COMPLAINTS ABOUT PROCEDURE (AND OTHERS) OF THE BETTWS NEWYDD PLANNING APPLICATIONS (REFERENCE NP/06/076,NP08/361,Np/10/033 AND SUBSEQUENT APPEAL (REFERENCE APP/L/9503/C/10/2131835, APP/L/9503/A/10/2128919)

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1. Introduction

This report examines the history of the 3 applications that were made to the Authority following submission of an application by Mr and Mrs Nicholas for planning permission to redevelop the site now known as Bettws Newydd. Those applications have generated considerable publicity, controversy and comment in both the immediate area and further afield. They have raised very serious issues as to the ability of the Authority to provide an effective planning service when faced with both challenging applications and local significant public interest both for and against such applications. Those issues have been:

- Was there an effective pre application discussion process in place?
- Was there a proper system in place for considering the submitted application?
- Was there any failure in the consultation process?
- Was there any failure in the decision granting process?
- Was the decision as granted monitored adequately during development?
- Has the Authority been able to change its procedures?
- What has been the cost in financial terms and in reputational terms?

This report is a public document.

Please note that reference is made in this report to the minutes of the Authority's Development Management Committees and the Officers Reports presented at these meetings. These documents can be found on the Committee pages of the Authority's website http://www.pembrokeshirecoast.org.uk/default.asp?PID=498. Alternatively they are available from the National Park Offices at Llanion Park, Pembroke Dock.

2. Legal and Administrative Background

There are a number of legal and administrative issues to be identified, and I will address such issues under the following sub-headings:-

(i) Publicity for Planning Applications

The responsibility for publicising planning applications falls upon Local Planning Authorities under the provisions of the Town & Country Planning (General Development Procedure) Order 1995.

Of relevance to this Report are the provisions relating to "Site Notices" and "Neighbour Notification":

(a) Site Notice

Circular 32/92 (issued by the then Welsh Office now Welsh Assembly Government on 3 June 1992) states:-

"Notices should be displayed on or near the site, and should be visible and legible to anyone passing by without the need to enter the site to be read".

(b) Neighbour Notification Policy

The Authority has a declared policy in relation to "Publicity and Neighbour Notification". The policy was last confirmed in May 2004.

In summary the policy states that: "Neighbour Notification" is to be employed at the discretion of the Officers where they consider that:-

(i) Development proposals may have significant amenity impact on neighbours, and

(ii) A Site Notice would be insufficient to draw proper attention to the application, or

(iii) Where a third party has commented on a previous related application.

(ii) Public Speaking at Committee and Site Meetings

The Authority has a declared policy which allows applicants and third parties (objectors and supporters) to address Members – both at Committee Meetings and at Site Inspections. Naturally, there are conditions to be complied with under the policy, in order to ensure the proper conduct of meetings. I cannot see that anyone exercised this

right to address the Development Management Committee when the matter was considered on 22 March 2006.

(iii) Pre planning guidance

(a) At the time of Mr Nolan's application on 16 February 2006 the Authority had in place an unwritten policy of endeavouring to provide pre-planning guidance to potential applicants for planning permission. This older process was established in the early days of the Authority but was of a more informal nature than the policy that is now in place. It was the "old process" that was in place at the time of the Mr Nicholas's first enquiries about future development of the Bettws Newydd site, in August 2005. That process was never formalized and appears to have developed on a somewhat empirical basis, evolving without any clear written guidance or definition of what was to be submitted and how any advice was to be given. Despite these shortcomings, it appeared to the officers of the Authority at the time to have worked well, as it was not overly prescriptive**.** This they felt, may have been an advantage. Clearly however there were also disadvantages as there was no clear written procedure as to what guidance was given and why; an objective benchmark to ensure consistency in approach and performance; or a protocol for how information exchanged should be recorded .As there was a lack of clear structure and formality, each case was treated differently with inevitable inconsistencies over recording of information, level of officer input and each parties contributions and expectations.

(b) The rules for pre-application guidance were revised in 2009. The current policy by contrast, is publicized on the Authority's website and is available in hard copy form. The procedure that is followed is set out clearly, together with a time scale of twenty days for response by the Authority. Apart from providing information about location, the applicant is asked for details in writing of the proposed application, materials, dimensions including levels, etc. It is stressed that at this stage , any advice is subject to the publicly stated policies of the Authority in its published plans, which at the time were the JUDP and the decision of the Members of the Authority ,as opposed to the Officers although some decisions can be dealt with by way of Officer Delegation.

(iv) Development Plan

This Report concerns itself with planning permissions granted by the Authority on 17 October 2006. At the time of considering the application, the Local Plan remained the principal consideration but certain policies of what became the JUDP were in a position to be afforded considerable weight (as not subject to outstanding objections awaiting the Inspector's conclusions. The Policy 54, now 56 – "Replacement dwellings" was one such policy.

The Report to the PCNPA (Extra-ordinary Meeting) dated 14 December 2005 expressly states:-

"*The weight to be attached to policies in emerging UDPs, which are going through the statutory procedures towards adoption depends upon the stage of plan preparation (the weight will increase as successive stages are reached) and upon the degree of any conflict with adopted plans. If no objections to relevant policies in a deposited plan have been lodged, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted and replace those in the existing plan. Equally, the converse applies if there have been objections to relevant policies. The nature of objections to, and representations in support of, a policy will also be an important consideration*[1]

The Plan has now reached another milestone on the road to adoption and now is an opportune time to consider the materiality of the Plan's policies as proposed for modification.

Significant weight can be attached to those parts of the Plan that:

I. Have not required an Inspector's Recommendation
II. Have received a supportive recommendation from the Inspector in response to objections and no modification is proposed.
III. Are being changed but the modifications are insignificant in nature, e.g., factual updating, typographical errors or minor clarifications.
IV. The Inspector when proposing the Modification is recommending a Modification to ensure compliance with Welsh Assembly Government Planning Policy.

The resultant list of those parts of the plan, to which significant weight can be attached, if Recommendations A to D are approved, is set out in Schedule 4 which has been made available to Members. I set out Schedule 4 for ease of reference.

"SCHEDULE 4"
WEIGHT ATTACHED to JUDP for PCNPA area

SIGNIFICANT WEIGHT CAN BE ATTACHED TO THE FOLLOWING
As at December 2005

Policy 52 Gypsy Caravans	III and IV	Significant
Policy 54 Replacement Dwellings	III	Significant
Policy 55 Sub Division of Houses	II	Significant
Renewable Energy – Introduction	IV	Significant
Policy 59 Renewable Energy	III and IV	Significant
Policy 60 Wind Energy Development	III	Significant
Nature Conservation – Introduction	III	Significant
Policy 61 Sites of Importance for Nature Conservation Sites Protected by Designations	III and IV	Significant

[1] Paragraph3.5.1Planning Policy Wales

Policy 62 Protection of Biodiversity	III and IV	Significant
Landscape – Introduction	II	Significant
Policy 63 Landscape Diversity and Traditional Landscape Features	III	Significant
Policy 64 Conservation of the Pembrokeshire Coast National Park	II	Significant
Policy 65 Development and Landscaping/Habitat Enhancement	III	Significant
Policy 67 Green Wedges	III and IV	Significant
Trees – Introduction	I	Significant
Policy 68 Protection of Trees and Hedgerows	III	Significant
Coast – Introduction	III	Significant
Policy 69 Development Requiring a Coastal Location	III and IV	Significant
Policy 70 Coastal Defences	III and IV	Significant
Building Conservation and Design – Introduction	III	Significant
Policy 75 Amenity	II	Significant
Policy 76 Development in a Conservation Area	IV	Significant

It is necessary to note that, the Local Plan current at the time of the March 2006 planning application, differs in other parts from the Joint Unitary Development Plan which replaced it. It was largely clear as to its future direction especially Policy 54. For the record this, then was replaced by the Local Development adopted in September 2010.There was no significant difference between the Local Plan and the JUDP Plan at that time in relation to “Replacement Building” Policy.

The Position can briefly be summarized as follows:-

(a) Period from October 2005 to 27 June 2006

In this period the relevant Development Plan for the Authority was the Local Plan.

(b) Period from 28 June 2006 to 29th September 2010

In this period the relevant Development Plan for the Authority was the Joint Unitary Development Plan.

(c) Period from 29th September 2010 to the present day

For this period, the relevant development plan for the Authority is The Pembrokeshire Coast National Park Local Development Plan which was formally adopted by the National Park Authority on the 29th September 2010. The Local Development Plan became operative on its adoption.

(v) Relevant extracts from the "Local Plan" current in 2006

The Development Plan should be read as a whole, but of particular relevant are the following policies:

Policy 54 Replacement Dwellings

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.

The underlining is mine by way of emphasis.

The accompanying note says:-

5.4.1 Redevelopment or replacement can allow the development of housing accommodation which is better adapted to meeting present and future housing needs as long as the quality of the environment is maintained. In some situations the cost of renovation of substandard or derelict properties is prohibitive. Where there is an existing use right applications for replacement dwellings will be considered against the above criteria. The new dwelling should reflect the scale and character of the existing dwelling and relate well to other dwellings in the area and the surrounding landscape. The re-use of materials from the demolished dwelling should be considered where appropriate. As such it is expected that the new dwelling will not be substantially larger than the dwelling to be replaced and should be located on or close to the siting of the original dwelling. The existing dwelling should not be a listed building, or a building that enhances the character of an area (Policy 77, Policy 78, and Policy 80).

Again the underlining is mine by way of emphasis.

(vi) Relevant extracts from the Joint Unitary Development Plan current June 2006-2010

Policy 5 Development and the National Park

Development within or impacting on the National Park must be compatible with the conservation or enhancement of the natural beauty, wildlife and cultural heritage of the Park, and the public understanding and enjoyment of those qualities. In determining proposals, due regard will be paid to the need to foster the economic and social well-being of the local communities within the Park provided this is compatible with the

statutory National Park purposes embodied in the foregoing considerations.

Policy 56 Replacement Dwellings

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.**

The underlining is mine inserted by me for emphasis. The relevant accompanying note says:-

5.4.2 *Redevelopment or replacement can allow the development of housing accommodation which is better adapted to meeting present and future housing needs as long as the quality of the environment is maintained. In some situations the cost of renovation of substandard or derelict properties is prohibitive. Where there is an existing use right applications for replacement dwellings will be considered against the above criteria. The new dwelling should reflect the scale and character of the existing dwelling and relate well to other dwellings in the area and the surrounding landscape. The re-use of materials from the demolished dwelling should be considered where appropriate. As such it is expected that the new dwelling will not be substantially larger than the dwelling to be replaced and should be located on or close to the siting of the original dwelling. The existing dwelling should not be a Listed Building, or a building that enhances the character of an area (Policy 80, Policy 81, and Policy 83).*

I have quoted this note as it is word for word the same as that provided in relation to Policy 54 of the LDP. All that has changed in this long-standing policy is the number in the JUDP and not the substance.

Policy 66 Landscape Diversity and Traditional Landscape Features

The pattern and diversity of Pembrokeshire's landscape shall be protected and development and land use changes will only be allowed where the integrity and coherence of the local landscape character is retained and enhanced. Development and land use change that would result in the loss of local landscape features will only be allowed where such a loss, either individually or cumulatively would not damage the character of the area.

The relevant accompanying note says:-

6.2.2 *Pembrokeshire's landscape is rich and diverse in character and texture. This policy seeks to ensure that the particular distinctive features of these areas are retained and enhanced including features of major importance for wild fauna and flora.*

6.2.3 *Countryside character evaluation will enable local distinctiveness to be identified. Development and land use changes should reinforce the landscape character types identified, and therefore differing approaches to development may be required in different locations. In some instances the LPA may require from the applicant an appraisal of the likely impact of the development on the landscape. A character study of Pembrokeshire will be undertaken building on existing landscape studies to enable such local distinctiveness to be identified and protected from inappropriate development. Both Local Planning Authorities are currently progressing LANDMAP and when completed this will inform the production of SPG on Landscape.*

6.2.4 *Local landscape features which are generally considered to be of importance in Pembrokeshire and worthy of protection within the context of this policy include stone and earth hedgebanks, native hedgerows, open streams and rivers, ponds, pools and other wetlands, and stands of broad-leaved trees.*

6.2.5 *With regard to hedgebanks, in particular, the government in recognising the important contribution hedgebanks make to the character of and biodiversity in the countryside, introduced a Hedgerow Regulations Scheme in 1997. In summary the new rules mean that it is against the law to remove most countryside hedgerows without permission. In order to remove a hedgerow, you must first get permission from the LPA, and appropriate felling licenses should be sought from the Forestry Commission*

Policy 67 Conservation of the Pembrokeshire Coast National Park

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.

The relevant accompanying note says:-

6.2.6 *The purpose of this policy is to ensure that the qualities of the Pembrokeshire Coast National Park landscape are not lost to future generations. The National Park Management Plan identifies the principal special qualities of the Pembrokeshire Coast National Park to be the range of breathtaking scenery and the diversity of the landscape from the coast, to the Daugleddau, to the Preseli's from the coastal towns to the inland villages as well as individual historic sites; the peace and quiet and the different atmospheres evoked by the different areas of the Park; and the diversity of wildlife. The wealth of opportunities for enjoying these special qualities, especially on foot, is also highly valued.*

6.2.7 *Attention to detail and the cumulative effects of change are important considerations. Even seemingly minor changes in the landscape can have an adverse effect; prominent individual buildings or widespread application of inappropriate trends in design detailing can have an impact much wider than their immediate environs and cumulatively will subtly and irreparably alter the often fragile landscape character of the National Park.*

6.2.8 *Where there is a possibility that development and land use changes may cause significant visual intrusion, impacts should be assessed as applicable from:*

- *public access points;*
- *the Coast Path (a National Trail);*
- *Public Rights Of Way (as well as the public highway);*
- *views on entering and leaving settlements;*
- *views on entering and leaving the National Park itself;*
- *the offshore islands;*
- *waterborne craft on the Daugleddau and coastal waters;*
- *important vantage points within settlements*

6.2.9 *Particular attention should be given to medium and distant views, as well as the more obvious impacts on immediate environs and streetscape with special emphasis on the effects on the settings of Listed Buildings, Scheduled Ancient Monuments and Conservation Areas. The appearance of individual and groups of buildings, and settlements in their landscape settings, traditional building details and boundary treatment also need to be considered. Planting using native trees and shrubs, where appropriate, and landscaping can enhance and help to blend new development into its surroundings. This may help to balance in part the loss of original features. Given the very restricted geographical extent of the National Park and its generally exposed coastal nature, any major or large-scale development is likely to sit uneasily in visual terms within the National Park's landscape. Development outside the National Park may have an impact on the qualities of the National Park and should be considered under this policy.*

6.2.10 *Where a development would constitute the introduction or intensification of a use which is incompatible with the location, for example noisy activities in a relatively undisturbed location, such development would not be considered appropriate by the LPA. Both Local Planning Authorities are currently progressing LANDMAP and when completed this will inform the production of SPG on Landscape.*

Policy 68 Development and Landscaping/Habitat Enhancement

Development that does not make provision for necessary and appropriate landscaping or habitat creation/enhancement will not be permitted.

The relevant accompanying note says:-

6.2.11 *Where landscaping or habitat enhancement is necessary it will be required as an integral part of the proposed development in order to provide a suitable and pleasant setting for the proposed development and/ or to integrate new buildings into the surrounding landscape and natural environment. There is a need to ensure that adequate provision for landscaping/habitat enhancement is provided as part of the initial planning application. Natural features within the site should be utilised and the planting of local species of native provenance/origin will normally be encouraged. A high standard of landscaping will be expected and planning applications should be submitted with sufficient detail to allow the full impact of the landscaping and habitat enhancement to be assessed. The following details should be submitted as part of any scheme as appropriate:*

- *identification of planting areas, species details, size and density of plants*
- *details of all hard surfacing materials*
- *details of all boundary treatments and their integration with neighbouring sites*
- *details of trees and hedgerows to be retained and new planting, including measures for their protection*
- *information regarding earthworks and changes in level*
- *opportunities for nature conservation or habitat creation, where appropriate*
- *protection of existing flora and fauna and associated habitats, where appropriate*
- *details of long term management plans*

Policy 78 Amenity

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
v) the development is visually intrusive.

The relevant accompanying note says:-

6.5.6 *This policy aims to protect the amenity enjoyed by people in their residences, workspaces and recreational areas. Amenity is defined as those elements in the appearance and layout of settlements and the countryside which makes for pleasant life rather than a mere existence. Anything ugly, dirty, noisy, crowded, intrusive or uncomfortable may adversely affect amenity.*

Policy 85 Historic Landscapes

Development that would adversely affect the integrity, coherence or character of Landscapes of Historic Interest will not be permitted.

The relevant accompanying note says:-

6.6.5 *CADW has published a Register of Landscapes of Historic Interest in Wales which is based mainly on the degree to which historic and archaeological features have survived, the character and extent of historic interest and how this is apparent in today's landscape, together with other factors such as associations with art, literature, religion, technology, or folklore. When considering the implications of developments on these landscapes the LPA will pay particular attention to those developments which are of such a scale that they would have a more than local impact on the area on the Register. In addition, the cumulative effect of piecemeal development will also be considered. The LPA will ensure that necessary change is accommodated without sacrificing the essential integrity, coherence and character of the landscape. Integrity refers to how the landscape reads as a whole while coherence relates to how the individual components of the landscape connect together. Character relates to the combination of essential historic elements which make one landscape distinct from another. Sites protected under this Policy are identified on the Proposals Map*

(vi) Development and Completion Notices

(a) It is a view sometimes held by members of the public that once a planning authority has granted planning permission, then all the proposed development must (without exception) be undertaken by the applicant.

Further, the view is sometimes held that the planning authority has an absolute duty to compel the applicant to complete all the development that has been authorised. Such views do not accurately represent the legal position.

(b) Under Section 94 of the Town & Country Planning Act 1990, the planning authority may (at its discretion) serve a "Completion Notice" on the applicant stating that the planning permission will cease to have effect at the expiration of a further period of time - if the authorised works are not completed in full. A "Completion Notice" cannot be served until the period allowed for the commencement of the development has passed. This would normally be after a period of 5 years has expired. A "Completion Notice" will only take effect after confirmation by the Secretary of State. Completion Notices are very rarely used.

(c) An applicant who has the benefit of a planning permission may implement the authorised development piecemeal or in part only, - subject to two provisos. First, that such partial implementation does not infringe any of the conditions to which the planning permission is subject - as otherwise the applicant will be in breach of planning control. Secondly, the applicant must be aware of the provisions of Section 94 of the Town & Country Planning Act 1990 - and the possibility of the issue of a "Completion Notice" by the Planning Authority.

(vii) Planning Policy Wales

Of relevance to this Report is the advice given in Planning Policy Wales ('PPW') issued by the Welsh Assembly Government in March 2002 (ref. para 4.1.8), as to the weight that Members and Officers should attach to local concerns, namely:-

"When determining Planning Applications, local Planning Authorities must take into account any relevant view on planning matters expressed by neighbouring occupiers, local residents and any other third parties. While the substance of local views must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting a planning permission; objections, or support must be based on valid planning considerations.

Planning Policy Wales 2002 has now been superseded by Planning Policy Wales (Edition 3). This policy and advice came into effect on 20th July 2010.

(viii) The Enforcement of Planning Conditions

(a) Planning Authorities are given very wide powers to impose conditions upon the grant of a planning permission. Circular 35/95 issued by the Welsh Office now Welsh Assembly Government (on 20 July 1995), is followed in Wales. It sets out a six-fold test that conditions should meet. Planning authorities are not at liberty to use their powers to impose conditions for an

ulterior object, however desirable that object may seem to them to be in the public interest.

(b) Under the Planning Acts, failure to comply with any condition or limitation to which a planning permission has been subject constitutes a breach of planning control. The statutory procedures and mechanisms available to a planning authority to deal with any such failure include:-

(i) The service of an Enforcement Notice

(ii) The service of a Breach of Condition Notice

(iii) The service of a Stop Notice

(c) In the publication "Planning Policy Wales" issued in 2002 (by the Welsh Assembly Government) it is stated:-

"An effective development control process requires local planning authorities to be prepared to take enforcement action in appropriate circumstances. The decisive issue for the Authority is whether the breach of control would unacceptably affect public amenity, including the existing use of land and buildings meriting protection in the public interest."

"In all cases there should be dialogue with the owner or occupier of land and in some cases mediation may also be an agreed way forward. In many cases this dialogue could result in an accommodation which means that enforcement action is unnecessary."

(d) The fundamental principle which governs the taking of enforcement action by a planning authority is that the Authority has a statutory discretion whether or not to take enforcement action, - but in the exercise of that discretion the planning authority must act reasonably.

3. Site Background

The Bettws Newydd site is situated to the south west of the hamlet of Parrog which lies on the outskirts of the village of Newport. The site is 0.66 of a hectare in area and forms a rough 'L' shape and is located within the National Park. It is adjacent to, but outside of, the Parrog Conservation Area as defined in the current Pembrokeshire Local Development Plan. The site is also situated within the Cadw Registered Landscape of Historic Interest.

The site slopes downwards from south to north i.e. to the seaward side. The partially completed dwelling is located to the southern end of the site. Areas of established trees and hedgerows are located along the site's eastern boundary i.e. towards the town of Newport.

The site is bounded to the south and north-east by agricultural fields and to the west by a narrow lane. The northern extremity of the site abuts the curtilage of a residential dwelling. To the south-east of the site is a dense area of woodland which is in the ownership of Mr and Mrs Nicholas.

The site is accessed at its southwest corner via an unmade track which connects from 'Feidr Brenin' some 140m to the south. This in turn connects to the A487 which runs east-west from Aberystwyth to Fishguard and passes through the towns of Cardigan and Newport (Pembs).

Within the wider topographical context the site lies on the gently rising, north-facing slopes above Newport Sands, the Afon Nyfer estuary and the Parrog. Directly north the flat open expanse of Newport Sands links across the estuary to the south-facing cliffs of Morfa Head.

The buildings in the vicinity of the site comprise a small number of large detached dwellings set back from the road in generous plots. The overall character of the area immediately around the site is therefore of low density development with single dwellings or small clusters of dwellings in a predominantly undeveloped and rural environment.

The site lies to the south of The Parrog Conservation Area (designated in 1999) and of which its southern edge abuts the northernmost garden boundary of Bettws Newydd. To the north of the site and within the Conservation Area lie a mix of cottages, semi-detached houses, Victorian villas and modern bungalows that form the sea-facing dwellings of The Parrog.

4. History

There was on the site an old wooden building occupied by an elderly gentleman who died. His estate placed the property was on market. It was advertised for auction.

The Estate agents got in touch with PCNPA planning department. Clearly some discussions took place between them and the Authority's officers as they included reference to this in their advertisements and included it in the sales material. This evidences the fact that some dialogue took place although I have been unable to find any notes or evidence in the Authority's records. There was a letter to the agents in terms which set out what may be permitted. This letter was not intended to be a precise guide and was subject to a number of important caveats.

Additionally, I received evidence from members of the public, who understood from the selling agent what the agent considered the Authority's position on redevelopment was. They expressed interest on the basis of what they understood would be permitted and have felt prejudiced in that what was subsequently consented to, was not what they had been given to understand would have been permitted by the Authority. Had they known what was ultimately permitted then they would have considered proceeding further with their interest.

5 Description of planning application and its determination

(i) Pre 2006

During this period the site was occupied by an unpretentious, single storey, timber bungalow orientated in a North-East to South-West configuration, with a floor slab that sat at a level described as circa 17.5m; an equivalent ground floor level; eaves levels of 20.14m; at and a ridge height of 21.21m. It had a footprint area of just 100.80 sq m, a frontage width of 13.6m and a building depth that varied between 6.8m and 7.8m

Information on the nature and condition of the site curtilage is sparse but it has been described as "unkempt". It is understood that it was generally laid to grass, not highly manicured, with a narrow open stream running generally in a north – south direction and various individual and clumps of trees scattered randomly around the site. It would appear that the site sloped from south to north in a series of random ridges and that the dwelling itself sat generally on what would have originally been the 17 to 17.5m contour.

(ii) The 2006 Scheme

The 2006 application as it became known, was submitted on the 17 February 2006, and registered under Ref No 06/076.Planning permission was granted 8 months later for the scheme on 17 October 2006 .see Appendix 1. This approved development later became commonly known as the "fallback", even though it was not built precisely in accordance with this scheme.

The application was submitted to the Authority on one of its standard "*application for permission"* form and bears the words

"***Height-existing-7m", - the height was actually less than 5m on the original building which was to be demolished, it now transpires the architect got this wrong.***
***"New building 7 and 10.5m "– the new building is actually 11m*."**

When the application, which was lodged by a professional architect on behalf of the land owners and developer, a number of drawings were included, as follows:

NP 001 – 1:200 scale Site Plan (which shows a much smaller site than does the survey drawing submitted at the same time, and which also does not indicate if the proposed dwelling is to be located on the actual footprint of the bungalow or not).

NP 002 – 1:100 scale Lower Ground Floor Plan
NP 003 – 1:100 scale Upper Ground Floor Plan
NP 004 – 1:100 scale Roof Space Floor Plan
NP 005 – 1:100 scale South Elevation (in fact the north elevation)
NP 006 – 1:100 scale West Elevation (in fact the east elevation)
NP 007 – 1:100 scale North Elevation (in fact the south elevation)
NP 008 – 1:100 scale East Elevation (in fact the west elevation)

NP 009 to 012 – 1:10 scale 3D Views (4 drawings)

A 1:200 scale survey (dated September 2005) submitted with the 2006 application, showed the physical characteristics of the site at the time of the application; and the bungalow with a floor plan of 100.80 sq.m, a frontage of 13.6m, a width of 6.75 and 7.6m, an eaves height of 20.14m and a ridge height of 21.21m. The survey was not marked to indicate that the levels were to AOD. This drawing was not stamped approved and thus cannot be treated as having the same status as the approved drawings. It was agreed in the Statement of Common Ground ("SOCG") to the Planning Inspector that "there is no indication that it was not considered to be an accurate reflection of the site conditions at the time".

There was no proposed ground level information submitted to enable a comparison to be made between the then-existing situation, as shown on the survey drawing, and the proposed situation.

The drawings did show, however, that:

The Lower Ground Floor covered 143 sq.m
The Upper Ground level covered 232.33 sq.m
The Roof Space Level covered 239.14(including the void) or 191.11 sq.m (excluding the void)
The total floor area was therefore 614.48 sq.m (including the void area) or 566.45sq.m. (excluding the void area)
The maximum ridge height above the surrounding finished ground level was 7m.

From the approved drawings it can be seen that the approved dwelling comprised three floors containing three bedrooms, a bathroom, a shower room, and a fitness suite at the lower ground level; a lounge, open plan kitchen, family room incorporating dining space, hall, garage, utility and WC at upper ground floor level; and a master bedroom and en suite, landing, IT suite and sun terrace at roof space level. The north elevation of the building incorporated a full height (three storey) "*wall*" of glasing as shown on drawing NP005.

Whereas the total floor area of the original bungalow measured no more than 100.80 sq m the approved floor area of the "*fall-back*" had a total floor area of 566.45 sq m "*excluding a void*" area at roof space level.

Whereas the ridge level of the original bungalow sat at a level described in a submitted 2005 survey at 21.21m, the ridge height of the "*fall-back*" dwelling sat at between 27.45m and 27.66m AOD. However it is not known if the topographical survey published in 2006 was produced to AOD. If it was, it is clear that the ridge height of the approved dwelling sat at a level of possibly as much as 6.45m higher than the ridge height of the original bungalow. The status of the topographical survey which was produced created much confusion later on. I find a principal reason for this is that it is not marked to AOD as it should have been but it was accepted by the Authority in its defective state although not stamped as an approved document.

The application was duly advertised and the local Newport Town Council ("NTC") considered the application and the plans. They recommended rejection of the application. In their consultation response to the Authority dated 8 March 2006 they said:-

> "*The Council wishes it to be clear that it is not opposed to innovative buildings in the National Park, and that this site could well be a highly suitable location for something really modern but sensitive to its delightful and important position. This proposal, however, despite some interesting features does not fulfil the criteria". There is too much glass, especially on the North side, which faces the sea and the west elevation is reminiscent of commercial buildings rather than a home……"* *The Council recommends rejection of this proposal but with encouragement for something more suitable to be processed.*

No other objections were received from any individual, group or body, save for one letter received from a neighbour who raised concerns about a number of issues including the ultimate height of the building. This letter was dated 20 March 2006 and received after the preparation of the Planning Officer's Report for the Development Management Committee (DMC) meeting which was held on 22 March 2006. He did not receive a specific reply to these points but was included in the consultation process when he was sent a set of revised plans for comment. I refer to his second set of comments in due course.

The case Officer then prepared a report, the 1st Report, which specifically refers at the commencement to the Policy considerations that were relevant in her professional judgement. It states:-

"Local Plan -GE1
JUDP-54 (which is now JUDP-56)"

The salient part of which, says in paragraph 56 (IV) - "the replacement building has a lawful residential use and the new dwelling is no more visually intrusive than the original dwelling"

The Case Officer clearly considered this specific Policy as the following sentence quotes it in the report. "*The most relevant policy to the application is Policy 54".* The report also clearly shows that the consultees' responses were considered.

Is there a legally defined test for the phrase "no more visually intrusive"? The only guidance to be gleaned shows that the Inspector when considering Policy 54 of the JUDP specifically decided in his report, not to define this.

He said in paragraph 4.8.4 of his report "...*I am satisfied that the specified policy criteria are sufficiently clearly expressed to enable proper consideration to be given to future development proposals. Policies of this sort, by their nature, require subjective judgments to be made and the present provisions assist in this exercise; any attempt to define certain key terms more rigidly, for example what amounts to "visual intrusion", would lead to an over-prescriptive*

policy which is neither reasonable nor appropriate. The existing supportive text already provides enough explanation of these provisions.

This issue of visual intrusion goes to the heart of this case and report.

The Case Officer's 1st report states:-

*"The existing property on the site is a **LARGE**, timber-clad property".*

Some neighbours subsequently challenged this comment in their letter of complaint to the Authority on 16 May 2008 (some 2 years later) and said that the replacement is approximately 231m^2 compared to about 97-100m². The evidence of a re-measuring exercise shows the increase in floor plan as approved, to be 227 square metres. They go on to say that:-

"*This must be multiplied by the 3 storeys to show how much larger the new building is 630 sq m - more than 6 times the original building*"

The BNOG have consistently challenged this by asserting that the description of " large " could not fairly be ascribed to the old building known locally as Jimmy's Place .On the evidence that I have seen of old photographs, the impression I have gained is of a wooden cottage which could not be properly described as "large". I find that the use of the adjective "large" is inaccurate.

The Case Officer's 1st report goes on to say

"The proposed dwelling is also situated in the southern part of the site but situated to take better advantage of the views. The design is modern, with extensive glasing to the northern elevation, and is of a split level design to take advantage of the drop in levels with a two storey element to the north and a single storey element to the south and the main public views".

The underlining is mine.

Later on the Case Officer reports

"It is agreed that the principle of a modern design on this plot is acceptable, as it is divorced from other buildings and could provide an exciting opportunity to introduce an innovative design to the area. However, there are details of the design that do need further discussion, in particular *the overall height* of the *structure, the roof balcony and the details of the elevation facing the entrance. Policy 54 requires replacement dwellings to not be more visually intrusive than the existing dwelling, and it is considered that these aspects of the design detract from the overall concept and would be rather intrusive adjacent to the network of paths within the area.*

This shows that the Case Officer did, I find as a fact, consider Policy 56(iv). It is her interpretation of this policy that led to the granting of the 2006 permission. The 1st Report concluded that "*further discussion is required with regard to the detailed design".*

I find that the Plans as originally submitted were attached to the report for Members of the Authority to consider. It is clear that these showed the actual proposal in respect of the number of storeys and the directions they faced.

On 22 March 2006, the application came before the Development Management Committee which passed it. There was a debate and I have gathered from members present that they believed that, because of the concerns expressed at the end of the report that a reduction in height would be sought with other variations. However it is clear to me that the idea that this was to be a three floor property was not made as clear to them as it should have been, not withstanding the plans were included in the report for Members' perusal.

The minute of the decision reads:

> "***That the Application be delegated to the Chief Executive (National Park Officer) to issue consent on the receipt of satisfactory amended plans altering the detailed design and subject to the resolution of the issue relating to the badger sett.***"

It must be remembered that this was passed after consultation with the statutory consultees and the reading of the Case Officer's 1st Report by the Members. The plans that the statutory Consultees had seen at that time were the original plans lodged with the application and these were subsequently replaced in July 2006 by amended plans.

On 24 March 2006, the Case Officer wrote to Mr and Mrs N's architect that the overall height needs to be "*reduced."* .This in my view evidences the officer's awareness of the members' desire for a reduction in height and clearly the case officer was aware of this.

"The overall height of the building with a need to reduce the size to a more traditional two storey dwelling at its southern side and a single storey on its northern side. At present the heights reflect a <u>three storey</u> property to the south and a <u>two</u> storey to the north".

This letter shows that the <u>three</u> storey concept needed to come down in height and The Case Officer knew this. <u>But</u> the Officer's 1st report to Members in Committee referred to "*two storeys to the north and a single storey to the south".*

The complainants say this wording in the 1st Report led the Development Management Committee ("DMC") to think that it was lower in height than subsequently transpired. I do find this allegation made out. The letter from the Case Officer to the Architect when discussions were entered into about modifying the original application refers, amongst other things, to the height issue and does not show anything to suggest that they (the members)were aware they approving a three storey building.

With the benefit of hindsight, the letter from a neighbour dated 29th July 2006, highlighted some of the main issues to emerge.

1 Any new development must meet policy 54 and 73 .i.e. not be more visually intrusive.
2 The revised amended plans do not overcome the Town Council's concerns
3 The height of the proposed building had not been reduced. He pointed out the new height was much higher than the old height.
4 The wetlands needed to be retained
5 Did the Case officer intend to return to DMC?

This letter did not receive a reply until after the consent was issued on 17th October 2006. Points 1-4 all emerged as major points in this case. No mention of them was made in the reply even though they had been "flagged up" before the consent was issued. The normal practice I have established from officers is that individual responses are not made to letters of representation unless they ask specific questions needing answers. Officers do in their reports summarise letters and respond to those issues where appropriate. In this case this letter which identified key issues was not responded to until after the consent was issued.

On 21 August 2006, Newport Town Council recommended qualified approval. It records the change of position of the Town Council following the receipt of the revised amended plans of 24 July 2006.

The Town Council wrote:

"The Council concludes that the modifications make the proposal acceptable in general as an innovative design in an interesting location. Not liked are the row of windows at ground floor level on the South elevation reminiscent of a row of garages and the Council would like some negotiation on design to mitigate this effect. The Council has no agreed view on the uPVC criterion, although clearly preferring glass and wood if that were possible. Of particular importance is the inclusion within the conditions of a requirement to conserve all the natural trees and wetlands for its importance historically in the Town of Newport. Subject to the above points of detail, the Council recommends approval of the revised proposal

The underlining is theirs.

Under the system in place at the time, there was no requirement after the response from NTC had been received to return to the Members. The officer's view was that as the resolution did not explicitly require this there was no obligation on them to do it.

The Case Officer then undertook over the summer (July/August) of 2006 a revision of the 1st Report .This resulted in the 2nd Report which did not go back to members in support of an agenda item as the decision had been delegated. There is no evidence that members were made aware that two further sets of plans had been sent in or of the details of exactly what changes had been achieved by officers through their dialogue with the developer.

The second report does not go into the height issue in any further detail but approaches the revisions in a more rounded and holistic manner. In the officer's appraisal, it is reported:-

"The design is modern, with extensive glazing to the northern elevation, and is of a split level design to take advantage of the drop in levels with a two storey element to the north and a single storey element to the south and the main public views. The design includes a balcony within a flat roof area of the property"

The 2nd Report still talks of a two storey element to the north and a single storey element to the south. The approved plans however, do show 3 floors in parts of the building with living accommodation. In fact, all along 3 floors are shown on the plans accompanying each report, as is apparent from examining the plans.

"*However, there are details of the design that do need further discussion, in particular the overall height of the structure, the roof balcony and the details of the elevation facing the entrance. Policy 54 requires replacement dwellings to not be more visually intrusive than the existing dwelling, and it is considered that these aspects of the design detract from the overall concept and would be rather intrusive adjacent to the network of paths within the area."*

This is a repetition of what was in the 1st Report. These comments reflect word for word what was in the 1st Report.

The 2nd report commented that the NTC points of concern had already been addressed by the DMC on 22 March 2006 or could be dealt with by way of conditions and that the Town Clerk of the Town Council had noted that NTC's issues on the glazing on the ground floor windows would not be discussed further, thus concluding that particular area of concern.

I have seen a reference in the written evidence of Robin Williams, the planning expert retained by the developer at the Inquiry that "senior officers" considered the Case Officer's delegated report.

The issue of formal consent on 22 October 2006 suggests that they considered it and by implication approved it. I am unable to find any written record of such a meeting .Without a written record it is difficult to assess what was discussed, what criteria was applied and how the issues of visual intrusion, height and protection of the wetlands were addressed. This is a significant shortcoming but consistent with the poor written record keeping at this stage of the case, which is a consistent failure in this case.

Before the consent was issued, there had been agreed variations from the original drawings, in that there were amendments to the balcony and entrance elevations intended to reduce the intrusiveness adjacent to the footpath abutting the development, which the Case Officer felt were sufficient. There is nothing on the file to record how these variations were agreed or on what basis. But they do corroborate the Authority's account that some variations from the original plans were achieved. It must be borne in mind there were a

number of variations sought and some were achieved and others not. What was achieved was, in the professional opinion of the Case Officer and other officers of the department, an enhancement of the building overall from the original plans that had been submitted. It was on this basis that senior officers and the case officers came to the conclusion that the delegated decision could be made and the consent issued.

On 17 October 2006 the Consent was issued, subject to the amended plans of 24 July with 15 specific conditions (**Appendix 2**).

The relevant conditions on the consent in relation to this complaint were:-

Condition 2 *The development hereby permitted shall be carried out, and thereafter retained, strictly in accordance with the amended plan received by the National Park Authority on 24 July 2006 and subject to the following conditions.* This was not done

Condition 3 *Following site clearance and prior to commencement of construction work, site profiles of the external ground and internal finished floors shall be set out on site for approval by NPA.* This was not done

Condition 5 *A Schedule of external finishes and colours to be submitted to the National Park Authority for approval in writing, prior to the commencement of work.* This was not done prior to commencement.
This was not done.

Condition 6 *Full details of all windows and doors (including their means of opening, glazing bars and framing, dormers, soffits, fascias and verges shall be submitted to the National Park Authority for approval in writing prior to the commencement of the construction of the dwelling.* This was not done.

Condition 6 is a result of the comments of the Town Council (per letter from the clerk to the Newport Town Council). This again should have been followed up especially after the first site inspection on 4 January 2007 when it was known work had started.

Condition 7 *A suitable and comprehensive scheme for the soft and hard landscaping of the site shall be submitted to the National Park Authority for approval, in writing, prior to the commencement of work. Such a scheme shall take account of the natural trees and shrub species on the site and in the area in general. The scheme should also include measures for the retention and management of the wetlands scrub on the site.* This was not done

On the same day as the consent was issued, the Case Officer wrote a very specific letter to architect:

"It is important that the works are carried out strictly in accordance with the approved plans (where applicable and therefore all persons concerned

(applicant, builder, agent, etc.) must be provided with full details of this consent –including any conditions attached to it.

Any amendment to the approved scheme must be fully discussed with the appropriate The Case Officer and consent for it obtained, in writing, before any work commences .Our current policy only allows for minor working amendments to the plans/conditions to be approved by officers. Requests for all other amendments must be submitted as a formal planning application.

Until that is given any work carried out is unauthorised".

The underlining by way of emphasis is mine. This reinforces the requirement contained in the conditions, that "work must be carried out strictly in accordance with the approved plans, and conditions may require the agreement of the Authority". I am satisfied this was sent to the Architect, who was authorised to deal by Mr and Mrs N and imbued with their general and ostensible authority to deal with the Authority at this time.

The Case Officer had been correct to reinforce the need for prior consent before commencement of work on these conditions and was aware from writing the letter that any work on site undertaken would be unauthorised. Likewise so was the developer/builder and his architect.

From examining the evidence of Mr Robin Williams to the Inquiry, which appears to have been unchallenged by the Authority, it appears that the original dwelling was demolished and the site cleared in December 2006. Clearing a site is not 'development' that in planning law constitutes a start, and this was not in breach of conditions 4,5,6,7. However between January and February 2007, site excavation works were undertaken and work on the foundations commenced.

The first recorded visit from an Authority officer is on 4 January 2007. He was the local enforcement officer and he saw that the existing building had been demolished and the debris removed from site. He correctly recorded this in writing in his progress Monitoring note.

In the meantime, apparently unknown to the Authority, the developer/builder had appointed Roger Casey Associates as structural engineers. The ground conditions on site had been reported as "poor". This meant that the foundations had to be dug deeper into the ground than had originally been proposed by the architect, requiring more earth being excavated from the northern end of the site creating the potential for instability in the ground which required a new design solution. In order to resolve this, the architect was asked by the developer /builder to make changes to the plans. This as a fact was never done at that time. What did happen was that on 25 January 2006 Pembrokeshire County Council registered an application for Building Regulation approval for a new dwelling house. The work had already been going on for at least one month. This was submitted from the architect. No mention of this appears to have been made to the case officer or any other officer of the Authority.

On 16th March 2006, Building Regulation approval was issued by Pembrokeshire County Council. The drawings approved for Building Regulation approval showed a property that was narrower than that approved by the Authority under planning permission NP/06/076 and contained an extra basement room.

As was subsequently admitted by the developer " *It is now clear that these various changes to the building required a fresh planning permission which the architect had responsibility for but which was never obtained"* This is contained in para 3.15 of the proof of evidence of Robin Williams, p13 to the Public Inquiry.

On 4 January 2007, there had been the first site inspection by the Authority's enforcement officer. The file note says that the existing building had been demolished. There is no evidence of any communication, either orally or in writing or of any attempt by the builder, or their architect to inform the Authority of their intention to start work or the date of the commencement of work. It is essential to remember that Mr and Mrs Nicholas had been using the services of a professionally qualified architect, through whom dialogue and correspondence had taken place, over the changes which had been sought by the Authority to the original plans. He had been specifically advised in writing of the need to advise the Authority as to when work was to commence, as well as this being endorsed in a covering letter sent with the issued consent. The request to be told when works start, passes the onus to do this to the Applicant. There is nothing on the files to say that they have ever did tell the Authority either formally or informally that they had started work on the development. I have considered "Was it right to simply ask the developers to inform the Authority when work was to start?" Whilst it is clear they should have notified the Authority, but by not to doing so the Authority were simply not aware of what was going on this site. In this case the developer started work not only contrary to the conditions precedent on the consent but also without a building regulation consent in place at the time.

Although the onus was on Mr and Mrs N and their agents to inform the Authority of the commencement of work, there is no evidence that the site was monitored or the conditions of the consent followed up by the Authority, especially in the period prior to the first site inspection of 04/01/07 when it became known that work had started. This was a significant weakness as there was no system in place to manage the supervision of planning consents issued to conditions precedent.

The work on site continued on site throughout January and by 14/02/07 the actual construction of the new dwelling had started .By then it is recorded that 43 loads of concrete were in the ground. That is a substantial amount of concrete as major excavations would have had to take place to pour that amount of concrete into the foundations. The developer/builder acknowledges that by the time of this visit part of the foundations had been poured.

The case officer and the enforcement officer attended on site on 14 February 2007. There is nothing on file or any evidence I have seen that there were any visits in between, and if so, by whom. This is despite it being known from the 4th of January 2007 that work was going on site. There is no record of any

reaction taking place to the information recorded on the file by the enforcement officer following his first visit on 4th January 2007.

This second site inspection is five weeks later than the first. During this period building work was continuing. There is a note that shows "*Levels needed agreeing ... Builder was going to contact architect before continuing next phase*". There is nothing on file to say that consideration will be given to having work on the project will be put on hold or stopped until the levels issue was dealt with or the other outstanding conditions resolved/complied with. There are statutory powers available to the Authority to achieve this .There is also WAG guidance that dialogue should be the first approach rather than confrontation but that guidance does not extend to not considering using statutory powers to stop unauthorised work.

On 27 February 2007, the Third site Inspection took place. The note that I have seen says:-

"*Meeting on site Gordon Davies & The Principal Planning Assistant, and 3 Officers of PCNPA. Levels agreed. Finished foundations to be reduced by @ 400-500mm as much as possible. Details as requested by conditions 5, 6, & 7 to be submitted in writing to PCNPA. Discussed finishes to glazing details – Further info required. Concern expressed regarding the tipping of excavated material to the lower part of the site - agreed that this would be removed. Some of the material is to be used for backfilling".*

At this meeting the levels were agreed on site by Authority Officers and Mr and Mrs N's architect, Gordon Davies. There is nothing on file to establish how the levels were precisely established and what process was followed to establish how the levels were based on the approved plans. I refer to this later on. Additionally the word " removed" is written in manuscript. in such a way that the word could be interpreted as "reduced" as some of the complainants think. Having studied it carefully and having had the officer's written explanation, I now accept t that it is more likely to read "removed" rather than " reduced".

At about this time, and I have been unable to establish precisely the date, Mr and Mrs N's builder moved onto site a large amount of stone spoil/waste from a nearby site that Dwr Cymru had been working on. Its existence is referred to in the site inspection note but neither its significance nor why it was not removed forthwith is revealed or even attempted to be explained.

There was no further evidence on the file of any follow up or further inspections until contact was made on 27 May 2007 over the fenestration issue. Building continued on site unabated in the meantime during those three months

Significantly on 16 March 2007, there was approval of the Building Regulations from PCC. The Building Regulation drawings were different from the approved plans and drawings with the Pembrokeshire Coast National Park Authority planning permission. There was no mechanism in place to ensure that Pembrokeshire County Council were aware that the drawings they

approved were or could be different from the drawings approved by the Authority. Pembrokeshire County Council did not inform Pembrokeshire Coast National Park Authority that this was the case or vice versa. The builder appears to simply carried on up to this date, even without Building Regulation approval from PCC, or compliance with the conditions precedent of the consent issued by the Authority.

On 23rd May 2007 an Authority planning officer informed the architect that the window samples that had been submitted were unacceptable.

On 5th June 2007 work started on the erection of the steel frame. By then there is evidence that the Authority had been made aware of complaints from the public about the height of the structure. I have been supplied with a number of photographs from different witnesses which clearly show this. The Authority did react and the Case Officer went to site and meet the builder and his architect. The main structure of the portal was in place including the ridge was in place. She raised a number of very serious concerns and was promised confirmation of a number of matters. These were not forthcoming from the architect, who appears to have left the project at about this time.

(iii) Discharge of Condition No. 3 of NP/06/076

Following a site visit, a letter of 26 July 2007 was issued by the National Park Authority stating that the development was being carried out in accordance with the approved drawings (i.e. those approved under NP/06/076) and that condition 3 of the Planning Permission (requiring, prior to the commencement of any construction work, site profiles of the external ground and internal finished floor levels to be set out on site for approval) was discharged. The letter is attached as **Appendix 3**. I will deal with this in more detail shortly.

However the letter did not specify the levels agreed to any agreed ordnance or other datum. Rather, it is understood that it was agreed on site prior to the letter being written that the ground floor level of the dwelling as constructed at that point sat at the same level as either the top of a series of stone steps which sit at the site entrance (shown in the July 2010 survey (**Appendix 4**) to be 20.45m AOD) or at the same level as the top of a small wall that supports those steps (20.66m AOD). Agreed levels were consistent with those at the top of a series of steps located at the site entrance. However, there is confusion as to whether the agreed level was that of the surface of the top step or the surface of the small wall that supports the steps. It was agreed in the Statement of Common Ground to the Planning Inspector therefore, that the ground floor level of the dwelling, as discharged, sat at one of those two levels which are 20.45mAOD (top of steps) or 20.66m AOD (top of wall supporting steps).This is an example of how the lack of initial precision led to a situation where even though the parties seemed to have agreed, there was still scope for confusion. I have little doubt that had the levels been agreed and recorded properly at the outset this issue would not have arisen. It is in my view symptomatic of the lack of precision that is not confined solely to the Authority in this case that led to the case evolving like it did.

It is significant the discharge was sought when much of the building structure had been erected and the site had been the subject of substantial earthworks. This was notwithstanding, the conditions precedent on the consent when

issued and the Authority having been aware since January 2007 work was being carried out on site in breach of these conditions. This was subsequently acknowledged at the Inquiry by both sides. The letter confirmed that Conditions 5, 6 and 7 had yet at that time to be fully complied with. It did not point out the fact that the footprint of the building was not located at the specific location shown on the approved drawings but appeared to be located some 5m to the west (towards the access) of the location approved and some 5m also to the south of the approved location.

There is no evidence on the files to show that at any stage between January 2007 and July 2007 officers questioned the levels set, nor did they raise the possibility that the position of the dwelling was incorrect, or its dimensions wrong. In the light of this, I question what was the point of the conditions precedent if they were tacitly waived. More fundamentally, no consideration appears to have been given to using the powers it had to stop the construction until compliance .The developer appears to have been left to continue to build in accordance with the Building regulation approval issued by another authority - Pembrokeshire County Council - not the approved plans of this planning authority. Critically there is clear evidence that members of the public were informing the Authority that construction was going ahead and materials to alter the levels were coming on site .There is no evidence that anything was done other than to meet and "discuss" the matter on site. I acknowledge that the guidelines (TAN 9) do refer to dialogue with developers in cases to ensure compliance, but the guidelines also talk of taking action in appropriate cases.

On 20th of July 2007 in the absence of any response from the architect the case officer met the builder on site. By now the steel portal frame had been substantially completed and ground floor level and ridge height could be identified After the builder's foreman took a number of measurements including the site levels and height and dimensions of the structures, the case officer checked these against her plans. She confirmed orally that the building was constructed in accordance with the approved plans. She wrote on 26th July 2007, following up the meeting

> "*I am able to confirm that the development is being carried out in accordance with the approved drawings and that Condition 3 of the planning permission NP/06/076 (dated 17 October 2006) may now be discharged.*
>
> *However I should point out that Conditions 5, 6, and 7 have yet to be fully complied with. I therefore trust that these outstanding matters receive you urgent attention accordingly."*

On or about the beginning of August 2007 the builder replaced his architect who had become "unavailable" to the Authority's officers. From evidence given to the inquiry he was also unavailable to the developer. A fresh architect was appointed on the 1st August 2007. Significantly the first drawings he received from his own client was a set of the approved Building Regulation plans.

By August 2007 ,complaints began to be received by the Authority from various individual community members

On 5 August 2007 the local Town Council wrote to the Case Officer, raising a number of concerns which were later incorporated, in part, into the complaints that had been lodged by the complainants in this case.

They asked the following questions:-

1 what was the height reduction between the first published plans, and the amended plans and are the developers conforming to those revisions?

2 What were the reasons for you not to have taken account of JUDP Policy 56 (IV) in your decisions?

3 What were the reasons and measurements taken, which enable you to discharge approval condition 3?

With the arrival of this letter, there was cause for some concern at the Authority. The Head of Development Management (HDM) became involved and made enquiries with the Conservation Officer, who had not been consulted about the planning application on the basis that it was not technically within the Conservation Area even though its close proximity to the Conservation Area meant that its construction might have an impact on those living within the Conservation Area.

An officer wrote internally:-

> "*We are all a little culpable here in policy 79, should have had greater prominence with regard to view was in and out of a CA…….. My main concern would have been the overall height of the house". Later on the officer states that, "one simple remedy is the application of policy 79".*

Policy 79 was not included in the policies listed as having been considered in either the 1st or 2nd Report or if it was considered no specific reference was made to it.

On 17 August 2007, Officers visited the Town Council as part of the ongoing dialogue that regularly took place between these parties. The meetings were not minutes. This was an agreed policy by both parties, as it enabled a full-length free dialogue to take place between the parties, which was considered to be more conducive to mutual understanding. As I do not have any minute available, I am unable to make any findings as to whether or not this is in fact the case. It is clear however that the Town Council wanted a specific response to its letter of 5 August and although there may have been discussions on that day, the differences between the Authority and the Town Council were not resolved. It is alleged by BNOG that NTC were told on 17th August 2007 that there had been agreement in height reduction when in fact there had not been.

The Head of Development Management (HDM) responded on 31 August 2007 in a letter to the Town Council and a letter in similar terms was sent to some individual complainants. It confirmed that the amended plans had in fact been forwarded to the Town Council, and that it had consented to the application. I

am satisfied on the information I have seen on the file, and from interviewing the officers that those amended plans were sent to the NTC.

In the letter to the Town Council, HDM crucially stated

"*From my examination of the file it does appear that although the architect's ground levels were not as accurate as they might have been and therefore the building looks higher than any of us perhaps expected. This is unfortunate but I do not think that at this stage anything can be done about that. Obviously, there are major ground works to be undertaken and the building finished and in my view ,at the moment is that it is premature to so robustly criticise the development (which is what is happening) or to blame a single officer for something that is not liked. It is the Authority's decision and if there is criticism it should directed to the Authority".*

In HDM's letter to members of the public, who had complained and who were also neighbours, it stated:

"*It does however appear that although the structure itself is in accordance with the approved plans (and these have been carefully checked) the ground levels are not as indicated by the architect on his drawings and therefore the building framework which is all that can be seen at the present time, appears higher than anticipated* "

By now, the steel framework had been erected for some time, looking at the photographs that I have been supplied with, and was plainly visible to the Complainants.

On 9 September 2007, members of the public wrote again to the Authority, reiterating their complaint in detail, "*There still seems time to reduce the height of the metal frame before the building work goes further".*

This was not addressed and it now transpires that, in fact the steel frame work was too tall and had not been constructed in accordance with the approved plans.

On 21st September 2007 the HDM in an email to the Chief Executive, a planning officer admitted:

"We do not appear to have addressed the height issue …..the actual minute does not refer to height (copy attached) although the preamble definitely does.
I don't think I can get away with not admitting this …try honesty it really works??????...we thought that the other improvements achieved to the detailed design were enough?????????"

The subsequent response to the neighbours dated 27 September 2007 states on the height issue:

" *Whilst I accept that the issue of height was raised in the discussion ,the overall improvements to the design in the main details of which obviously*

can not yet be seen) were to be considered to meet the concerns expressed by the members; the Town council having raised only minor points in respect of the amended design ,recommending approval to the amended scheme, although one objector maintained his view. Accordingly the planning permission was issued."

On 1 November 2007, the Authority responded to NTC:

Dear Mr Harwood

RE: Bettws Newydd, The Parrog, Newport

I refer to your most recent letter regarding the above matter. I am aware that you have seen the committee report but for the sake of completeness enclose a further copy.

To specifically answer your questions:-

1. The overall height of the building was not reduced as a result of the negotiations. However changes were made to the form and design of the building which were considered to help them with the impact of the development

2. Policy 56 is but one of the many policies in the JUDP and it was considered that the scheme, as amended, had much to commend it; that overall, and given the particular landscape in which the building was set, the development was acceptable and it was not considered that when completed the building would, in the overall landscape context, be unacceptable or intrusive visually.

3. A meeting was held on site, and a photographic record retained on file which led to officers accepting by letter dated 26th July that condition 3 had been discharged. Copies of drawings showing the levels were requested for the file but the architect originally commissioned to do the work has left the project. I understand another architect has now been employed and those drawings, as a record for the file are promised.

I trust that this answers the outstanding issues raised.

Yours sincerely

This is some 87 days after their letter raising their concerns. The context is important as they had written as a result of locally expressed views and believed that the reduction of height issue was something that was being addressed, whereas in fact unknown to them it had been tacitly abandoned by the officers, who felt that other modifications made had resulted in sufficient gain and had in the round addressed the criticisms. The failure to reveal the full position to the democratically elected members of NTC is a failure I my view that only served to increase the difficulties that existed in the relationship

between the Authority and the NTC. I have not been any given any explanation as to why it took so long to explain this.

On 8 November 2007, HDM sent an e-mail to another interested party which stated

> "*the application was determined in 2006. Height was not in fact addressed in the submission of the amended plans that were approved although a wide range of other issues were, which convinced us that the scheme was acceptable in that particular landscape. The Town Council, who supported the revised scheme, has been advised of this.*

It appears that although a whole range of issues were considered there was no direct consideration of policy 79, as this is acknowledged by Head of Development Management, until some time after the decision had been reached. No one appears to have raised this at the time the planning application was submitted or during the consultation process.
Thus by November 2007, the local community was aware of the approach taken by the planners, as Head of Development Management's e-mail is clearly in the plural. This approach in essence was that the height "issue", as that is how it was described, was certainly part of the planning and decision making process on the revised plans that ultimately became approved, but it was not a "stand alone" issue on its own.

During this period there is no evidence that any of the Authority's planning officers asked for legal advice on enforcement from the Authority's Solicitor.

(iv) Application NP/08/361 - Variation of condition 2 of NP/06/076

This was to allow the development to be built in accordance with revised plans) (application made pursuant to S73 of Town and Country Planning Act 1990) and discharge of conditions 5, 6 and 7.

On the 8th of October 2007 the Authority drew to the attention of the developer that there were still a number of outstanding conditions to be addressed. In particular the Authority was seeking drawings showing finished floor levels requested. It asked for these to be submitted as soon as possible. The new architect informed the planning officer that the previous architect's plans identified levels. When the planning officer pointed out he was unable to find any plans on file which matched the description of a plan of the second architect was talking about, the second architect then forwarded a set of his working drawings to the Authority's planning officer, which were the approved building regulation plans. This exchange demonstrates the confusion which appears to have been in existence at that time. It transpires that the Arwain architects (the new architect) discussed with the developer further minor changes of the approved building regulation approval drawings received on 9 October .This resulted on the 5th of December 2007 with the Authority receiving Arwain architects first floor plans and elevations. On receipt the officer informed the architect that he had "concerns" and that a fresh application would be required for the amendments. He recorded this with a

clear telephone note which is recorded on file correctly, the content of which was not challenged by any party at the subsequent Inquiry.

On 17 January, 2008 the HDM wrote to say that the additional living accommodation shown on the Building Regulation approved plans was not shown on the National Park approved plan and in consequence a further application was required. She also advised the conditions 5, 6 and 7 had not been discharged.

On 20 January 2008 Arwain Architect met the Authority's landscaping officer on site to discuss landscaping. I have not seen a note of this meeting. In this meeting it is alleged by the builder in his evidence that the form of landscaping was verbally agreed. It is clear that a Landscape Proposals Plan in respect of condition 7 was submitted shortly thereafter.

On the 20th of February 2008, which is a year after the work started on site, a site meeting took place at which a detailed survey of the building on site was undertaken by one of the Authority's planning officers. This identified a number of discrepancies between the approved plans and the building as constructed. These discrepancies were recorded on the original architects approve site plan NP 001. From this 2008 survey it appeared that the "as built" building had been constructed on the basis that the ground level was level with the top step of a flight of steps identified at the site meeting of 20th February 2007.

Following a further meeting held between the Case Officer and the developer/builder and his second architect, the Case officer wrote on 20th March 2008, to the new architect identifying the number of discrepancies and continuing to maintain conditions 5, 6 and 7, had yet to be agreed in writing with the Authority.

There was no response to this letter until revised plans were submitted on the 1st of May, 2008. By the 30th of May 2008, the Authority had considered the changes and pointed out that these changes did require a new application. The Architect was advised of this in a telephone conversation. This telephone advice was followed up in writing by a letter dated the 13th of June 2008. Eventually on 25th of June, 2008 following a meeting at the NPA offices between the architect and building developer it was agreed with officers that there would be submitted a new application to vary in particular condition 2. This meeting was recorded by a file note made by the Authority's officers. This application was numbered NP/08 /361.

The notes that I have seen of these meetings between Arwain architects and the Authority are contained in the evidence submitted to the inquiry from the builders witnesses and the Authority files. They were not challenged as to accuracy by the Authority. The note taking had improved by this stage and form a reliable contemporaneous only record in my opinion.. This contrasts with the early history of the application.

During this period the then HDM was still engaged in correspondence with the NTC. On 14 April 2008, the Town Council asserted that Head of Development Management admitted that they (meaning the Authority) had made a mistake:-

> "*when you did not refer to ordnance datum height, in assessing the relative heights of the original and replacement dwellings, in granting consent, and when agreeing that the levels were correct in compliance with Condition 3 attached to the consent is acknowledged".*

I have not been able to find any evidence that in fact any specific steps or work were undertaken to assess the relative heights of the original and replacement buildings by reference to ordnance datum levels, when agreeing the levels at the meeting of 27 February 2007. Whilst it may have been, there is no record of how it was done on file. In addition, I have been unable to find any specific correspondence which, in itself, states the Authority acknowledged that it "had made a mistake "as asserted by the Town Council. I have already referred to the informal meetings that did take place, which are unminuted and as such have been unable to assist in deciding as a fact, whether the assertions of the Town Council in relation to the alleged "Admissions" are made out conclusively. Although it is possible words to this effect may or may not have been said at one of the informal meetings, or conveyed such an impression I am unable to be certain so as to make a conclusive finding on this specific point.

The issue of landscaping clearly became more significant following a complaint from yet another neighbour as well as the Complainants. It forms a significant part of the complainants' complaint that Condition 7 of the consent has not been complied with and Mr and Mrs N appear to have gone to a lot of trouble and expense to redirect the course of the stream that flowed into and through the wetlands. The work that has been done there is unauthorised as it is not in accordance with the specific Condition 7 that exists on the current consent. Policy 68 is relevant in that it refers to "*Information regarding earthworks and changes in level"*. The complainants say that these issues were not properly addressed at the outset as the datum levels are so poorly recorded. I find that the policy does require information to be provided regarding earthworks and changes to level as it states but that the plans do provide some information which is sufficient to satisfy this policy.

I am unable to identify a specific date when this work was done but it appears to have been done early on in the redevelopment, notwithstanding the Case Officer's letter of 17 October 2006. It is something that could have been the subject of specific enforcement action irrespective of any other breach. The significance of this breach and the destruction of the wetlands cannot be overemphasized in my view.

It is also clear that officers had recognised the serious breach and retained the option of enforcement proceedings, although no steps were taken to commence such enforcement proceedings although they were contemplated in January 2008 but not taken any further.

(v) Application NP/08/361

This had long procedural history.

On 28th July 2008 Arwain Architects submitted an application for the "Variation of Condition No 2 on the Planning Consent NP/06/076 & Discharge of Conditions 5, 6, and 7. This application, Reference NP/08/361 sought a variation of Condition No. 2 of Permission NP/06/076 to allow the retention of the building in the state then completed which was not in accordance with the 2006 approved scheme.

"This application was submitted under Section 73 and initially reported to the Authority's DMC on 19th November 2008.The Officer 's report was broadly in favour of the application A legal issue then arose as to whether the application should be decided under section 73 or section 73A of the Town and Country Planning Act 1990 (the Act) as members of the Bettws Newydd Opposition Group suggested .Their representations were considered and after taking legal advice, the Authority proceeded under Section 73A of the Act. There is a significant difference between how a Section 73 application and a Section 73A application is determined. Section 73A amounts to, in effect, a fresh reconsideration. As a result the decision was again deferred, ultimately until 18th March 2009. For the November 2008 meeting of the DMC, officers had recommended approval "with a condition restricting the use of the additional basement rooms as living and storage accommodation. By the time the matter came back in to DMC in 18th March 2009 the members decided that they wished to undertake a Members Site Visit. This they did on 30th March 2009.

This meeting was attended by members of the opposition group, some of whom exercised their right to address the DMC. After a debate the members decided that:

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 glasing 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.

The architect responded to this and the matter came back formally to the DMC on 20th May 2009 when it was deferred again for Members to have further time to consider the information provided.

On 17th June 2009, the matter came for active consideration. After a lengthy debate in which members expressed serious concerns about the plans, the members changed their previous decision and resolved to refuse the application in the terms below:

DECISION: That the application 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 other buildings on The Parrog and it is therefore in conflict with criteria (i), (ii) and (iv) of Joint Unitary Development Plan (JUDP) Policy 67 (Conservation of the Pembrokeshire Coast National Park), criterion (iv) of JUDP Policy 56 (Replacement Dwellings) and JUDP Policy 76 (Design).**

2. **Notwithstanding the fall back 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.**

The decision notice was issued on the 2nd July 2009.

The reasons for refusal were identical to those used to refuse the subsequent appeal scheme other than the fact that Policy 78 (Amenity) was not cited as one of the JUDP policies that the proposal was considered to be in conflict with.

(vi) The 2010 application

The applicant then decided that he would submit a new application supported by a new landscaping scheme and a Landscape Visual Assessment, which were prepared by his agents Soltys Brewster. This was submitted on the 12th January 2010 and registered by the Authority on 26th January under reference number 10/033.

This was based largely on a fresh landscaping scheme

Yet again the plans lodged with the application were subsequently revised and revised plans were submitted on 22nd March 2010.

On the 21st April 2010 the application came before the DMC. The officer's report pointed out what is now known as the "fall back" and that this would and should be a "material consideration" under section 38(6) of the Planning and Compulsory Purchase Act 2004.The officer's recommendation was for approval.

In July 2010 in preparation for the Inquiry to be held the Authority and the developer/builder agreed to a fresh Topographical Survey.

I will deal with the as built scheme next as it is important to be aware of it in the context of the application being made in 2010.

(vii) The "*As-built*" scheme

This was the subject of the two appeals and, although the building is substantially completed, it is not yet finished. Other than those elements of the building yet to be completed and the landscaping, it is in accordance with the drawings submitted for approval and refused on 21 April 2010 (Application No. NP/10/033 – the appeal proposal)

A comparison between the 2006 approved scheme (the fall-back position as adjusted, in terms of levels, and the "*as-built*" scheme, as confirmed by the July 2010 Topographical Survey agreed between the parties, is as follows:

- The ground floor level of the appeal scheme is 0.08 to 0.13m higher than the 2006 scheme.
- The eaves height of the appeal scheme is 0.56 to 0.77m higher than that of the 2006 scheme.
- The ridge height of the appeal scheme sits 0.43 to 0.64m higher than the ridge height of the 2006 scheme.
- The footprint of the appeal scheme is just 3.6 sq m larger than the 2006 scheme.
- Of significance to these appeals the "total visible elevation" of the appeal scheme is, at 717 sq m, some 119.5 sq m (20%) larger than the 2006 scheme.
- In terms of the western elevation, however, the as-built dwelling has a visible elevation which is 70 sq m (36%) larger than that shown on the approved 2006 approved drawings.

The consequence of the above is that the "*as-built*" dwelling, as shown on the drawings and as witnessed on site albeit in the absence of the yet to be finally agreed landscaping scheme, gives the impression of having significantly more external mass than does the approved 2006 dwelling. Although the frontage width of the appeal scheme is actually 1.5m narrower than the approved 2006 scheme, therefore, it is the extent of the additional "*visible elevation*" that in particular suggests that the difference in scale and massing between the two buildings is significant.

(viii) The determination of the 2010 application

A potential legal challenge emerged which resulted in the matter being delayed until 21st April 2010 when the members voted to refuse it. The debate is recorded in the approved minutes of the meeting and can be found on the attached link DM minutes 210410.doc.

The recorded decision is minuted as:-

"That planning permission be refused for the following reasons:

1. The proposed extension, by virtue of its scale and mass, would enlarge this property to an unacceptable extent and would result in a dwelling of

excessive scale and massing, which would have a detrimental impact on the character, appearance and amenity of the area.

2. The proposal is contrary to the following policies of the Joint Unitary Development Plan:

Policy 5 – Development and the National Park
Development within or impacting on the National Park must be compatible with the conservation or enhancing of the natural beauty, wildlife and cultural heritage of the Park, and the public understanding and enjoyment of those qualities. In determining proposals, due regard will be paid to the need to foster the economic and social well-being of the local communities within the Park provided this is compatible with the statutory national park purposes embodied in the foregoing considerations.

Policy 67 – Conservation of the Pembrokeshire Coast National Park
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.

Policy 76 – Design
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.

It is not considered that the proposal meets the criteria of this policy.

Policy 77 – Extensions to a Building
Permission will be granted to extend a building if:

i) the scale, design and external materials of the proposed extension building do not adversely affect the character of the building or surrounding area; and
ii) the proposal does not reduce the privacy or amenity of nearby residents: and

iii) the proposal would not cause the felling of the loss of hedgerows or other boundary features contributing to environmental quality of the area; and
iv) sufficient space to park vehicles would remain in the curtilage of the building.

It is not considered that this proposal meets this policy, by virtue of criterion (i)

Policy 78 – Amenity
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

It is not considered that this proposal meets criteria (ii) and (iv).

The decision is noteworthy as it clearly demonstrated a difference between the members and the officers. The members when they refused this application demonstrated that in their view, the development amongst its other faults was "visually intrusive."

(ix) Enforcement Action

On the 3rd June 2010, following refusal of the application 10/01/033, the Authority formally issued an Enforcement Notice to the developer.

In October 2009 the Authority had been minded once again to take enforcement action. However, it concluded that it was first prudent to seek further consultation with the developer in line with the advice tendered in paragraph 6 of Technical Advice Note 9 (Wales) that enforcement action should not be taken "*simply to regularise development for which permission had not been sought, which is otherwise acceptable*". Paragraph 8 of TAN9 confirms that the initial aim of potential enforcement action should be to explore with the owner what steps, if any, could be taken to reduce the effects on public amenity to an acceptable level.

Accordingly it was considered prudent by officers to allow the developer to explore if there was any way in which the scheme could be modified in some way to reduce its unacceptable impact to a level that would render it acceptable in planning terms. Accordingly, it was resolved that the developer should be invited to undertake the exercise of attempting to demonstrate how he could bring the building back to the 2006 "*fall-back position*" or otherwise resolve the harm to amenity. It was also resolved that if it was confirmed that

such a solution could not be advanced then enforcement action should be issued, which would seek to remedy the breach by:

1. Removing the building, hardstanding and drive.
2. Removing from the land all building materials and rubble arising from the application of the first requirement.
3. Restoring the land to its condition before the breach took place by levelling and resurfacing that part of the land disturbed by the unauthorised works, consistent with the contours or features shown on the 2005 "*existing survey*" drawing.

It was the consideration of taking enforcement action that was the catalyst for the 2010 application (NP/10/033)*The application having been refused on 21st April 2010, the Enforcement Notice was issued on 3rd June 2010, and it would have taken effect on 6th July 2010 had the appeal to be determined at this inquiry not been made"*. The notice required:

1. Remove the building, hardstanding and driveway and ground works forming part thereof.
2. Remove from the land all building materials and rubble arising from compliance with the requirement (1) above and restore the land to its condition before the breach took place by levelling and resurfacing the ground.

The appellant was required to remove the building, hardstanding and driveway, and the ground works and earthworks within six months of the notice taking effect (that is by 6 January 2011) and to remove all building materials and rubble and to restore the land within 12 months of the notice taking effect (that is by 6 July 2011).

(x) The Appeal and the Public Inquiry

The appeal against the enforcement notice and the appeal against refusal of planning permission in application NP/01/033 went to appeal held before an independent inspector. It lasted 6 days in October 2010.Evidence was given for the Authority by its retained expert Lyn Powell and on the landscaping issues by Mr Richard Staden from Pembrokeshire County Council. No officer of the Authority gave evidence. The appellant Nolan Nicholas gave evidence as well as his experts Robin Williams, Jeff Davies, Roger Casey, Mr Nicholas and a landscaping expert etc. The evidence and submissions are a matter of public record and can be found on the Planning Portal Website www.planningportal.gov.uk by searching for Appeal references APP/L9503/C/10/2131835 and APP/L9503/A/10/2128919. I do not intend to repeat them here again.

Both the developer and the Authority were represented by barristers. The BNOG represented themselves and submitted their own evidence through their witnesses. In the broadest terms their position was similar but not entirely the same as the Authority's in that they opposed the scheme in its entirety as well as commenting in detail over specific aspects of the application

NP/01/033 and the enforcement notice. They raised a number of their own specific objections.

The inspector published his decision on the 7th December 2010
I have added at **Appendix 5** the full copy of the Inspector's decision on both the application for planning permission and the enforcement notice.
In summary in the context of this report, the inspector in his conclusions made it clear that the property had been built outside of policy and that he would not have been granted permission if it had come before him on an appeal. He concluded that subject to conditions, the building "as built" should be permitted because of the existence of the "fall-back" position contained in 2006 consent. He expressed his view, in this manner:

"I consider that the completed building would be visually intrusive and insensitively sited within the protected landscape of the National Park due to its scale, design and location on rising ground above the coastal scene. It also impinges upon the level of amenity currently enjoyed by local people, particularly on the appearance of this part of the town and adjoining countryside.

15. In those views of the northern elevation from near and far, the building has a 3-storey appearance, with much reflective glasing in the main living room gable. Being setback on higher ground, it is tall and dominant in its surroundings, notwithstanding the existence of 3-storey houses along the Parrog seafront, which it towers above in distant views. Therefore I take the view that, when completed, the building would fail to harmonise with, or enhance the landform and landscape character of the National Park as required by Policy 15 of the LDP.

16. The design of the dwelling is uncompromisingly contemporary, with little concession made to the vernacular architecture of the area or the large historic buildings that form the core of the Parrog Conservation Area. It makes a bold design statement that is a clear departure from the varied quality of domestic architecture in the surrounding area. As such, the building relates poorly to the place and its local distinctiveness .Due to the prominence and scale of the 2- and 3-storey elevations, the building is incompatible with its surroundings and due to the visually intrusive nature of the building I conclude that the retention and completion of the development would have an unacceptable impact on local amenity contrary to LDP Policy 30.

17. Whilst it can be argued that the as-built dwelling fails to meet the sustainable development objectives of LDP Policy 29 and the Supplementary Planning Guidance on sustainable design in the National Park, it has to be borne in mind that these appeals both deal with the retention of an existing dwelling (albeit part-built), which makes it rather to difficult to apply these guidelines retrospectively. Nevertheless, I conclude that in my opinion the large modern dwelling that has been built on the site fails to meet many of the criteria of the approved LDP policies.

This approach by the inspector reflected to a certain extent the view that the members of the Authority and by now, the officers of the Authority had. It was conceded at the Inquiry by its Counsel that this was the position but there still existed an extant planning permission from 2006 that could be implemented. He proceeded to consider the "as built" property in detail, and after considering the fact that there was an extant permission from 2006 that could be implemented and that the "as built" property was not so significantly different, he granted the appeals both for planning permission and against the enforcement notice.

For the purposes of this report, I am now satisfied that the views of the complainants and the inspector and the Authority's belated acknowledgement, are now in agreement and planning permission was granted in 2006 contrary to the policies contained in the LDP and where applicable in the JUDP in 2006 .

There is now an open acknowledgement that it does contravene policy 56 (iv) and other policies in existence at the time, in that it is amongst other things, more visually intrusive than the building it replaced.

One complaint has been that the Authority did not acknowledge this earlier. That complaint is in my view a comment rather than a complaint. The recognition of what was described as an "innovative design", and that initially had been felt by officers to be inside the parameters of policy was now outside those parameters, was arrived at by the Authority's officers after advice was taken from its own outside planning consultant and a review of all the evidence by its officers by summer 2010.This is evidenced from its submissions to the inquiry.

Following the decision notice being published, the Authority and BNOG consider the decision carefully and after taking legal advice decided that notwithstanding their concerns over the decision, not to challenge it further in the High Court.

By way of conclusion, the Authority was requested by BNOG to make an order under Section 102 of the Act requiring the discontinuance of use of and/or removal of the " As built" building .and /or the use of Section 97 of the Act to revoke or modify the planning permission. The matter was the subject of an officer's report to the DMC, which recommended that it was not expedient to make either a discontinuance order or revocation order .On 23 March 2011 that recommendation was accepted by the Members.

(xi) Financial considerations

I have looked into to the substantial financial cost of this case. For the record the direct financial cost to the Authority is based on the three forms of direct expenditure.

(a) Officers time
The total internal recorded planning officers' costs are at least £6,727.64 and detailed below

1 HDM: 24 days = £6,046.56 (18 days = £4,534.92 + 4 days = £1007,76 + 2 days = £503.88)
2 Case Officer : 3 days = £552.90
3 Enforcement Officer = £128.18

I think these are understated as there has been input from other officers including the previous Chief Executive, the Authority's solicitor, the authorities landscaping officer, and other officers of the planning department who attended on site. In the light of subsequent comments I make about the adequacy of record keeping I think it more likely than not that the officers' time is understated when taking into account the length of and number of reports, the number of meetings evidenced on file and at the Inquiry. It is a matter of regret that I am not in a position to be any more precise. Furthermore the matter has been the subject of a site meeting, a number of appearances on the DMC's agenda involving Member's time, and support staff time.

At the appeal before the independent inspector, Mr Richard Staden BA Dip LA CMLI is employed by PCC as its Landscape Officer gave evidence on behalf of the Authority. He comprehensively reviewed the landscaping submissions from the developer and his advisers and filed a comprehensive report. His services were provided by Pembrokeshire County Council to the Authority as part of and under a reciprocal arrangement for mutual exchange and support of specialised officer services on a non financial charge basis. The authority under the scheme will be expected to provide the support to PCC and support it on another matter or matters should it be requested to do so, thus there is, in fact, an obligation for a commitment to officers time in the in the future which cannot currently cannot be quantified. Another external landscape architect had provided an estimate of £8,000.This was a well merited decision.

(b) <u>The cost of Outside consultants</u>

Up to the time up the commencement of the Inquiry process of the Authority, had retained the services of a barrister and also a planning consultant to advise on committee reports, practice and procedure. I have examined the Authority's policy and procedure for the engagement of outside contractors and have found that the procedure had been corrected followed in that each contractors cost came within the limits under procedure prescribed. The procedure should be revisited as when these costs are aggregated they go beyond the parameters of officers' individual authority.

Consultant	Nett Cost	Total Cost
RPS	3327.70	
RPS	5709.14	
RPS	3438.15	
RPS	2810.18	15285.17
Graham Walters	2137.80	
Graham Walters	378.00	

Graham Walters	105.00	
Graham Walters	472.50	
Graham Walters	420.00	
Graham Walters	4685.10	
Graham Walters	262.50	
Graham Walters	5638.50	14099.40
Landmark Chambers	250.00	
Landmark Chambers	1050.00	
Landmark Chambers	200.00	
Landmark Chambers	150.00	
Landmark Chambers	375.00	2025.00
		Final Total: 31,409.57

(c) Outside consultants' time during and post inquiry
These are the direct costs that were in incurred once the developer had exercises legal rights to challenge the refusal of the 2010 decision and by enforcement notice.

Consultant	Nett Cost	Total Cost
RPS	9076.35	
RPS	10501.80	
RPS	1506.25	21084.40
Graham Walters	18000.00	18000.00
		Final Total: 39,084.40

(d) These sums amount to £77,421.61. I draw them to the attention of the members. These are substantial sums.

6. Complaints

(i) The Newport Town Council – 'NTC'
They are democratically elected by the voters of Newport to represent them. They were consulted by the Authority as statutory consultees but having given a qualified consent to the development at the outset have felt that their caveats to their qualified support to the development initially, were not considered fully or taken care of before the final decision was given in October 2006 .

Furthermore they have felt that their correspondence was ignored and that the views that they expressed were not taken into account, to the extent that there was a considerable rift between them and the Authority. Whatever were the individual reasons and details of this breakdown it is evident to me, that as a fact, there was a significant deterioration in communication between the 2 bodies. This was at a time when good communication was essential.

There was a system of informal dialogue which, whilst being in place did lead to problems as its informality contained the seeds of its shortcomings. The meetings were unminuted and whilst they have been conducted on an "off the record" basis, each parties recollections and conclusions from the meetings differed from time to time in the absence of agreed minutes.

On the evidence I have seen, I am satisfied that the view of the NTC is correct and they were not given the due regard they should have been. The delay to replying to correspondence undermined the Newport Town Council's confidence in the Authority and served only to heighten their perceptions of "them and us". This is particularly so in relation firstly the period following the decision to delegate the decision in March 2006 and secondly to its written enquiries in August 2007, when asking for confirmation of the changes. By delaying any response, they were denied the chance of taking their objections further.

(ii) Complaints against the Pembrokeshire Coast National Park Planning Authority from Bettws Newydd Opposition Group ("BNOG")
These are set out in the following schedule. The schedule also contains complaints from other interested parties, some of which repeat the complaints previously made .The BNOG is the principal organisation that has made complaints. There have, in addition, been complaints from individual members of the public who are not part of any group but make their complaints in a personal capacity.

These I have also taken into account as well as criticism expressed in previous correspondence from the Newport Town Council.

The complaints have been grouped with regard to the development process i.e. from commencement with a pre-application right through the process to the Appeal.

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
1.	Not recording pre-application meetings on file in both 2005 & 2006 where agreement was allegedly reached over levels	BNOG	It is acknowledged by the case officer that in the early part of the case inadequate written records were retained on file. This practice has now been addressed. It is not accepted that there was an agreement over levels in 2005. There is no written evidence to support this allegation or conversely to reject it. There was to the case officer's certain recollection, discussions over levels but these were of a general nature, non measured nature.	Estate agent spoken to on telephone –given impression "No larger than Jimmy's place" . In the agent's sales particulars, there are architects notes of what may be permitted. 2 people say what they had in mind to build was not going to be allowed. They are aggrieved as what was built was not in accordance with this guidance in contrast to what they understood the PCNPA's position to be. They were still aggrieved at the time of the Inquiry. NN met CO on site in 2005 agreed levels of upper ground floor. No Note or record kept of this meeting. In 2010, this pre application meeting was revealed. I am satisfied Pre-application meeting levels were discussed see NN's evidence to the Inquiry.	Sept 2005 – Feb 2006
2.	**Not recording on file advice given to Newport Town Council**	Newport Town Council	There were meetings with members of Newport Town Council's Planning Committee. There had been a practice of meeting with them on an informal basis with the object of being able to speak freely and on a without prejudice basis. These were not	There were oral meetings between some members of the NTC Planning Ctte. They were private, and unrecorded and were reported back to NTC by those attenders – sometimes only 2. At the critical meeting about alleged reduction in height only 2 members of	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
			formally minuted or even noted.	NTC planning Cte present. This process was informal in contrast to the statutory consultation process and formal correspondence. It has now been changed so that the reasons for the meeting and minutes are now taken.	
3.	**Not noting on the file the need to correct the orientation of elevations**	BNOG	The officer acknowledges the incorrect orientation but believes that in fact, none was likely to be misled as the error was so glaringly obvious.	It displays a weak validation process. It would not be easy to see correct orientation to the untrained eye. It should have been corrected. There is however ,no evidence that any one was actually misled.	Feb 2006
4.	**Not achieving modification of the north elevation before stamping approved**	BNOG	The officer repeats the above comment. Under the current validation process this would not have occurred	By June 2006 JUDP in place –Policy 76 Orientation should contribute to sustainability .Even if fenestration not altered, they should have checked it complied with Policy 76 before granting consent. This does not appear to have been done.	
5.	**Not filing a record of the site meeting of 14 June 2007**	BNOG	This is acknowledged	Missing .It should have been there	14th June 2007
6.	**Not filing a record of the site meeting of 20 June 2007**	BNOG	This is acknowledged	Missing. It should have been there	20th June 2007
7.	**Not filing a record of meeting between Officer and Newport TC**	BNOG	This is acknowledged	Missing. It should have been there	
8.	**Not filing a record of meeting of 20 Feb 2007**	BNOG	This is acknowledged	Missing. It should have been there	20th Feb 2007

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
9.	**Not filing a record of meeting of 28 Feb 2008**	BNOG	This is acknowledged	Missing. It should have been there	28th Feb 2008
10.	**Not recording all meetings on File**	BNOG	AS the case developed meetings from Feb 2007 were recorded but it is correct that not all meetings were recorded	It should have been done .Poor records of meetings at the outset .Some meetings not recorded at all.	
11.	**Not holding any record of agreed levels on file**	BNOG	The levels were taken initially in Feb 2007 .They were taken by an architect and officers .It is correct that no written record of the process that was ultimately agreed by all parties was produced. This shortcoming is now accepted.	This goes to the core of the dispute. The levels were "agreed " after concrete had been put in the ground. Little mention of levels on the plans. The levels should have been clearly marked on the plans. The levels were agreed to after a site meeting but even then there was apparent confusion. After various attempts by the parties to agree, it was in July 2010 that an independent professional level was taken at both parties joint expense. The conditions precedent required – this to be sorted out before work started, nevertheless the case officer agreed lifting of conditions .The full circumstances were only brought to attention of DMC in 2010 –see also the challenge letter. The levels issue continued to cause problems throughout the history of this case. There needs to be a clear record of how levels are taken and the criteria	Feb 28th 2007

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				for taking them . There is clear professional guidance available and literature published on this key process. This should be followed.	
12.	**Agreeing levels and not supplying this information to the Development Management Committee-DMC**	BNOG	It was thought that the levels had been agreed and was within the powers delegated to the planning officers.	Levels were apparently agreed – not until 2010 was it actually disclosed. Also the builder and the case officer met pre2006 –There may well have been an exchange as to what was likely to be acceptable made orally ,but I can not find any evidence to substantiate the claim that there was an actual agreement over levels prior to the application being submitted. If such an agreement was reached ,why was it not presented at the outset to officers and members?	Feb 28th 2007
13.	**Not properly describing the application to DMC**	BNOG	The correct accommodation at the time of the application was described, but it is acknowledged that greater clarity in the description could have been achieved especially in the use of the words " storey "and "levels"	There was confusion over storeys /floors in the reports. Inaccurate descriptions in the reports may well have led the members into thinking the development was not as high as it subsequently transpired it was. The loose terminology is repeated in officers' reports on this case. I am satisfied that this was a factor in the confusion in this cases that could have been avoided with more precise language.	Feb 2006

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
14.	Advising that the development is a two storey dwelling and in briefing NPA team to the Inquiry, and therefore not making it clear that it is a three storey building from the level of the original bungalow on site	BNOG	It was originally a two storey dwelling. What was relevant was the proposed development to replace the existing building. This was always going to be demolished and another building rebuilt	This lack of clarity is another thread that runs through the early reports. See finding above	
15.	Not returning to the Development Management Committee when satisfactory amended plans had not been achieved	BNOG	The decision was delegated under the Authority procedures and there was no specific resolution that specifically required this. The officer's discussion did result in amendments and amended plans and whilst they achieved some variations, they did not actually achieve a height reduction. It was thought by the case officer and her senior officers that these changes had achieved a fair and effective compromise.	The DMC membership expected this to be sorted out in detail and their initial debate had made their concerns clear .This included the issue over height and an intention to seek a reduction. .When it did not actually happen, no explanation was given save in general terms that "changes had been achieved." Also NTC thought it had been .Officers should have made clear to members and NTC that there as a fact there had been no reduction in height.	Oct 2006
16.	Informing the Development Management Committee that the steel structure had been erected in accordance with the approved plans	BNOG	It was thought that they had been. It is acknowledged that no re-measurement took place when the steel work was erected.	The basis of this complaint is made out when there were still issues over the levels. This before levels were agreed. If so how? If not why say it, if they had not been checked? This demonstrates a lack of factual clarity at the Authority at the time.	
17.	Head of Dev Man advising	BNOG	The building was by then partly	The tenor of the report is that the	Oct 2007

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
	Development Management Committee in October 2007 that there was no merit in a site visit It was wrong. If they had seen it they would have been horrified.		erected and the decision on the details of the consent had been delegated.	HDM did not fully understand the local people's views. They do not seem to have been given very much weight. Also by then the steel frame portal was constructed.	
18.	Head of Development Management advising Development Management Committee that there had been a personal attack on an officer and instructing The Chairman of Newport TC Planning Committee that the case officer was not to be questioned on this case	BNOG	The case officer did feel that some of the criticisms made were of her personally rather than in her capacity as an officer of the Authority. This did create tensions. The Officer had done a written report in October 07 at the request of the Chief Executive and Members.	The criticism made was certainly strong and unfortunately, as a fact I find it did lead to the idea of it becoming personal against the CO. This did create tensions in a number of different areas .I am not going to adjudicate on the causes and details of this , as it involves personal sensitivities but I am satisfied that there was breakdown in a number of relationships and the planning issues did for a time become clouded by personal issues, which were not restricted to only 2 of the relevant participants in the debate. It is significant however that there was no contact between the CO August 07- and Feb 08. This prevented BNOG asking relevant questions over the easing of conditions and the letter 27/7/07 revoking condition 3 This was not explained or answered .Their letter is in the file.	
19.	Misinformation in Officer's April 2010 report (two cases)	BNOG	This not accepted	The officer's report and report to the Authority reflects her professional	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				judgement. I do not find a case is made out for 'misinformation'.	
20.	Stating in April 2010 report that height was 'marginal'	BNOG	This comment should be put into the correct context of the case and not taken in isolation	This comment is subjective. The report accurately contained the CO's professional view at that time. Subsequent reconsideration by the Authority later acknowledged the "visual intrusion" point was made out.	
21.	Advising Development Management Committee in April 2010 that "fallback" should override policy	BNOG	This is the view that the Inspector took in his decision and is an accurate reflection of the planning position.	By April 2010, this was a recognition that there was a "fallback" consent. It accords with the Inspector's view in his report. This is the key point in his decision.	**April 2010**
22.	Advising Development Management Committee in April 2010 that refusal would lead to implementation of 2006 permission	BNOG	The case officer remains resolute that this is the correct planning position.	See 20 and 21 above. This is echoed in the Inspector's decision letter.	
23.	Not taking into account Planning Policy Wales 2002 and SPG in relation to Conservation Areas. It is so close and not considering Policy 79 was mistake.	BNOG	The Conservation officer had written that the property was outside the conservation area. In addition there had been a long history of evolution and different styles of properties in and around the Parrog.	It was near but crucially not in the Conservation Area. The Building Conservation officer initially had no comment on the policy. SPG was ignored as it does not relate to land on which BN stands. It should have merited some consideration as acknowledged in an internal e-mail.	
24.	Not taking into account SPG on Landscape character. It is so close. It was a Policy 79	BNOG	The Building Conservation Officer wrote a letter on this. – see in response 23.	The Building Conservation Officer later commented that the area was constantly evolving and he saw no	April 2010

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
	"mistake"			reason to intervene	
25.	Reporting of public response in April 2010 did not list concerns regarding vegetation and habitat destruction	BNOG	No comment by case officer	I was given to understand that this complaint was withdrawn. In any event landscaping detail is still a live issue.	April 2010

Complaints against Officer competency

26.	Not properly assessing the 2006 application against National and Development Plan policies	BNOG	It was assessed and a subjective judgment by a planning officer was made. A number of policies were considered on what was presented as an innovative and imaginative development at the time. Those policies are referred to in the case officer's report.	Now acknowledged that Policy 56 not followed. Decision flawed on issue of "visual intrusion". The Inspector's report makes this clear. Authority's own evidence to the Planning Inquiry recognises this.	**Feb 2006**
27.	Not assessing implications of setting ground floor at the agreed level against compliance with national and development plan policies	BNOG	They were assessed on the plans that ha d been submitted at the time and marked "Approved"	No evidence any such assessment undertaken	
28.	Not taking into account JUDP policy 79 – development in conservation areas	Member of public	The property was not in the Conservation area. It was outside it.	It was not considered initially but later when considered felt not to be relevant	
29.	Not assessing the validity of the site plan before stamping approved	BNOG	There was no mandatory validation process in place at the time, in contrast to the current position.	As Mr Atkinson acknowledged, the site plan could be right or it could be wrong. It is not definitive. The real issue is that there was no proper	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				validation of it at the time of its receipt. They (the levels) also were the same in 2006 checked in 2009.The 2010 level checking exercise was , in effect , a red herring. The current validation process makes this a basic requirement now (Para S9). The criticism is well made of an outdated system.	
30.	Not properly negotiating amended plans, not justifying lesser amendments at meeting	BNOG	The case officer thought that suitable amendments had been achieved which met members concerns	It is clear that some amendments were in fact achieved but crucially not on the height issue. There appears to be a difference between expectations of the Members, Newport Town Council and the officers as to what was to be achieved and what the end result was. It must be remembered that the principle of a large replacement dwelling had been agreed. What was not done was that the extent of the amendments made clear to the Members and NTC and neighbours.	
31.	Inadequate care in writing conditions to attach to planning permission	BNOG	Some conditions were required by outside consultees and are in themselves neither unusual nor overly prescriptive. Some were conditions to be fulfilled prior to work commencing	Conditions precedent –not followed effectively. The number of conditions precedent meant that the building work should not have started. Once it was, it was tolerated and work was not stopped. This is a balancing act	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				between being too inflexible and too rigid but here in the context of this case, PCNPA was too tolerant.	
32.	Not properly overseeing the setting out of the site profiles etc as specified in condition 3	BNOG	Done by an architect and builder.	This not normally done by the Authority. The developer had professional advisers who the Authority could reasonably expect to deal with this.	
33.	Not monitoring whether or not the finished foundations were reduced following the 27 Feb 2007 site visit	BNOG	accepted	This should have been done. No reason given as to why it was not.	
34.	Discharging a pre-commencement condition, 7 months into the construction work	BNOG	The letter was written following a meeting.	The letter reflected the Authority's position that by 26/07/07 the CO genuinely thought the development was being carried out in accordance with the approved drawings. However the Conditions precedent were not followed effectively.	
35.	Advising developer in June 2008 to make application to vary condition 2	BNOG	This was because the first plans from Arwain architects clearly showed variations which needed a new application. The developer understood and agreed this himself.	The builder appears to have worked to the BR approved plans not the NPA approved plans. These themselves were revised. It was in December 07 that it became apparent there had been variations made that were too great to be regarded as normal variations within the protocols. A planning officer clearly recorded accurately the sequence of events that led to this. There was significant	**Jan 2008**

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				delay in the provision of the new application and plans, with a revised groundwork/landscaping scheme. By this time however, the wetlands had had very substantial work undertaken on them.	
36.	Accepting comparison drawing for consideration which showed the ridge height of the "as-built " dwelling to be same as the ridge height of 2006 scheme	BNOG	These were assessed correctly.	These were accepted by the Authority and no reduction in the ridge height of the as-built dwelling. In fact there were variations, which were greater.	
37.	Not properly assessing the 2008 application against planning policies	BNOG	This was an examination of the application against the policies in existence at the time.	The report shows that the officer did reconsider the current policies of the Authority when drafting the report. This criticism reflects disagreement with the officer's conclusion rather than a complaint against the process.	
38.	When considering the retrospective application, not reporting that condition 3 had been discharged by letter of 26 July 2007	BNOG		This not referred to as clearly as it might have been	
39.	Not establishing under what part of Section 73 A that application was being made	BNOG	This was a legal matter.	This was examined and Counsel's opinion taken. This agreed with the opinion of BNOG and the matter was dealt with under Section 73A.The complaint raised was well made.	
40.	Using difference method of measurement	BNOG	The Authority believed it carried out the measurement to industry standard.	It is not the purpose of this report to say one system of measurement is better than another.	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
	Complaints regarding misinformation to the public and others				
41.	Advising Newport TC that the height had been reduced in the amended plans when it had not	BNOG	There were informal discussions which did include a reference to a part reduction in on part of the roof. This was not minuted. There was no overall height reduction	There was part reduction of a small part but the extent was not made clear. Officers should have been more precise on why was this done and what it achieved. It is clear to me that Newport Town Council thought there had been a reduction achieved. The meeting is however not minuted and was informal in nature.	
42.	Not having the orientation labelling on all elevations corrected before stamping them approved	BNOG	This has been raised previously and the response is the same	This was an obvious error but it could have led to misunderstanding by members of the public but no evidence that any one actually was. It should have been corrected .	
43.	Stating in 26 July letter that development was being carried out in accordance with approved drawings	BNOG	Repetition	This is a repetition	
44.	Advising Newport TC that development appeared higher because of architect's inaccurate drawings after levels had been agreed on 27 Feb 2007	BNOG	The drawings were inaccurate	The HDM should have been clearer	
45.	Not advising changes made from stamped approved drawings	BNOG	The case officer thought that sufficient alterations had been	As the changes made were not minor they were not in accordance with the	**Spring 2008**

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
	which were not in accord with minor amendments protocol		gained but when further revisions were sought they required a new application	minor amendments protocol. It was an inappropriate use of the protocol	
46.	Misinforming Newport TC Planning Committee on 27 Feb 2008 that latest drawings should be disregarded	BNOG	No complaint from NTC	There has been no complaint on this point from NTC. This specific complaint not made out	

Complaints regarding lack of action by PCNPA

47.	Not halting work in January 2007 when clear vegetation and trees had been cleared etc without complying with pre-commencement decisions	BNOG	They were not made aware until information was received that the builder had started work in breach of the conditions on the consent NP/06/076. Clearing site in itself is not a breach.	While the initial work of site clearance may not have been a breach, what followed very shortly thereafter was. The work had been commenced without the conditions precedent being satisfied. Even PCNPA's counsel acknowledged that this rendered the building work unlawful. This is acknowledged by the developer in his evidence and the evidence of his witnesses to the Inquiry. See also SOCG.	
48.	Not advising that non-compliance with pre-commencement conditions required retrospective application to vary conditions	BNOG	He was actually told this but later on by 2 other officers including HDM	When the officers were aware nothing was done to ensure compliance with planning consent as published they did pursue the matter by way of dialogue and requests for information. The developer was informed in writing and on the telephone. This	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				approach was ineffective in getting responses quickly and too placid.	
49.	Refusing to accept that material had been imported to build up levels	BNOG	Only aware of this after information received from the public.	The developer had been responsible for the spoil. The Authority knew about it but did nothing other than to accept the developer's word for his future intentions with it. This was a significant failure.	
50.	Allow work to continue on site after architect told that further application required	BNOG	The WAG guidance TAN 9 refers to the need for dialogue.	This complaint repeats the failure to be seen to have firm enforcement action. Furthermore evidence had been supplied by locals and others that spoil was being put on the land and concrete poured etc and nothing was done about it. TAN 9 also says that enforcement has to be looked on in each case on its merits and here there was a clear breach that was in effect tolerated. TAN 9 also does refer to the need to take action in some cases.	
51.	Not halting work in late 2007 when wetland area subject to pre-commencement condition had been dug out and filled	BNOG	The authority was in dialogue with the builder and he was told that it was at his risk but it is acknowledged that this did not happen	This repeats the failure of the enforcement process.	**Autumn 2007**
52.	Informing complainant that she would be advised of investigation and not doing this	BNOG	Acknowledged	This is correct. There should have been better communication. It undermines confidence in the Authority	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
53.	Relationship with environment agency over the wetlands issues – was there any direct or indirect contact or formal arrangements about the exchange of information? One close neighbour does not think so	BNOG and members of the public	Little contact	No evidence of liaison with Environment Agency. No relationship with Environment Agency over the wetlands issues. No evidence displayed of any direct or indirect contact or formal arrangements about the exchange of information. The close neighbour does not think so and on the available evidence I agree	

Complaints regarding Inquiry attendance

54.	Non attendance at the Inquiry by PCNPA Planning officers	BNOG	The Authority relies upon the legal advice provided to it which is privileged as between counsel/solicitor and client	I have established that the RTPI professional guidance says that officers in situations where approval is recommended, should not give evidence. Officers are bound by this Professional Guidance/Code of conduct. Furthermore it's Counsel who advises which witnesses to call. It is a matter for each party. This criticism is misconceived.	**October 2010**
55.	Reliance by the Appellant on National Park officers professional views which differed from the professional views expressed by witnesses for the National Park. This is what "R anonymous" felt.	BNOG	The Officers' views were recorded throughout the case in reports to committee which were in the public domain. The external witnesses for the Authority gave their evidence in accordance with their professional judgement. At	It is clear that officers had provided supporting views on the application in the past in their reports to DMC and on the enforcement issue. This was latterly overridden by the members. I recognize the difficulties that may have been caused to the case being	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
			the end of the day how one party chooses to present its case is a matter for him or her and their respective advisers.	advanced by the Authority if the case officers had been subjected to cross examination, but this is speculative. As a fact they were not called for the reasons in 53 above.	
56.	Advising that the development is a two storey dwelling and in briefing NPA team to the Inquiry, and therefore not making it clear that it is a three storey building from the level of the original bungalow on site	BNOG	This was the continued view of the case officers	This repeats the lack of clarity about the height of the building which runs throughout the case. This height issue should have been made clearer and more precise language used in the officers reports.	

Other Complaints **Feb 2011**

57.	Officers continued to defend the development by stating that it was in compliance with approved plans and condition 3 and satisfactory in their professional view	BNOG	The officers position was set out in publicly available documents and those were at the time of the individual reports reflective of their professional judgement. They are bound by their professional body's guidance to give their considered professional judgement. This is also contained in their obligations to the Authority.	THE HDM's response in CO's absence reflected the Authority's then view, although it subsequently transpired that the assessment by the independent Public Inquiry inspector was that the property did not comply with the Authority's published policies. This has been recognised by the Authority.	
58.	Response on June/July 2007 was inadequate	BNOG	The response was adequate	This is repetition and a comment rather than a complaint.	June/July 2007
59.	The correspondence in Nov 2007	BNOG	On reflection, the "height issue"	This in my view is correct. The	Nov 2007

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
	was justified on examination of the "height issue"		was not as clearly addressed as it could have been	"height issue" was fundamental to the consultations and responses. By this time the frame was however up.	
60.	Complaints over breach of policy 56 (iv) not acknowledged	BNOG	The case officer held a view on Polcy 56(iv). She published her reports with what she believed were the relevant issues and policies.	Re-assessed in Oct 2009. The report to DMC reflects a revision/ reassessment which is what BNOG wanted. With the benefit of hindsight the issue of "visual intrusion" was only fully recognised after construction. Had proper plans and levels been submitted this would have been recognised very much earlier. A great deal of time and effort was incurred by everybody as a result of the failure to recognise this issue until very late into proceedings.	Oct 2009
61.	Delay in response to Newport Town Council	BNOG	There was some delay which is regretted	Meeting Jan 08 HDM acknowledges mistake over levels .This "admission" is later challenged. The delay in corresponding with letter of August 07 did in my view significantly affect relations between the Authority and PCNPA. The delay was critical as the delegated officer's report and decision were made before NTC had had a full response. This should not happen again.	Jan 08 August 07
62.	Inadequate response to claims of non sustainability and incorrect orientation breach of Policy 76	BNOG	Repetition.	Belated recognition in Dec 07 but not formally admitted until 2010 Inquiry.	Dec 07-Sept 2010

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
63.	Response to complaint that development was not in accordance with the approved plans	BNOG	Repetition	The later reports made clear the fact that applications were being brought to retrospectively permit development that had not been carried out with the approved plans.	
64.	Complaints were subject to loss, slow responses etc	BNOG	Repetition	Some complaints were responded to promptly but others were not. There was, it has to be said, a number of repetitive complaints, particularly in relation to "height issue" in Oct 07. Overall, the response to the correspondence was not of the standard one would expect. This complaint is made out.	
65.	The HDM did not visit site until Feb 08	BNOG	The HDM saw no reason to, as the matter had been dealt with by the case officer (CO).	The critical period was January – March 2007. By summer 2007 the steel frame was up. Any visit should have taken place when the first report from the enforcement officer came in in January 2007.	
66.	A patronising attitude	BNOG	Not accepted.	I do not find this. The correspondence I have seen has been clear and not patronising.	
67.	Failure to respond to materials from Welsh Water site being brought on site	BNOG	This was noted.	There was no clear system for this information being collated and brought to the attention of the head of section. This is a failure in my view.	March 08
68.	Failure to refer complainants to service standards/ombudsman	BNOG	The Service standards procedure is on the website	Ombudsman rejected the complaint from one person, as it did not comply with his terms of reference, as	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				established by statute.	
69.	Implying too late to complain	BNOG	This is not accepted	I do not read this the same way as BNOG. The complaint is not made out	
70.	Shielding case officer from contact with NTC	BNOG	There were tensions. The CO did feel unpleasant personal verbal attacks were made on her.	I find that whatever was said, the effect was to create an atmosphere of personalities as opposed to policies. This resulted in a breakdown in relations. This was however only a minor part of the case for a short period and peripheral to my main conclusions.	
71.	Accusation of personal attack on an officer	BNOG	There were tensions. The CO did feel unpleasant personal verbal attacks were made on her	Largely irrelevant although I am satisfied that some people involved did feel that matters had become highly personalised.	
72.	Insufficiently serious attitude	BNOG	Rejected as officers behaved professionally	Whilst there is serious criticism over aspects of the case this is not one I can see is made out after reviewing all the evidence, policies, witness statements and reports.	
73.	Inaccurately reporting the members' position in October 2007	BNOG	Rejected as officers behaved professionally	This complaint is again a comment rather than a complaint	October 2007
74.	Downplaying the seriousness of the complaints	BNOG	This was always treated as a serious case and so were the complaints	While the timing in response to some of the complaints was too long, there's no evidence that the complaints were not taken seriously.	
75.	The report to Oct 2007 DMC inaccurate	BNOG	Not in the CO's opinion.	The report is not as accurate as it should have been in its terminology.	

	BETTWS NEWYDD	Point raised by	Officer's response	My findings	Date line
				There is a basis to this complaint especially over "storeys/floors", but this has been before.	
76.	Neighbour misled/uninformed of the drainage problems/destruction of wetlands /light pollution	Mrs C	Do not agree	There was a failure to monitor what was going on on site, especially at the commencement of construction and in the 7 months following.. This complaint is well made especially in relation to the wetlands. This was very significant work and should not have been allowed to happen. The impact of the alleged light pollution remains to be seen, and I make no finding on that.	

7. Conclusion

At the outset I posed a number of questions to myself. Before I deal with those, I am satisfied that there was no single reason for the failure of the Authority's actions in this case but a number of separate shortcomings, which when added together lead me to the conclusion that the Authority did fail in this case to meet the highest standards of performance that it had set itself.

The reasons for this conclusion are contained in my answers to the questions I had posed at the outset.

- Was there an effective pre application discussion process in place?

  In the absence of any contemporaneous notes, it is difficult for me to conclude that whatever the discussions that took place prior to the application being submitted were, those discussions were effective in leading to a well thought out and planned application being submitted to the Authority. The confusion which emerged later, resulted in various amended plans from the developer and his two firms of architects and two would be developers not being able to proceed further .This suggests to me that the pre application discussions were not effective. The new system that has now been installed is a significant improvement. It is clear, concise, easily workable and in the public domain, unlike the previous system.

- Was there a proper system in place for considering the submitted application?

  There was no national benchmark in place for validating applications in 2005. The Authority operated to a system which was less precise. The plans that were submitted were not to the standards that now exist in 2011. They were amended at least three times, prior to the 2006 consent being issued. By plainly showing amongst other things, the orientation incorrectly; an inexact position of the building; the ultimate levels of the building imprecisely; and a lack of fenestration detail, they directly led to confusion and the lack of clarity that pervades this case. This procedure has been changed to national standards since the introduction of the new validation process in 2009. Furthermore clear guidance issued to applicants and their advisers now refers specifically to ensuring that the levels are clearly set out. In my opinion, the system even as it was, was not applied rigorously to this application when it was lodged. Its inadequacies should have led to initial rejection.

- Was there any failure in the consultation process?

  Many of the complaints that I have received, demonstrated to me that the consultation process had not been detailed as clearly as it should have been, under the Authority's own publicly expressed policies. The failure to engage adequately with Newport Town Council, which left them with a feeling of being outside the engagement process, highlights this. The

responses of consultees should have been given greater weight during the process.

- Was there any failure in the decision granting process?

  The decision that was made to delegate this decision to an individual officer, inevitably meant that subjective decisions by that officer would have to be made. It was not recognised at the time that this application was capable of generating such a high level of public interest. In my view it was always potentially a case would generate very significant public interest. In my view it was inappropriate to criticise any officer personally when the system that was in place required them to make an individual professional judgement. The evidence shows that the innovative design was considered initially to be within the parameters of existing policy. Subsequent events have demonstrated that this is not correct. There is clear evidence from the reports and files that the officer did consider the published policies of the Authority and took a view based on professional judgment, on the issue of "visual intrusion". This is not a case where the policies were ignored but in respect of one key policy (56 iv) the officer's view was subjective. The subsequent acknowledgment by the Authority that this development is "visually intrusive" demonstrates the difficulties that can arise when a single officer is asked to make a subjective decision in circumstances such as these. The decision, which appears to have been looked at by other senior officers in the planning department, should have been the subject of critical corporate scrutiny, duly recorded before being issued. Furthermore, when the decision had been delegated because of the objections and reservations and concerns expressed by the Members, with the benefit of hindsight, the issue should have been referred back to them for final determination when the final set of plans had been received and the dialogue about the reduction of height of the building concluded. Once the decision was delegated there was no requirement, practice or policy to return to Members. There was evidence from the minutes of Members' concerns and in the context of the wide public interest the failure not to do so was, in my view, wrong, especially in the light of the Members' evidenced views in March 2006. The decision issued in October 2006 was not brought fully to their attention. I conclude there was a failure in the decision granting process.

- Was the decision as granted, monitored adequately during development?

  I have highlighted the most significant shortcomings in the monitoring of this development. There was an over reliance on dialogue with the developer and the reluctance to use the legal powers open to the Authority to ensure a full compliance with the terms of the 2006 consent. There was no central system in place to draw to the attention of all the senior officers, the persistent breaches that had been brought to their attention by members of the public. There does not appear to have been any direct management coordination. The Authority was very much in a reactive situation rather than being proactive. On review, I find the Authority's response to commencement of work on site by solely entering into dialogue and requesting further information to be ineffective although

understandable as part of a process of dialogue as opposed to confrontation as suggested in TAN 9.

The building was allowed to start and continue in breach of the conditions precedent. From January to March 2007 there appears to have been limited monitoring of the building by the enforcement officer. I conclude that there was not adequate monitoring.

- Has the Authority been able to change its procedures?

  Very significant change has been introduced by the Authority into its procedures since 2006. Three main policies have been introduced by management at different times since that date, which will in my opinion significantly reduce the likelihood of something like this happening again in the future.

  1 The Authority has published clear guidance on pre-application discussions,
  2 It has adopted (based on national standards) a detailed procedure for validation of future planning applications. This requires a much more careful scrutiny of an application which now has to provide more detail in greater clarity for consideration.
  3 The Authority has revised its enforcement policy. The Authority also moved away from trying to engage in protracted dialogue with developers, which can have the effect of procrastination. Furthermore managerial responsibility for the enforcement of consents has been clarified and reinforced.

- What has been the cost in financial terms and in reputational terms?

  This is significant on both counts. I have referred to the financial cost but equally important is public confidence that the Authority must maintain in the integrity of its planning processes. This has been undermined by this case. The Authority had dealt with 3552 approvals and refusal for planning consent in the previous six years. There were 90 appeals out of which 24 were allowed :54 dismissed;3partly allowed;1 temporary consent and 8 withdrawn. This very high success rate only highlights the shortcomings in this case.

At the start of my conclusion I stated that there was no single cause for the failure of the Authority's action in this case. I conclude that there were multiple causes for the shortcomings that I have found. In summary, they were:-

1 No notes taken of pre-application meetings.
2 Drawings were accepted which were not as clear as they should have been.
3 There was an over reliance on dialogue with the developer and his architect as a means of resolving issues.
4 A lack of awareness as to what was actually happening on site during the initial construction period.

5 Imposing a number of conditions precedent on the consent and then not enforcing those once it was aware work had started.
6 Failure to react to information from the public.
7 No coordination of accumulated evidence.
8 Reluctance to use the enforcement powers available.
9 No effective dialogue with Newport Town Council.
10 Failure to agree and record levels on site.
11 Failure to clarify to Members exactly what had been agreed when suggesting outstanding matters had been resolved.
12 Failure to clarify to members of Newport Town Council what had been resolved over the height issue
13 Inaccurate written descriptions of "storeys/floors" in reports.
14 Having a system in place where the ultimate decision was delegated to a single planning officer to make critical decisions alone on a case attracting widespread public interest.
15 Failure to coordinate effectively with Environment Agency and PCC.

It is important to step back and to reflect that while there may have been, in some of these failures, some laudable intentions, the actual result when looked at as a whole, has left me with conclusion that the Authority did at the time fail to deal with the application as it should have.

Steps taken already to implement changes

Factually the Authority has implemented 3 significant procedures. I am satisfied that the introduction of these does reduce the possibility of a repetition of the case.

(i) Pre-planning advice system now changed
There is now in place a process which has been published on the internet and in print on how the Authority deals with pre planning discussions. It was introduced in 2009. It sets out what is expected from both parties to any pre-application dialogue. It should result in a movement away from the old ad hoc system with its inevitable inconsistencies to a clearly set out procedure that is to be followed. If this had been in place it is unlikely that the initial plans and un-annotated topographical survey would have been accepted

(ii) The validation process.
The Authority adopted its new validation process on the 14th October 2009. It is published in paper form and electronically. This was and is kept under review by officers of the Authority. A further interim loose-leaf statement has been published. This is an interim amendment as the Welsh Assembly Government are also currently undertaking a National review. At the moment the Authority is holding in abeyance its own ongoing review pending the receipt of the Welsh Assembly Government's review conclusions. An officer of the Authority reported to the Authority the current position in her report to the National Park Authority on 8th December 2010.

"With *regard to the Validation of Planning Applications, the Welsh Assembly Government has undertaken a national consultation exercise on this issue which ended on the 12th November 2010. The consultation covered both standard national requirements and proposed thresholds for local validation. The consultation documents also advise that there will be a requirement to review and consult on local validation lists following the issue of the final Welsh Assembly Government Circular. In light of this, it is felt to be a more effective use of resources to undertake a single consultation following the issuing of the final Circular. In the meantime the Interim Statements for Affordable Housing, Transport Statements, Sustainable Design and Minerals Safeguarding provide the most up to date requirements for the validation of planning applications."*

The current published guidance now expressly states that:

> "S9. Site layout plans *required for all applications unless otherwise specified.*
> Four copies of the site plan should be submitted, drawn at a metric scale of 1:500 or 1:200 and showing accurately the direction of North; the proposed orientation of the development in relation to the site boundaries and other existing buildings on the site, with written dimensions of boundaries; all buildings, trees and footpaths; access arrangements and any public rights of way crossing or adjoining the site. **A site survey showing existing and proposed levels and cross sections must be included.** Details should also be given of the extent and type of any hard surfacing and boundary treatment including walls or fencing where this is proposed."

I have emphasised the requirement for a site survey showing levels. This clearly shows that some of the main causes of this case would in my view be far less likely to occur as a result of the adoption of this validation process.

(iii) The new Enforcement Policy
This matter had been under consideration for some time. In its meeting on the 8th December a report was read and adopted by the Authority. Again that report is available on the Authority's website. Due to its length I do not intend to reproduce it here but to direct you to it on the website, the link is
http://web5.pcnpa.org.uk/PCNP/live/sitefiles/applications/committees/docs/Enforcement%20Policy.doc

In essence, it introduces a clear strategy for future control of enforcement issues.

(iv) A new computer system has been installed which has the facility to log all information including information about potential breaches of planning consents and conditions. This replaces the manual system it is designed to ensure that all officers in Development Management, Enforcement Plan, Development Plan are all able to access up to date information on a planning consent. This should reduce the failure to record accurately

information on relevant files and make it available for senior management to take action as and when required.

Financial controls

I have looked at the Authority's financial controls. I have reviewed all the available records and policies as they existed and am satisfied that rigorous financial controls were in place. The system for the engagement of outside contractors, however does need to be reviewed

8. Recommendations

Major changes have been implemented over the last 3 years with the specific intention of raising the performance of the Authority's planning processes. Strict adherence to the changes introduced is necessary and this is a key management challenge for the future. Confidence can only be restored by a clear consistent application of those changes. I make some other specific recommendations. I recommend that the Chief Executive review the contents and formats of the reviews I recommend and report to the Authority how these recommendations have been acted upon.

1 Accurate and full note taking of all meetings, and conversations with developers/applicants and builders must be put on planning files.

2 There must be a clear process for measuring levels with properly qualified people engaged to do this, either within the Authority or brought in on contract from without. The new validation process requires it. This is fundamental, as the costs of it not being done properly are significant. Although this has cash implications in a time of financial restraint, there cannot be in future failure of such a basic component of an application. Very careful consideration should be given by senior management to establishing precisely how this can be done on a cost recoverable basis from the applicant/developer.

3 As there has been damage to the reputation and integrity of the Pembrokeshire Coast National Park Authority arising from poor communication, the Chief Executive should remind all members of the Authority's staff of the need to deal promptly with communications from members of the public and statutory consultees.

4 A formal recorded Meeting should be held with the Newport Town Council to seek to clarify any outstanding communication issues and to ensure that that organisation is accorded a formal apology for the delay in responding to its criticisms. In future, any correspondence from any statutory consultee should be answered properly. There should be regular meetings with them, and those meetings must be minuted. If there are to be informal discussions with locally democratically elected bodies then the parameters of those discussions should be established in the clearest possible terms in advance so those participating councils and bodies can explain to their members and ultimately the local electors what they were told, when they were told it and by whom etc.

5 There is a need to avoid inaccuracies, clichés and jargon in reports. Without clear and accurate reports, the decision making process, with all its interested parties, is prejudiced. There is a need to ensure accurate and effective discussions with all relevant groups in the planning process i.e. members of the Authority, Community and Town councils, special interest groups and local individuals. The Authority's officers need to remind themselves that they all have a role in the planning process and their ability do so depends very much on clear and accurate reports.

6 There is an urgent need to have a clear system in place, of liaison with the Building Regulation department of PCC and with the Environment Agency. I do not mean a "joint Committee" which meets half yearly. It requires something more specific so that any alterations to plans, or where on-site issues arise they can be immediately addressed. Senior management should submit a proposal to the Authority for resolving this within 28 days. It is difficult to see how a planning consent can be effectively monitored when the actual building is done to another set of plans approved by another authority.

7 When decisions from Members are delegated to officers on outstanding issues on applications, they are returned to Members with clear detailed reports of the outcomes of those issues where Members had expressed concerns. This obligation becomes greater when amended plans are submitted to officers which differ from those submitted initially and available to the Members when they delegated. Furthermore the officer's report on delegated decisions is put on the file and not actually seen by Members, who only receive a report that the consent has been issued. They can only find out the detail if they inspect the file themselves. The effect in this case was that three sets of plans came in before the delegated decision was made, but two sets were never referred back to Members although sent to statutory consultees. Additionally it is inconsistent that a Member of a statutory consultee (NTC) had the amended plans to comment on but the Members of the Authority – as they had delegated the decision – did not and were consequently not aware of the details of the application when it was granted in October 2006. The "delegation to the Chief Executive" procedure, which is, in practice, to officers should be critically reviewed and a report submitted to the Authority by senior management within three months.

8 The use of conditions on consents needs to be thoroughly reviewed by senior management. There is current WAG guidance that needs to be fully absorbed by each officer who prepares reports. Furthermore the Authority itself should, through senior management, lay down formal internal guidance to officers on the use of "conditions". As this case demonstrates it is a dangerous practice to in effect simply agree to agree in the future, by which time the building is erected. If a large number of conditions are thought necessary on a domestic building, then this should raise the question "Is the application properly validated?" In the past, there appears to have been a greater emphasis on trying to reach an amicable conclusion by dialogue but now there should be a greater adherence to the validation process now in place for new applications. There should also be standardised wording, in clear and simple terms where conditions are deemed to be necessary.

9 When a planning permission is issued with pre-commencement conditions management must ensure that these are met prior to works commencing on site. However before such a consent is issued consideration should be given as to whether it should be issued at all, if it requires a number of matters to be finally resolved.

10 The Authority's policy on its powers to stop developments during construction should be reviewed by its solicitor within 28 days and guidance given to officers so that they can demonstrate a greater willingness to use the powers it possess to ensure compliance. There should be a seminar or Committee presentation, prepared by the Authority's solicitor, to ensure that all Members, planning and enforcement officers are aware of the current powers open to them and the most up to date guidance from the Welsh Assembly Government. This should be repeated at least annually, as part of an in house programme for continuing officer and Member continuing development.

11 When a complaint/information from the public is received about non compliance with conditions, a central database should be maintained on the Authority's computer system so that senior management are aware of the type, number and detail of the allegations of non compliance. Senior management should address this, by looking again at its current policy of enforcement management and including this in their review. It is fundamental that all staff are adequately trained are thoroughly familiar with the new computer system and its applications, particularly with regard to non-compliance with conditions.

12 Where there is an application for planning consent that an officer may reasonably suspect of being likely to attract significant public interest then there should be a process in place for it to be easily referred to senior officers so that a collective or collegiate approach can be undertaken in determining such an application. This will require the officers to use their experience in making this assessment as I recognise that at the outset such cases may not be easily recognisable. This should ensure that the objective of a consistent approach is maintained. A signing off process of such cases should be critically reviewed by senior management as the present system can be unfair to the individual officer and also to the applicants. Senior management will need to address the detail of how this is achieved.

13 When the Authority is engaged in large scale disputes a clear overall budget should be prepared at the outset for the case. Where there are likely costs to outside contractors, be they barristers, solicitors, surveyors, planning experts then the potential aggregate of all the costs should be the deciding factor. I am aware that in other areas where public money is committed to funding litigation and, I include Public Inquiries in this, clear and concise case cost plans with the case carefully costed on the best information available should be done. Once a potential exposure of £25,000 is reached, specific authority should be obtained from the Chairman, the Chief Executive and the Section 151 Officer if the Authority is not able to meet quickly enough. The current system should be amended to give effect to this recommendation as quickly as possible and a report prepared by the Chief Executive to the Authority within three months.