they had admitted that mistakes had been made, but that lessons had been learn. It was difficult to apportion blame as this was a complicated building, however he did consider that there was a lack of supervision and a lack of Enforcement Officers and as a result things would go wrong.

Councillor Evans said that the speeches that day had demonstrated the level of concern in Newport and although 400mm might not seem much, he thought that the Authority had been taken for a ride. He would be voting against the application as he felt that people had to get the message that retrospective permission was not always granted. He believed that the design should not have been allowed in the first place, and by doing so the Authority had done a disservice to Newport. He stated that he would be leaving the meeting following consideration of the



application and would be submitting his resignation as a Member of the Authority (note – a number of other Members asked Councillor Evans to reconsider this decision which he later agreed to do.)

A number of Members then expressed their unhappiness with the building – some considering that modern architecture was not suitable for that location, others were concerned that the original drawings had been misleading and that the building had been built contrary to the plans. However it was acknowledged that the decision to grant permission in 2006 had been a corporate one, taken by Members, and the house as built was not that different to that for which planning permission had been given and to which the applicant could revert if the application were refused that day. Therefore it was proposed that the application be approved, but with a reworking of the landscaping scheme. It was suggested that the native trees of Ash, Withy and Hawthorn already on the site could be reinforced with substantial planting and allowed to grow so as to screen the visual impact of the development. The wetland should also be put back. With regard to concerns expressed about light pollution it was suggested that internal shuttering or glass that allowed light in only one direction be considered. These conditions should then be monitored carefully by officers.

Members were also concerned with the number of amendments to the plans and asked when the developer had become aware of the ground conditions which had necessitated the changes. Officers replied that some of these had been agreed on site following the visit of the Building Regulations Officer, when the slab level had been agreed. Further concern was then expressed that, despite the Committee's concern over the application and a number of visits by officers, these breaches of condition had been allowed to happen. They were unhappy that conditions had been ignored and were worried about the reputation of the Authority, which may be perceived to have been inconsistent. Lessons had to be learnt.

Members were also unhappy over the loss of the wetland and questioned whether this would have happened if the landscaping scheme had been submitted as required. The Head of Development Management replied that many decisions required landscaping schemes to be submitted prior to the commencement of work, but unfortunately a number did not comply. She added that she had raised with Counsel in a telephone discussion whether non-compliance with the 2006 conditions had the effect of invalidating the 2006 consent. He had answered that the Courts have indicated that this issue had to be approached with common sense. The Courts' current approach appeared to be that only the breach of a condition which expressly prohibits any development taking place before a particular requirement (such as approval of details) has been met



would render a development unlawful. Such a prohibitive element was not present in the 2006 conditions.

The Chairman informed the Committee that he had received a letter from Mr Tim Giles, who was unable to be with them that day as he was recovering from an operation, however all the points he had made had already been raised by other Members of the Committee. He went on to say that the application to be determined that day centred on differences between it and the permission granted by the Committee in 2006 not the cottage which had existed on site previously. He did not believe that the differences were sufficient to justify refusal of the application.

However the Solicitor reminded Members that because the application was retrospective and so fell to be determined under Section 73A of the Town and Country Planning Act 1990 the Authority had a statutory obligation (under Section 38(6) of the Planning and Compulsory Purchase Act 2004) to determine the application in accordance with the Development Plan unless material considerations indicate otherwise.

**DECISION: That the application be granted planning permission subject to the applicant first submitting and the Authority approving:**

- (a) improved landscaping proposals aimed at achieving additional screening of the development;**
- (b) reconsideration of the glazing element to address concerns of light pollution and glare.**

**Members stipulated that these proposals must be brought back to the Committee for approval before planning permission is granted.**

**The Committee also required that a condition be imposed on the consent restricting the use of the additional basement rooms to storage only, and that all conditions be thoroughly monitored.**

