

Cynulliad Cenedlaethol Cymru  
National Assembly for Wales

Mr David Lander  
Boyer Planning  
Groveland House  
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GU20 6BT

Eich cyf . Your ref: DL/AMJ/98.203  
Ein cyf . Our ref: A-PP 134-98-009  
A-PP 134-98-010

Dyddiad. Date 22 March 2007

Dear Sir

**TOWN AND COUNTY PLANNING ACT (AS AMENDED); SECTION 78 APPEALS  
BY NEWBRIDGE CONSTRUCTION LTD, AND MR R A E AND MRS M G  
HERBERT**

**APPEAL A – APPLICATION (REF 03/1763) – RESIDENTIAL DEVELOPMENT,  
PUBLIC OPEN SPACE, FLOOD ALLEVIATION WORKS AND ASSOCIATED  
ENVIRONMENTAL IMPROVEMENTS LAND AT FORMER TREDEGAR PARK  
GOLF COURSE, NEWPORT**

**APPEAL B – APPLICATION (REF 05/1203) – WORKS TO PROVIDE FLOOD  
STORAGE AND FLOOD CONTROL FACILITIES LAND AT TREDEGAR PARK  
SPORTS FIELD AND RECREATION GROUND NEWPORT**

1. Consideration has been given to the report of the Inspector, Emyr Jones BSc (Hons) Ceng MICE MCMI, who held a public local inquiry into an appeal under Section 78 of the Town and Country Planning Act 1990 (the 1990 Act) made by your clients against the refusal by Newport City Council (the Council) to grant outline planning permission for the application subject to Appeal A above, and the failure of

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the Council to determine within the prescribed period the application subject to Appeal B above.

2. On 15 February 2006 a direction was issued by the Planning Inspectorate, under powers delegated by the National Assembly for Wales, that the appeals should be determined by the National Assembly rather than by a planning Inspector. On 20 March 2007 the National Assembly resolved that a committee to be known as Planning Decision Committee (2) 2007/2 be established in accordance with Assembly Standing Order 17 to discharge the functions of the Assembly under Section 79 of the Town and Country Planning Act 1990 in respect of the above appeals. Accordingly, the Planning Decision Committee has considered the appeals and has resolved under Standing Order 17.16 to adopt this letter.

3. The Inspector's conclusions are set out in paragraphs 91 to 115 of his report, a copy of which is enclosed, and those conclusions are reproduced at Annex A to this letter. The Inspector recommended that the appeals be dismissed. For the reasons given below the Planning Decision Committee disagrees with the Inspector's recommendations and concludes that the appeals should be allowed and planning permissions granted subject to conditions.

4. After the inquiry had closed you submitted to the Assembly under cover of a letter dated 13 December 2006 a report by Davis Langdon LLP indicating that the total cost of the works associated with the appeals, involving a variety of flood mitigation measures, would be approximately £1.6m. Your letter indicated that at the inquiry evidence presented on behalf of your clients was that those costs would be "in excess of £500,000". The Assembly Planning Division copied these representations to the Environment Agency Wales (EAW) and the Council seeking their comments. The EAW response was that there was no proposal for a scheme to be funded by public monies but that a flood alleviation scheme for existing properties at Dyffryn would be considered if the flood risk, priorities and funding allow. However, it advised that no scheme was planned within the Dyffryn area in the short or medium term and that higher priority was being given to flood alleviation schemes on the eastern side of Newport and coastal areas. Also, based on the information provided by Davis Langdon LLP, it considered that works to protect existing properties did not appear to be justifiable at this time. The Council's response was that it noted the EAW response and had no cause to dispute the information provided regarding the revised cost estimate for the proposed flood alleviation works. These representations, copies of which were sent to you, have been considered by the Planning Decision Committee in reaching its decision on these appeals. Copies of your letter and enclosed report together with the representations for the EAW and the Council are at Annex B to this letter.

5. The Planning Decision Committee has noted the agreement of the parties that the appeals represent two components of a single proposal and that a recommendation to refuse one and allow the other would be undesirable. The Committee accepts that the appeals are best considered as part of one overall scheme, and not in isolation, but nevertheless considers that each should also be assessed on its own merits.

6. The Planning Decision Committee agrees with the Inspector that the main considerations in these appeals are whether the proposals breach development plan

and national policies concerning development in the flood plain and, if so, whether there are material considerations or benefits sufficient to outweigh such a breach and to justify a departure from policy. The Committee notes that the proposals would provide non-flooding benefits, in particular, the provision of affordable housing, but it also agrees that any non-flooding benefits should carry little weight in the overall balance, with the appeals being determined on the basis of the flooding issues.

### Appeal A

7. The Planning Decision Committee agrees with the Inspector that the appeal proposals are in breach of policy and undermine the thrust of national guidance to prevent residential development on Zone C2. It also agrees with the Inspector, for the reasons given by him, that the Appeal A proposal would not result in unacceptable risk of flooding on site or the occupants of the proposed houses, and that the two proposals together would not result in an unacceptable risk of flooding off site.

8. The Planning Decision Committee agrees with the Inspector that the reduction in flooding risk is a material consideration attracting considerable weight. It considers that the crucial issue in these appeals is whether the degree of protection from flood risk that would be provided by the associated flood prevention works is sufficient to outweigh the conflict with local and national policy.

9. The Committee acknowledges that the reduction in flooding risk would be at the cost of a permanent loss of an area of floodplain on part of the former golf course site, and it has noted the Inspector's view that it would be a more sustainable approach to leave open the option of securing the reduction of risk, without the loss of floodplain, open to the future. However, the Committee has given careful attention to the particular circumstances of this case where the flood protection works associated with Appeal A would ensure that the proposed dwellings would still be above the 100 year flood level even allowing for climate change at the additional 20% within 50 years cited in TAN 15, and the two proposals together would provide enhanced protection to the Dyffryn area, as identified by the Inspector in paragraph 98 of his report, and not result in an unacceptable risk of flooding off site. In these circumstances the Committee disagrees with the Inspector's conclusion that the loss of the floodplain would be unacceptable and that the benefits are insufficient to outweigh the conflict with the statutory development plan and national planning advice. While the Committee acknowledges that there would be benefits in leaving the option of securing the reduction in risk, without any loss of floodplain, open to the future it notes the lack of certainty about any proposal for relevant works and concludes that in this particular case the reduction in flood risk offered by the proposals is such that it outweighs the possible future benefits arising from refusing new development on the land. The Committee therefore concludes that Appeal A should be allowed subject to conditions.

10. In reaching his conclusion that appeals should be dismissed the Inspector noted that if the EAW decided to undertake flood protection works they would clearly have to compete for finance with other projects and that would require amongst other things, a Cost - Benefit allowance. However, he considered that an approximate cost of £0.5m against the potential benefit of avoiding costs of between £7m and

£24m in a 160 year event, ignoring the additional benefit to businesses, did not seem to be particularly excessive. The Planning Decision Committee has noted from the representations submitted after the inquiry had closed, referred to at paragraph 4 above, that the revised cost for those works, in the region of £1.6m, was not disputed and that there is currently no proposal for a scheme to be funded by public monies. However, the Committee has also noted that the EAW would consider a flood alleviation scheme for existing properties at Dyffryn if the flood risk, priorities and funding allow, although no scheme was planned within the Dyffryn area in the short or medium term and at present higher priority was being given to flood alleviation schemes on the eastern side of Newport and coastal areas. Although a flood alleviation scheme for Dyffryn is not being given the highest priority by the EAW such scheme has not been ruled out in the longer term. The Committee has taken into account the possibility that such a scheme may come forward in the longer term but does not consider this is a consideration of sufficient weight to overcome the benefits of the reduction in flood risk associated with these proposals. The Committee have therefore concluded that the further representations do not materially affect its conclusion that Appeal A should be allowed subject to conditions.

### Appeal B

11. As indicated at paragraph 5 above the Committee accepts that the appeals are best considered as part of one overall scheme, and not in isolation, but nevertheless considers that each should also be assessed on its own merits. The Planning Decision Committee accepts the Inspector's view that that the two proposals together would not result in an unacceptable risk of flooding off site. The Committee accepts the Inspector's view that the Appeal B proposal does not satisfy the tests at section 6 of TAN 15 but it considers that this objection is outweighed by the benefit in flood risk reduction that would result from both appeal proposals being implemented. The Committee therefore concludes that the appeal should be allowed subject to conditions.

### Conditions and planning obligation

12. The Planning Decision Committee agrees with the Inspector, for the reasons given by him at paragraph 109 of his report, that the conditions set out in the Annex to his report should be imposed. The Committee also agrees with him that the executed unilateral planning obligation submitted to the inquiry is acceptable, for the reasons given at paragraph 110 of his report, and that the conditions and the undertaking would also adequately mitigate the likely environmental effects of the proposed developments.

13. The Planning Decision Committee have taken the environmental information, as defined for the purposes of the relevant Environmental Assessment Regulations, into consideration in reaching their decision on this application.

### FORMAL DECISION

### Appeal A

14. For the reasons given above the Planning Decision Committee allows the appeal and hereby grants planning permission for planning application ref. 03/1763, dated 19 December 2003 (as amended) for residential development, public open space, flood alleviation works and associated environmental improvements on land at former Tredegar Park Golf Course, Newport, subject to the conditions in Annex C to this letter.

#### Appeal B

15. For the reasons given above the Planning Decision Committee allows the appeal and hereby grants planning permission for planning application ref. 05/1203 dated 31 August 2005 for works to provide flood storage and flood control facilities on land at Tredegar Park Sports Field and Recreation Ground, Newport, subject to the conditions in Annex C to this letter.

16. This letter a copy of which has been sent to the principal planning officer, Newport City Council and to those interested persons who appeared at the inquiry does not convey any approval or consent which may be required under any enactment, bye law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully

**Carwyn Jones AM**

Chair, Planning Decision Committee (2)2007/2

Enc; Leaflets "H" and "HC"



