

OTHER MATTERS

Enforcement

Bettws Newydd, The Parrog, Newport

Members will recall that I presented a report to the October meeting of this committee in respect of the above matter having consulted at length with the Authority's retained Planning Consultant and Barrister.

The report addressed the main issues at some length; the fact that the existing building had not been built strictly in accordance with the approved 2006 plans; the fact that a planning application to retain the building as built together with the provision of a substantial planting scheme had been refused contrary to officers recommendation in July 2009; that therefore the building as built was unauthorised and though no appeal had at that time (nor since) been lodged it was appropriate for the Authority to consider its position particularly in respect of the expediency of taking formal enforcement action. Throughout the report the "fall back" position, i.e. the fact that the 2006 permission existed and could be implemented was also addressed.

The report asked Members to consider whether if the as built scheme differed materially from that consented whether there was a material harm to amenity as a result and if so what reasonable steps should be taken to remedy the breach.

In that the 2009 application was refused then Members did obviously consider that that there was material harm to the amenity of the area.

The reasons for refusal of the 2009 application were as follows;

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 other buildings on The Parrog, and it is therefore in conflict with criteria i), ii) and iv) of JUDP Policy 67 (Conservation of Pembrokeshire Coast National Park); Criterion iv) of JUDP Policy 56 (Replacement Dwellings), and JUDP Policy 76 (Design).

2 Notwithstanding the fallback position encompassing 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.

Technical Advice Note (TAN) 9 addresses Enforcement and states that it should be commensurate with and should remedy the effects of the development not punish the developer. The TAN (para 5) states that

"...enforcement action is discretionary and should only be used as a last resort....." Paragraph 8 of the TAN confirms that the initial aim should be to explore with the owner what steps if any could be taken to reduce the adverse affects on public amenity to an acceptable level.

The October report stated that whilst it was considered that it would be "highly unlikely" that the implemented works could be modified in such a manner that that the result would be, in effect, the approved 2006 scheme or an otherwise acceptable form of development the opportunity had to be given to the developer, in line with Government advice, to submit proposals to the Authority before formal enforcement action, which could only be to demolish the building, was taken.

In line with Government and your Barristers advice the resolution following the recommendation put to the October committee was as follows;

"It is recommended that , in the first instance, an approach should be made to the owner to invite him 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 such a situation is unacceptable to the Authority, then an Enforcement Notice should be issued which seeks to remedy the breach by;

Removing the building, hardstanding and driveway

Removing from the land all building materials and rubble arising from compliance with the first requirement

Restoring the land to its condition before the breach took place by levelling and resurfacing that part of the land disturbed by the unauthorized works consistent with the contours and features shown on the submitted 2005 Existing Survey drawing."

In my verbal report to the committee I stated that it was intended to give the applicant one month in which to advise the Authority of their views as to whether there was any way in which the development could be modified and it was hoped that a future report would be brought to the December meeting of the committee.

At about the time that this October report was being prepared it appears that the applicant appointed new professional advisors , both in the planning and legal sphere to advise him and a meeting was held in Cardiff before Christmas with Mr Nicholas` planning Consultants, Asbri Planning, your own consultant, Mr Powell of RPS Cardiff and Mrs Milner.

At that meeting Asbri Planning indicated that they wished to explore the second part of the first "leg" of the October resolution viz ...to remedy the harm to amenity to an acceptable extent by way of the submission of a further planning application. It was explained that such a submission might still not be

acceptable to members but Asbri Planning pointed out that it would give them a firm platform, in such circumstances, of being able to appeal such a decision. (For some reason they do not wish to appeal the 2009 decision). It was also pointed out that in such circumstances the Authority would wish to serve the enforcement notice so that appeals against both that and the planning refusal (if that was the decision) could take place concurrently. The application was promised before Christmas.

At the time of writing this report (January 12th) an application has still not been received. I have been in contact with Asbri Planning and am advised that their barrister is to review the now prepared application this week with the intention of submitting the application the week of January 18th. This delay is unfortunate but in the circumstances nothing can be gained by pre-empting the position and proceeding to formal enforcement actionthe building is still there, no work is being undertaken to it.

Providing that their timetable is met, which the agents have assured me will be the case, the application should be received in the office before the January meeting of this committee. If that is the case I will be able to update Members of the position.....such an application will be subject to normal publicity etc and I would hope to include it on the agenda for the March committee. If an application has not been received by the date of this meeting I will report further on the matter, and advise Members on the appropriate action, bearing in mind that it will be fully three months since the Authority invited the applicant to respond to the October committee resolution.

Recommendation

That the above be noted.