



Adroddiad

Ymchwiliad a gynhaliwyd ar 17, 18, & 19/10/06
Ymweliad safle a wnaed ar 19/10/06

Report

Inquiry held on 17, 18 & 19/10/06
Site visit made on 19/10/06

gan/by Emyr Jones BSc(Hons) CEng MICE MCMI

**Arolygydd a benodwyd gan Gynulliad
Cenedlaethol Cymru**

**an Inspector appointed by the National
Assembly for Wales**

Dyddiad/Date 06/12/06

TOWN AND COUNTRY PLANNING ACT 1990

NEWPORT CITY COUNCIL

APPEALS BY NEWBRIDGE CONSTRUCTION LTD, Mr R A E HERBERT
& Mrs M G HERBERT

FORMER TREDEGAR PARK GOLF COURSE

and

TREDEGAR PARK SPORTS FIELD AND RECREATION GROUND, NEWPORT

APPEAL A

File Ref: APP/G6935/A/05/1186037

Site address: Former Tredegar Park Golf Course

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Newbridge Construction Ltd., Mr R A E Herbert, and Mrs M G Herbert against the decision of Newport City Council.
- The application Ref 03/1763, dated 19 December 2003, was refused by notice dated 2 February 2005.
- The development proposed is residential development, public open space, flood alleviation works and associated environmental improvements.

Summary of Recommendation: The appeal be dismissed.

APPEAL B

File Ref: APP/G6935/A/05/1193193

Site address: Tredegar Park Sports Field and Recreation Ground, Newport

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Newbridge Construction Ltd., Mr R A E Herbert, and Mrs M G Herbert against Newport City Council.
- The application Ref 05/1203 is dated 31 August 2005.
- The development proposed is works to provide flood storage and flood control facilities.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The application in respect of the Appeal A proposal included a voluntary Environmental Statement and a Transport Assessment (Documents A3 & A4 respectively). Prior to the Council's determination of the application, a number of supplementary documents were submitted (Documents A7, A9, A11 & A12). After the appeal was made, further information was sought by the Welsh Assembly Government and an Environmental Supplementary Report, a Design Statement, a Concept Masterplan, an annotated Topographical Survey, and a Badger Report (Documents A16, A17 & A18) were submitted in January 2006. A further Badger Report (Document A19) and Environmental Supplementary Assessment for both the Appeal A and Appeal B proposals (Document B6) were submitted in May 2006. With the material previously submitted, these provide an Environmental Impact Assessment for the entire scheme (Appeals A & B proposals).
 2. The plans submitted with the Appeal A planning application comprised drawing Nos. NC1, 7147/102B, 7147/103A, and 7147/104 (Document A1). The access arrangements were subsequently amended following pre-determination discussions (Document A10) and the proposal refused planning permission is that shown on drawing Nos. NC1.RevA and 7147/678 (Document A2). The relevant *Notice of Decision* (Document A15) incorrectly refers to plan Nos. 01, 7147/01 and KC/TREA/010 to 14. Both principal parties agreed that Appeal A should be determined on the basis of drawing Nos. NC1.RevA and 7147/678, together with drawing No. 2006.2487.001 (appended to Document APP2, which supplements drawing No 7147/678), and the previously mentioned Design Statement, Concept Masterplan and annotated Topographical Survey (Document A17).
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3. The Council's reason for refusing planning permission for the Appeal A proposal was: 'It is considered that the development of this area of floodplain for residential purposes will result in unacceptable risks and dangers to the occupants of the proposed houses, as well as the loss of natural floodplain capacity and potential increased flood risk. It is thus contrary to Policy ENV3 of the Adopted Gwent Structure Plan, Policies SP24 and U7 of the Deposit Unitary Development Plan (Second Proposed Changes), and Government advice set out in Sections 13.2 and 13.4 of Planning Policy Wales March 2002, and Technical Advice Note 15 – Development and Flood Risks.'
4. Although Appeal B relates to a failure to give notice within the prescribed period, the Council subsequently resolved that it would have refused the application for two reasons; one of which was withdrawn following the receipt of additional information. The non-withdrawn reason is: 'The proposal would be contrary to the advice of TAN 15 in that it is designed to facilitate development within the floodplain which would result in unacceptable risk to the occupants of that development and the loss of floodplain capacity and potential increase of flood risk'.
5. In opening, the appellants emphasised that the two appeal proposals represent a single project. Towards the end of the Inquiry, I sought the views of the principal parties on the possibility of a recommendation that one appeal be refused and the other allowed. Both effectively agreed that this would be undesirable on the basis that the applications had been presented as two components of a single proposal, and that they were effectively tied together by the draft conditions and the Unilateral Undertaking.
6. I have attached all documents and plans submitted to the Inquiry, including statements of evidence and closing submissions. These documents are generally as originally submitted, in other words they do not take account of how the evidence may have been affected by cross examination or other aspects of the Inquiry. However, I have annotated paragraph 6.25 in Document APP7, paragraph 2.1 in Document APP11, and Figure 6.6 of Document APP8 to reflect three specific corrections drawn to the Inquiry's attention. I have also annotated the closing submissions (Documents NCC9 & APP15) to reflect deviations from, and additions to, the text made when they were read out.

The Sites and their Surroundings

7. The former golf course site (Drawing No NC1.RevA at Document A2, Plan C, and Site Location Plan & various photographs at Document APP5) has a gross site area of around 38 hectares. The River Ebbw flows from the north-west to the south-east through it and a partly culverted dock feeder stream also runs south through the site, close to the western boundary. The site is bounded by the A4072 Forge Road to the south-west, Park View, Bassaleg Ambulance Station and the Whitehead Sports Ground to the north-west, and the embankments of the Newport-Ebbw Vale railway line to the north-east and the M4 motorway to the east. The embankment of an old tramway crosses the site (Plates 6.2 & 6.3 of Document APP8) with the bridge that carried the tramway over the River Ebbw being a Grade II listed structure of special architectural or historic interest.
8. A public footpath cuts across the Appeal A site, linking Forge Road with the Tredegar Park Sports Field and Recreation Ground via and underpass under the M4 (Plate 6.1 of Document APP8), and a further public footpath runs parallel to Forge Road (Site Context Plan at Document APP5). Extensive tree belts exist along the River Ebbw corridor as well as along the main dock feeder together with a number of additional stands within the site. These comprise mainly native broadleaf species, many of which are covered by a Tree Preservation

Order (TPO) (Plan B and Appendix 2.2 of Document APP6), together with a number of more ornamental tree and shrub species relating to the former fairways. Views into the site from Forge Road, Park View, the railway line and the M4 are restricted by existing established boundary planting and views across the site are also limited by existing planting, particularly the tree belts along the watercourses. Views of the site are afforded from the Gaer Hill Fort to the east which is a Scheduled Ancient Monument (Map Square F1 on Plan C).

9. The sports field and recreation ground (the Appeal B site) (Drawing No 98.203/3 at Document B2, Plan C, and Site Location Plan and various photographs at Document APP5) is in the appellants ownership but is leased to the Council until 2062. It has a gross site area of approximately 21.6 hectares and is separated from the former golf course site by the motorway embankment, which forms its western boundary. A flood embankment is located on the northern and eastern boundary, beyond which lies the River Ebbw, and the A48 Cardiff Road is on the southern boundary. The site includes playing fields, tennis courts, a miniature golf course, a basketball/football pitch, a children's play area and paddling pool, a caretaker's lodge, changing rooms, public toilets, and a car park.
10. An established tree belt alongside the A48 boundary filters views out of the site in that direction and views into the site from that direction. Established tree belts along the river corridor restrict views up to the Gaer Hill Fort. Planting along the M4 corridor filters views, although traffic on the motorway can be seen from the site and glimpsed views into the site exist when travelling west along the motorway. The site is also visible from the westbound slip road to Junction 28 on the M4. The site is part of Tredegar Park which is included on *Cadw's* Register of Historic Parks and Gardens of Interest in Wales (listing at Appendix 2.4 of Document APP6).

Planning Policy

11. The development plan is the *Newport Unitary Development Plan* (UDP) (Document E6) adopted in May 2006. Both of the appeal sites lie within the Urban Area, as defined on the Plan's *Proposals Map*. The Appeal A site is designated as an Environmental Space, where policy CE33 applies.
12. Amongst other matters, policy SP10 notes that sufficient land will be made available to provide for 3700 additional dwellings in the period 2006-2011. It anticipates that 400 dwellings would be provided between 1996 and 2011 by the development of unallocated infill and windfall sites within settlement boundaries. Policy SP11 indicates that benefits for the community will be sought where relevant, necessary and directly related in scale and kind to a development proposal. Examples of such benefits include, amongst others, educational and leisure facilities, affordable housing, open space provision and habitat creation.
13. Policy SP24 states that development, including the raising of land, which would result in an unacceptable risk of flooding, either on or off site, or which would adversely affect flood management or maintenance schemes, will not be permitted. Where flood risk is identified as a constraint, policy SP27 notes that development will only be permitted where a detailed technical assessment is provided. This is to ensure that the nature of the proposed development is acceptable in terms of flood risk, that it is designed to cope with the consequences of flooding, and that the funding and maintenance provision is appropriate for the lifetime of the development. Policy U7 notes that flood plains have been identified within various valleys, including that of the River Ebbw, where development and land raising will not be allowed. This is so that they can fulfil their primary function as effective flow conveyance and flood water storage areas.

14. Policy CE29 presumes in favour of the protection, conservation and, where appropriate, restoration of sites included in the registers of landscapes, parks and gardens of special historic interest. Policy CE33 refers to the safeguarding of sites having existing importance for their visual qualities, as wildlife habitats, or for recreational or amenity purposes as "environmental spaces". Development in these spaces will only be permitted where the existing or potential environmental qualities of the site will be improved or complemented, no site recognised as having special nature conservation interest is adversely affected, and, subject to qualification, there is no loss without appropriate replacement of a recreational, open space, or amenity resource.
15. Policy H2 is generally supportive of proposals for residential development within settlement limits subject to a number of criteria. Policy H5 requires a mix of house types and sizes capable of meeting a range of housing needs on new development on a substantial scale and notes that the Council will seek to negotiate appropriate elements of affordable housing on such development. Policy T14 seeks to develop a network of safe walking and cycle routes, including long distance routes forming part of the national cycle network.
16. The Council has also published draft Supplementary Planning Guidance (SPG) on *Flood Risk and Sustainable Drainage Systems* (Document E8), *Planning Obligations* (Document E7), *Affordable Housing* (Document E9), and *Outdoor Playspace Provision* (Document E10). However, they are all in draft form and can generally only be accorded limited weight with the last mentioned attracting very little weight because it is at a particularly early stage. The *Joint Housing Land Availability Study (March 2006)* (Document F5) records the housing land supply in Newport at 1 January 2005 as being 4.6 years.
17. National planning policy is found in *Planning Policy Wales* (PPW), the housing chapter of which has been superseded by *Ministerial Interim Planning Policy Statement 01/2006: Housing*. PPW is supplemented by various Technical Advice Notes, including *Technical Advice Note 15: Development and Flood Risk* (TAN 15).

Planning History

18. Planning permission (Ref: 97/1073/F) was granted in 1999 for the Golf Club to relocate to Ynysyfro to the north of Newport. A UDP Strategic Options Document (Document E1) published in 1997 identified the former golf course as a potential development opportunity. The first draft of the UDP (Document E2) proposed development consisting of 16 hectares of land for housing (150 dwellings) to the east of the river and 21 hectares for Class B1 development to the west of the river, but this was rejected by the Committee.
19. An outline application for residential development of approximately 150 dwellings on the east side of the river with the rest of the site remaining in open use (Ref: 00/0980) was refused planning permission in December 2000. An application for proposed flood alleviation works (Ref: 02/0140) was refused planning permission in May 2003. The reasons for refusing these applications are given in the Statement of Common Ground (SOCG) (Document GD3).
20. At the UDP Inquiry, the appellants argued that the land on the east side of the river should be allocated for housing comprising approximately 150 dwellings with the remainder to be made available as public open space (Document E3). The Council opposed this case on the basis of flooding issues (Document E3). The UDP Inspector concluded that the proposals would bring clear public benefits, the site ranked below previously developed land but above urban extensions, and there was no need to allocate additional housing (Document E5). Specifically on flooding, he noted that 64% of the proposed housing site was within Flood Risk Zone C2,

which ruled out an allocation in the UDP, and that the flooding issues would need to be determined through the planning application process, including if necessary a Section 78 Appeal.

21. There is no relevant planning history as regards the Tredegar Park Sports Field and Recreation Ground.

The Proposals

22. The principal features of both proposals are shown on Figure 5.2 of Document APP8 and, in respect of the former golf course site, document A2 and the plans forming part of Document A17. The Appeal A proposal relates to an outline application with siting, design, external appearance and landscaping reserved for subsequent detailed approval. The proposed housing would lie to the east of the River Ebbw and have a development area of 6.4 hectares gross (5.2 hectares net). It would be accessed from Park View, adjacent to the ambulance station, via a new traffic signal controlled junction (drawing No 7147/678 at Document A2 and drawing No. 2006.2487.001 appended to Document APP2).
23. The indicative layout (Document A17) shows a series of high, medium and low density housing zones with the overall scheme of 150 dwellings averaging 30 dwellings per hectare. The area to be developed would be raised to the level of the existing 1 in 200 years (0.5% probability) peak flow of the River Ebbw, plus a further 600mm.
24. A corridor of land between the proposed housing and the River Ebbw would provide an overflow channel, following the route that would naturally be taken during sizeable flood events. Retained wetlands would be incorporated into the design. To the west of the river, a wetlands reserve including a permanent pond is proposed with the remainder of the former golf course laid out as public open space with associated landscaping.
25. A flood storage facility of around 53,500 m² in surface area with a capacity in the region of 101,600 m³ would be provided on the western bank of the river through a reduction in the height of part of the tramway embankment. This would be on natural floodplain currently prevented from acting as active floodplain by the tramway embankment. This would replace 84% of the area of floodplain lost to the housing development and provide at least 1.85 times the flood storage capacity lost due to the housing element at the level of the 200 year flood.
26. Insofar as the sports field is concerned, a new flood embankment (Sports Field Bund Alignment at Document APP5) would be constructed around its perimeter along the toe of the motorway embankment and the boundary with the A48, and the height of part of the existing flood embankment would be reduced. The recreation ground would be outside the new embankment. This would provide flood storage with approximately 120,800 m² of surface area and a capacity of some 163,200 m³.

Other Matters Agreed Between the Appellants and Newport City Council

27. The SOCG (Document GD3) notes that the Council's opposition to both appeal proposals is solely on the basis of flood risk issues and in line with Environment Agency Wales' (EAW) objection. It also records that this is a sustainable location for new housing subject to the flooding question, which remains a matter of dispute.
28. The proposed housing site lies partly within the limits of the natural 1% (1 in 100 years) and entirely within the limits of the natural 0.1% (1 in 1000 years) fluvial floodplain of the River Ebbw, as shown on the EAW Floodplain Map (Figure 6.1 of Document APP8/Appendix 1 of Document NCC5). The proposed flood storage areas on the former golf course and on the

sports field lie within the limits of the natural 1% and 0.1% floodplains of the River Ebbw, as shown on the same map. Both appeal sites are located within Zone C2 of the Assembly Government's Development Advice Maps (Figure 6.2 of Document APP8/ Appendix 3 of Document NCC5) and part of the proposed housing site has flooded previously, most notably so during 1979, 1981 and 1998 (Figure 6.4 of Document APP8 and Appendix 2 of Document NCC5 in respect of the 1979 and 1998 events).

29. Although the tramway embankment is not a formal flood defence structure, it protects the area to the south of it from inundation in events up to a 1 in 200 year return period (Figure 6.9 of Document APP8). The flood embankment constructed in the early 1970's along the northern and eastern boundary of the sports field site protects the sports field from inundation in events up to a 1 in 200 year return period for most of its length, but less so towards Pont Ebbw at its downstream extremity (Plates 8.3 & 8.4 of Document APP8).
30. It is agreed that the hydrodynamic model used by the appellants to simulate flood levels on and downstream of the appeal sites appears to be fit for the purpose of modelling flood flows, with pre and post development characteristics being modelled, and the results appear to be sensible for all the variables examined. It is also agreed that a reduction of flood flows passing downstream of the appeal sites would potentially reduce the frequency of flooding in downstream communities. Subject to policy and sustainable development considerations, the resultant reduction in flood risk would be welcome.
31. Viewpoints 1-13, as shown on Appendix 4 of the SOCG, are appropriate points from which to assess the landscape and visual impact of the proposals (photographs from these viewpoints included in Document APP5). No significant concerns arise from these viewpoints, subject to suitable landscaping measures. Although many of the groups of trees on the site are covered by a TPO, the loss of trees which may potentially be affected by the proposed wetland area and flood alleviation channel would be of no material consequence to the overall TPO. Furthermore, all the trees identified as being of high ecological value would be retained.
32. It is agreed that the proposals would not affect the listed tram road bridge and, whilst there would be a physical effect on the tramway itself, there would not be a significant effect on its heritage value. It is also agreed that the proposals would not significantly affect the Gaer Hill Fort or Coed y Defaid Camp (another Scheduled Ancient Monument located on the opposite side of the valley (Map Square C2 on Plan C)) (see *Cadw* and Glamorgan Gwent Archaeological Trust responses at Appendices 2.5 & 2.6 of Document APP6). *Cadw* had no concerns in respect of the Appeal B proposal being on part of a Grade II* historic park and garden.
33. If planning permission is granted, the detailed design of the proposed access would be subject to the technical approval of the Council and be implemented under the terms of a Section 278 Highways Agreement. Dŵr Cymru/Welsh Water has confirmed that a domestic foul water connection could be made for the proposed housing development and there are no objections from any other statutory undertakers.

THE CASE FOR THE APPELLANTS

The material points are:

Introduction

34. It is clear from the decision notice on the Appeal A application (Document A15) and the terms of the officers recommendation on the Appeal B application (Document B5) that, but for the EAW's policy objections both applications would have been granted planning permission. That has remained the position of the Council throughout these proceedings and in all other respects the applications are acceptable (paragraphs 7.1.1 & 7.5.1 of Document GD3).
35. The benefits of the scheme were also recognised by the UDP Inspector (paragraphs 3.37 & 3.39 of Document E5). The proposals would clearly provide a most attractive housing site that would add to the range and quality of housing opportunities, including affordable housing, in Newport. The proposals would also deliver a unique public open space facility for the City at no cost to the public purse and the opportunity to secure this 31 hectare area as a recreational facility for the inhabitants of Newport should not be cast aside lightly. It would be of significant value both to the local communities (who are short of open space expressed as minimum standards) (Document E10 and Plan A) as well as constituting a strategic facility for the City linking with the formal sports pitches to the south of the M4. If the National Assembly's Planning Decision Committee can be satisfied that the flooding policy issue can be overcome then planning permission should properly be granted.

Flooding

36. The starting point must be Section 38(6) of the **Planning and Compulsory Purchase Act 2004** and the development plan comprises the recently adopted UDP (Document E6). The appeal proposals are in accordance with all development plan policies with the sole exception of U7, and arguably, depending on the conclusions reached on the flooding policy issue, SP24 and SP27. Given the terms of TAN 15, which predates the UDP, one would not expect policy U7 to say anything else. The purpose of the policy in respect of Zone C2 areas is said to be 'to ensure that flood flows and storage areas are not compromised' (last sentence of paragraph 10.18 to Document E6). That purpose is achieved and indeed improved upon by these proposals. In accordance with Section 38(6), material circumstances indicate that the decision should be other than in accordance with policy U7.
37. TAN 15 has the status of being one of the material circumstances to be weighed in the balance. Obviously, it is a very important consideration which creates a strong national policy presumption against residential development in what is agreed to be Zone C2 floodplain. However, it does not, and cannot as a matter of law, amount to an absolute embargo. It is necessary in this case, as in all cases, to weigh all material considerations in the overall balance. What is perhaps unusual is that the flooding policy issue is the only consideration weighing against the proposal.
38. The approach adopted in the Llandovery appeal (Document F4 (b)) is commended as being the correct one. Particular attention is drawn to paragraphs 36, 75 and 116 of the Inspector's Report and paragraphs 8 (last sentence), 9 (last sentence), 11 (first sentence), and 12 of the Decision Letter. The approach is clear; although that appeal failed on its facts, it was a very different type of case to these appeals. The benefits relied upon as outweighing the flooding policy objection were simply that the land was allocated for development in a plan which predated TAN 15 and seen as a long term commitment, and that the loss of flood storage would be compensated for by a like for like replacement.
39. In contrast, the benefits of the proposals before the Inquiry are of a wholly different order. The overarching purpose of TAN 15 is to reduce flood risk and for that purpose it sets up a

precautionary framework within which it suggests decisions should be taken. It is noted that the title of the TAN is *Development and Flood Risk* and attention is drawn to paragraph 1.2 in the 'Introduction'. Applying TAN 15 will achieve the right decision in 99% of cases, but on very rare occasions slavish adherence to the guidance will produce the wrong result, this is such a case.

40. The Inspector's, and the Planning Decision Committee's, task is made easier than it might otherwise be by the level of agreement between the parties on all the technical issues and flood modelling work that might otherwise have had to be resolved. The case really does distil down to a single issue as identified by the Inspector as being the main issue at the start of the Inquiry. This requires a judgement by the decision maker as to whether the circumstances of the case are sufficient to override the policy framework approach of TAN 15.
41. The decision notice for the Appeal A application (Document A15) identifies three flood related aspects that would occur if this development proceeded. On analysis, each is demonstrated to be wrong. Firstly, there would be no unacceptable risks and dangers to the occupants of the proposed houses. The land would be raised to 600mm above the level of the 1 in 200 year flood, which is higher than the 1 in 1000 year flood event. In a fluvial context, paragraph A1.14 of TAN 15 only requires dwellings to be protected to a standard equivalent to the 1 in 100 year flood. If climate change is allowed for at the extent recommended by the TAN (an additional 20%), the land would still be at the 1 in 250 year flood level and substantially above the 1 in 100 year event standard of TAN 15. This level of protection is acceptable now and in the future, as recognised by the Environment Agency's witness (paragraph 6.4.2 of Document NCC3).
42. Secondly, the reference to a loss of natural floodplain capacity is plainly wrong. The additional storage on the former golf course site would not, by-itself, provide a sufficiently compelling case. However, the sports field would provide additional storage and the two areas combined would represent a net gain of 3 times the area and 5 times the volume lost to the housing site. The scheme, therefore, achieves a very large net gain in natural floodplain capacity. The isolation of the area behind the existing tramway embankment and the River Ebbw flood embankment from functioning as part of the floodplain up to a 275m³/s flood (1 in 200 year return period) is not in accordance with current approach and practice (Figure 6.9 of Document APP8). Although much of the area south of the tramway embankment would flood, as would part of the sports field, in a 340m³/s flood (1 in a 1000 year return period) (Figure 6.11 of Document APP8).
43. The appeal proposals achieve sustainable flood plain restoration, in accordance with paragraph 13.3.1 of PPW, something which the EAW's witness acknowledged to be an important objective nowadays. This would cost roughly upwards of £0.5m, excluding maintenance, and there is no realistic prospect of it being achieved in the absence of the appeal proposals. There is no credible evidence before the Inquiry that it would ever be done by the EAW. It would be an item of major capital expenditure in a situation where there are many competing demands on a limited budget. The evidence of the EAW's witness can be discounted because he as good as admitted that he thought of the point over lunch and it has no sound evidential base whatsoever.
44. Turning to the third aspect of the reason for refusal relating to a potential increased flood risk. The contrary is the case, the appeal proposals significantly reduces the downstream flood risk. Under existing conditions, parts of Duffryn and some of the businesses beyond the A48 will flood in the 250m³/s flood (115 year return period) and above (Figures 6.7, 6.8, 6.9 & 6.11 of Document APP8). At a 265m³/s flood (1 in 160 year return period) (Figure 6.8)

almost 800 dwellings (over 1800 people) will flood at a potential economic cost of up to £24m (Document APP13). There would also be additional damage to the high value businesses of International Rectifier and the ASDA superstore (Map Square G3 and G5 on Plan C, respectively). This existing situation is far worse than had previously been believed as it was thought that the area was safe up to a 275m³/s flood (1 in 200 year return period).

45. The current situation is that Duffryn is at risk in a 1 in 115 year event whilst the existing flood defences protect recreational land up to and beyond the 1 in 200 year event. This is not as it should be, the appeal proposals would reverse the situation and allow for the managed flooding of both the former golf course site and the sports field in order to protect Duffryn. The amount by which the tramway and existing flood defence embankments are lowered can be fine tuned to optimise the benefit at any specified flood flow. If they were set to let water into the former golf course and the sports ground at the 1 in 50 year flood, and accumulated gravels were cleared from Pont Ebbw (Plates 5.1 & 5.2 of Document APP8), Duffryn would be protected up to the 265m³/s flood (Figures 8.10 & 8.11 of Document APP8). Furthermore, in a 275m³/s flood, the extent and depth of flooding would be significantly reduced (Figure 8.12 of Document APP8).
46. It is rarely the case that advantage may be secured across the full range of flood events and the downside is that there would be some worsening in the more extreme and infrequent events. If flood water was taken into storage at the level of a 1 in 30 year flood, the extent of a 1 in 1000 year flood would be slightly more in the Duffryn area than under existing conditions with the depth being 5% greater (paragraph 7.26 Document APP7). If flood water was taken into storage at the level of a 1 in 50 year flood and the accumulated gravels cleared, there would be a 6% reduction in the depth of a 1 in 1000 year flood as compared to that under existing conditions (paragraph 8.19 Document APP7). However, there would be a greater risk to St. Brides Gardens in Maes Glas (Map Square H3 on Plan C and Plates 8.1, 8.2 & 12.3 of Document APP8). The embankment protecting it would just be overtopped leading to low depth flooding along the road, but it would not be difficult to come up with an appropriate solution.
47. Flood storage should be used in the higher probability events that currently pose a risk of flooding to people and property, rather than being reserved for exceptionally rare events. The proposals are targeted at removing risk up to the 1 in 160 year event and this is the right balance. They would save Duffryn from flooding 6 times in 1000 years as opposed to the cataclysmic or 'biblical' event of once in 1000 years.
48. It is not part of the EAW's case that Duffryn could be protected by increasing the height of the recreation ground embankment. At best, this would merely transfer the problem downstream and cause flooding in the Maes Glas area. It would provide no solution to the problems identified and, in any event, would leave part of the former golf course and the sports field isolated from the flood plain, rather than returning them to it.
49. The appellants flooding model is agreed, no issue has been raised at the Inquiry in relation to the ground model and the EAW's witness has confirmed that all of the analysis in the evidence of the appellants' flooding witness is accepted as are the plans and figures produced. The only matter not agreed is the return period of a given flow, although the evidence of the appellants flooding witness is not disputed for the purpose of the Inquiry. This evidence can and should be accepted, there is none to the contrary apart from unspoken figures in a report (Document F6) and cogent and convincing reasons (Document APP11) have been given as to why these are not right.
50. The averaging of pooled group and single station analysis is non-standard practice; it is not in accordance with the *Flood Estimation Handbook* (Appendix 2 of Document APP11) and, to

the knowledge of the appellants' flooding witness, has never been done before. The analysis uses the very single station data which the authors of the report reject as being unreliable. The report uses a phantom flow of 353m³ in 1986 which has been deleted from the *Hi-flows* database and fails to recognise the 1998 flood which is well validated (Appendices 5 & 6 of Document APP9). If contrary to the appellants evidence, these figures were right (although there is no evidence that they are) then it would strengthen the case for the grant of planning permission because Duffryn would currently be at greater risk- 1 in 75 years rather than 1 in 115 years. Nonetheless, the appellants flooding witness and HR Wallingford (Appendix 1 of Document APP11) are convinced that this is not the case.

51. Both sites are upstream of the tidal limit and the backwater influence of the tide. The extended flooding model extends into the River Ebbw's tidal reach as far as its estuarial mouth and the downstream boundary condition was derived on a joint probability of a Mean High Water Spring Tide coinciding with a peak in fluvial flooding. The existing drainage problems at Park View relate to urban drainage capacity and maintenance problems, and they would not be exacerbated by the proposed development.
52. Existing recreation activities on the sports field would be unaffected by flooding events with a return period of less than 1 in 30 years (or greater according to the inflow to storage level chosen). In more extreme events, it is likely that sporting activities would have been curtailed by the weather in any event. In the event of flooding, nowhere would be more than 200m from the nearest embankment which, at a walking pace of 2mph, could be reached within less than 4 minutes (paragraph 10.1 Document APP7). In comparison, it is estimated that it would take at least 30 minutes for water flowing into either of the storage areas to reach a depth of 0.5m.
53. This Inquiry is the first occasion when all the benefits of the scheme have been fully assessed by an independent source. The EAW has never done it, its opposition is a straightforward policy objection based on TAN 15 and, as far as it was concerned, it never needed to look at the detail despite the advice at paragraphs 3.5 and 11.7 of TAN 15. The only other independent party to assess the benefits were Mott MacDonald (Document C2) who reviewed the Halcrow material in October 2004 at the Council's request. They recommended that the Council should seek to obtain the EAW's agreement to the approval of the scheme. It is also clear that the personal view of the Agency's witness is that the benefits of the scheme are such that planning permission should be granted. It is acknowledged that he did not specifically say so, but his position was clear.
54. This is an exceptional case which deserves to be granted planning permissions. It would significantly reduce flood risk in Newport through the sustainable restoration of the natural flood plain which has become isolated due to what are now seen as inappropriate flood defence works. The proposals are an opportunity which should be seized; they would deliver these benefits at no cost to the public purse either now or in terms of future maintenance. They would remove flood risk from Duffryn up to the 1 in 160 year flood and the associated economic cost of up to £24m and avoid the public purse, including that of the EAW, having to pay significant clean up costs which would follow a serious flood.

Landscape and ecology

55. The surrounding topography results in the sites being relatively enclosed and the visual containment is increased by the extensive woodland belts and boundary vegetation (see photographs included in Document APP5). The proposals seek to minimise tree loss by siting the development within the existing tree and woodland framework and compensating any unavoidable loss through replacement planting. Views up to the Gaer are restricted by

mature trees growing along the river corridor. Whilst the sites can be seen from the Gaer, existing vegetation filters and restricts such views and the sites are seen in the context of existing residential and office/industrial development, together with the M4 and other parts of the highway network. As a result, the proposals would not have a negative impact on the character and setting of the sites or the surrounding landscape.

56. On the basis of survey information (forming part of the environmental information (see paragraph 1 above) and Appendix 2.10 of Document APP6), it is clear that the ecological value of both sites is unlikely to be affected. Features or habitat areas of high value would generally be retained and protected. Furthermore, the creation of new habitat areas, including a wetland reserve, and additional planting would provide a significant biodiversity gain.

Access

57. A junction capacity assessment of the Forge Roundabout (Map Square D1 on Plan C) indicated that the Caerphilly Road/Park View arm was operating well within capacity (Document APP2). The longest queue recorded on video surveys of this approach on 19 October 2004 was 10 vehicles in the morning peak and 13 vehicles in the evening peak with queuing being neither excessive nor of long duration. On the 19 October 2004 the morning and evening peak hour two-way flows between Park View Gardens and the Forge Roundabout were 1111 and 936 vehicles respectively. The equivalent figures for 9 September 2004 were 1081 and 954 vehicles respectively.
58. The proposed development of some 150 houses could generate around 41 and 45 two-way movements between the access and the Forge Roundabout in the morning and evening peak hours, respectively. The corresponding figures for traffic between the access and Pye Corner would be of the order of 75 and 79 two-way movements, respectively. Based on manual counts undertaken on 9 September 2004 and allowing for predicted growth to 2011, these figures would represent a percentage contribution of 3.6% and 3.7% towards Forge Roundabout in the morning and evening peaks' respectively. The equivalent increases towards Pye Corner would be 5.8% and 7%.
59. *Institution of Highways and Transportation* guidelines for traffic impact assessment states that traffic flow on any uncongested road frequently varies by up to 10% on a day to day basis and in congested conditions where flow variations are smaller it may be difficult, if at all possible, to distinguish those variations from traffic specifically related to new development. Automatic traffic count data indicates that peak hour traffic flows on Park View vary on a day to day basis by up to 12.0% in the morning and 9.7% in the evening. The wider traffic impact of the development would, therefore, be imperceptible.

Conclusion

60. In this case, the precautionary framework of TAN 15 is an impediment to good decision making. The case for granting planning permissions is sufficient to override the TAN 15 policy objection and that based on UDP policy U7 and the Inspector is urged to recommend that planning permissions should be granted.

THE CASE FOR NEWPORT CITY COUNCIL

The material points are:

The issues

61. Until the second day of the Inquiry, the appellants case appeared to depend in part upon various alleged benefits associated with the scheme, all of which it was said when weighed in

the balance counted in favour of the scheme. These included, for example, the housing issues raised by the appellants' planning witness, the conservation benefits discussed by the appellants' landscape witness, the open space provision, and so on. Whether or not any of that carried any merit, the point no longer needs to be addressed in light of the cross examination of the Council's planning witness.

62. He agreed with the appellants' advocate that 'whether to grant permission depends entirely on resolution of the flooding issues' and that, in the circumstances 'none of the other matters feed into the crucial decision whether planning permission should be granted'. Indeed, and consistent with that agreement, there was subsequently no challenge to his evidence on any related aspects. Thus, whilst the grant of planning permission would obviously have various non-flooding consequences, they should be treated as merely incidental to the issue in these appeals, and there can be discarded any suggestion that this is a case about anything other than flooding. For completeness, the Council's view on these consequences is reported under the sub-heading of 'Other matters'.
63. A Flood Risk Mapping Study for the River Ebbw carried out by JBA Consultants for the EAW (Document F6), has identified peak flows at Bassaleg of approximately 273, 328 and 512m³/s for floods with return periods of 100, 200 and 1000 years respectively. The equivalent figures used by in the appellants modelling work for floods with these return periods are 240, 275 and 340m³/s (Document A5). The discrepancy between the two sets of data needs to be resolved and JBA have been commissioned to consider the matter further and report to the EAW. In the meantime, the Council is not in a position to dispute the appellants' figures but it does not necessarily accept them as being correct. However, for the purpose of determining these appeals, it is prepared to assume that they are correct but invites that no formal finding be made on the matter. If the appeals are to be allowed, it is of importance that this is properly resolved so that the extent of the 1 in 200 year event can be established and the appropriate level for the land raising determined.

Policy

64. It is immediately obvious that this is a scheme that runs directly contrary to both local and national policy. Falling within Zone C2 as defined in TAN 15, and comprising highly vulnerable development, it is unacceptable in principle. Furthermore, it involves land raising within the flood plain, something expressly prohibited by UDP policy U7 and conflict with policy SP24 and SP27 follows. In the circumstances, permission ought not to be granted, unless there are exceptional circumstances to justify it.

The consequences of development

65. In opening, the appellants sought to suggest that the Council's objection is about policy and nothing else; that this is in effect an example of slavish adherence without practical application. This is far from the truth and that the suggestion has been made at all indicates a misunderstanding of the thrust and purpose of flooding policy, and this is further reflected in the way in which the appellants' case has been put throughout. On the contrary, there are, as suggested by the EAW's witness, three reasons why this scheme causes real and substantial harm of precisely the sort that policy is designed to avoid.

(i) The risk to the proposed houses

66. It is clear that the proposed houses would be constructed on a platform, set at, or just above the 1 in 1000 year event level and upon completion, they would be safe from flooding, in effect taken out of the flood plain entirely.

67. Yet development in this context is not merely about protecting development now. A long term view is required, and in this respect it must be assumed that the level of protection would diminish as the effects of climate change are realised, and as the frequency and severity of events increases. In fact, probability demands that the site would flood at some stage, during an event considerably more frequent than the 1 in 1000 year event, placing at risk people and property, and placing demands on services and infrastructure. In this manner a risk is created; a risk that would not exist but for the scheme, a hostage to fortune, a problem for future generations. In short, the scheme creates precisely the harm that policy is designed to avoid for this type of development in this location because it comprises exactly the opposite to that which the Assembly Government urges upon us, namely the 'managed retreat' from the floodplain.
68. The appellants' answer to this reflects a misunderstanding of the thrust of policy. It is said that there is no need for concern because the scheme would be defended adequately during its lifetime to a level above the 1 in 100 year standard required by TAN 15. This response is obviously flawed for the following reasons.
69. First it relies on, and seeks to apply a non-applicable test. The standard referred to relates only to development which is acceptable in principle. It ought plainly not to be invoked in an attempt to justify development which is unacceptable in principle. To allow such an attempt would render otiose the prohibition (which operates as a matter of principle) against this type of development – obviously all highly vulnerable development could be similarly justified in the same fashion. This would make nonsense of the guidance. This approach was accepted by the Inspector who determined Appeal Ref: APP/Q6810/A/05/1194498 and by the National Assembly's Planning Decision Committee in Appeal Refs: APP/M6825/X/04/514568-514571 (Documents F4 (f) & (b)). In the latter, it was concluded that it is not appropriate to apply the TAN 15 tests to residential development in Zone C2. Notwithstanding the above, the proposed development does not satisfy the tests in paragraph 6.2 of the TAN in any event.
70. Second, this is not merely policy waving, there is a sound basis for declining to apply the test here. It is a test which applies only in circumstances where there is no alternative. In other words, where residential development is essential (having regard to the tests in Section 6 of TAN 15) then the risk might be justified so long as it can be minimised by existing and/or proposed defences. However, where those conditions are not met, as here, then such a risk will never be justified. This is evidently because of the seriousness, for this type of development in this type of location, of the consequences in circumstances where the risk becomes a reality. Thus, the fact that the site might be defended to beyond the 1 in 100 year standard is simply irrelevant.
71. Third, once the principle of residential development is established, all references to the lifetime of the development become obviously irrelevant. This further illustrates the unattractiveness of the appellants' arguments in this respect – the purpose of prohibiting development as a matter of principle is not simply to ensure the safety of occupants and property, but to avoid the cost of doing so and of dealing with the consequences of an event where that is necessary, both now and into the future.

(ii) The loss of natural floodplain

72. There is no dispute that the original natural floodplain includes almost all of the two sites – extending south of the tramway on the former golf course site and across the sports ground. Neither is there any argument about the objective of policy in this respect – the proper approach ought to be to retain, and where possible to recover, such an asset. This would also be consistent with the 'managed retreat' approach that is so fundamental to current advice.

73. Yet this is a scheme which patently fails to achieve such an objective and the result is a net loss of natural floodplain. The logic is inexorable, the area south of the tramway and the sports ground are potentially available as flood plain. Although they are temporarily inactive, all that is required for their restoration is a willing landowner or a determined authority. The cost to the public purse (approximately £0.5m for the works) would be insubstantial against their potential value (£7m - £24m in a 1 in 160 year event) (Document APP13). The EAW has the necessary powers and the fact that no scheme is currently proposed by it is no basis for discounting the possibility; as the EAW's witness said, now that the full extent of the risk to the communities is only recently recognised, the matter will be considered formally by the EAW. The appellants offer to restore the land must be seen in this context. Insofar as gravel removal from Ebbw Bridge is concerned, the EAW does this on an annual or biannual basis in any event.
74. Furthermore, it is not an offer without strings attached as it comes at a substantial price – a vast swathe of the northern part of the former golf course site would be excised from the floodplain, and thus permanently sterilised, as a condition of the offer. The true result, therefore, is a net loss, and the scheme is unacceptable for this reason. A short-term gain would be paid for by future generations because of an entirely inappropriate exercise that amounts to horse trading of one part of the flood plain for another. Not only is this exercise inappropriate in principle (the objective should obviously be to keep one's options open in this respect by avoiding the permanent loss of floodplain) but its practical effect is nothing like as positive as the appellants seek to persuade us.

(iii) The dilemma

75. Finally, even the so-called improvements, to which so much weight is attached, are far from unqualified and come at a considerable cost. The issue here is not so much about the degree of improvement, or even the cost of improvement, but a simple choice between two alternatives. The appellants flooding witness presented his case in apparently irresistible terms: grant permission and the raging waters engulfing Duffryn would recede, instead flowing gently and harmlessly across the empty grassland plains at Tredegar Park but, seen in its true colours, the position is very different. The two alternatives are, in general terms, either an opportunity to adjust the current position in order to defend today against more frequent, but less serious events, or to defend against the more serious event, currently less frequent, but becoming more frequent in the future. The scenario would be worse if FBA's peak flow figures are correct, for obvious reasons.
76. This dilemma is not an easy one, but the proper manner in which to resolve it is to seek the long term improvement over and above the desire for instant and immediate results. This would be consistent not only with general sustainability principles but also the need to plan for the future with flooding in mind.
77. The Appeal B proposal would also be located within Zone C2 and it fails to meet the justification tests set out in paragraph 6.2 of TAN 15. Moreover, its sole purpose is to justify highly vulnerable development within Zone C2 (the Appeal A proposal) and it too is contrary to the strong precautionary principle set out in national planning policy.

Other matters

78. Although the latest Joint Housing Land Availability Study (Document F5) records a supply of less than the 5 years required by PPW, comparing the agreed supply at January 2005 with the requirements set out in the subsequently adopted UDP gives a supply of 6.1 years (Document NCC7). Furthermore, the 2006 figures are expected to show a supply in excess of 7 years

such that there is no shortage of housing land. The proposal would result in some benefits comprising the provision of open space for public use, landscape and ecological enhancement, the completion of a missing link in the Sustrans cycle route, and the creation of a wetland reserve. The Unilateral Undertaking would secure affordable housing, education contributions, and the future maintenance of the open space, landscaping and flood defence structures. However, these do not outweigh the substantial policy objection to the carrying out of highly vulnerable development within an active flood plain.

Conclusion

79. The prohibition in TAN 15 against highly vulnerable development exists for a reason. It is designed to avoid precisely the sort of harm that this scheme would cause. The so-called advantages associated with the proposal warrant consideration but, in practice, they simply reflect not so much an improvement, as a different sort of compromise to that which currently exists, and a compromise that would lead to problems in the future. Those problems are likely to increase both in frequency and severity. A good sustainable approach requires that those future problems are avoided; the way to achieve this is to dismiss the appeals. To do so would be consistent with policy. Certainly, the exceptional circumstances required in order to justify the fundamental policy conflict urged upon the Inquiry cannot, in the light of the above discussion, exist.

THE CASES FOR INTERESTED PARTIES OBJECTING TO THE PROPOSALS

The material points are:

80. **Mr B F Collings** who lives at 28 Park View spoke at the Inquiry. The proposed access arrangements shown on drawing No 2006.2487.001 (Document APP2) gives no indication of the proximity of the existing traffic lights at Pye Corner, some 300 yards to the east, and the existing Forge Roundabout, some 300 yards to the west. If the traffic flows were measured when the schools were closed, this would give a false impression. During peak periods vehicles currently queue from the traffic lights along Park View and around the corner to the roundabout. The introduction of further traffic lights between the existing lights and the roundabout would exacerbate the current congestion and traffic from the proposed development queuing to enter Park View would block the ambulance station access. Park View has a low spot in the vicinity of the proposed access with the gulleys being blocked and not at the low spot. Willow Brook, which crosses under Park View to the east of the proposed access, also overflows because it only has a 300mm (12 inch) clearance under the road and it then has to turn through a right angle before flowing into the former golf course site. This results in frequent flooding, thereby holding up traffic. If 150 houses were allowed there is a possibility that further development could follow.
81. **Mrs P Copeland** who lives at 22 Park View (letters dated 6 March and 3 July 2006 within Document GD2) also spoke at the Inquiry. The proposals would be very damaging to the residents of Park View, Park View Gardens, Forge Mews and Church Mead. Park View is more vulnerable than it ever was following the building that has taken place around Bassaleg. The River Ebbw is higher than it ever was and when the tide is in there is nowhere for the water to flow to. Her drive was recently flooded and it is difficult to walk on the footway when the road is flooded. The drain outside No 14 has been clogged following works to the gas pipe. The proposal would result in a loss of trees, the golf course site was given by Lord Tredegar for the people to enjoy and there is nowhere else to go for a walk.
82. **International Rectifier** (letter dated 14 March 2006 within Document GD2) did not appear at the Inquiry. They have commissioned a review of the relevant documentation and this has

identified that, in isolation, the Appeal A proposals may result in an increase risk of flooding to their premises (Map Square G3 on Plan C) and they, therefore, object to it. The review also identified that the Appeal B proposals would provide a benefit in terms of flood risk for events up to a 1 in 200 year return period and no change for more extreme events such that they do not object to it.

83. The **Graig Community Council** (letter dated 24 February 2006 within Document GD2) did not appear at the Inquiry. It objects on the basis that development of this area of floodplain for residential or any other building purpose would result in unacceptable risks and dangers to the occupants of the proposed housing development, together with the loss of natural floodplain capacity and potential increased flood risk.
84. **The Pentrepoeth Action Group** did not appear at the Inquiry, but they submitted some 111 pro-forma objections (within Document GD2). These support the Council's stance and express concern at existing traffic levels and the potential loss of use of the sports field and recreation ground when flooded. Individuals have added further comments as to overloading of education and health facilities, high insurance premiums following past flooding, the loss of natural habitat, and the danger to children and animals arising from allowing land which has public access to flood.
85. A collective letter of objection and petition with around 115 signatures (dated February 2006 within Document GD2) was submitted on behalf of the **residents of Park View and Park View Gardens**. This also supports the Council's stance and notes that fields which originally housed rugby and football pitches used by the Whitehead Sports Club were rendered unacceptable for their purpose as a result of flooding.
86. A further collective representation was submitted by **Mr J & Mrs S Giblin** on behalf of themselves and 16 or so other individuals (letter dated 2 July & e-mails dated 23 June 2006 within Document GD2). It notes that the land was presented to the people of Newport for recreational use in 1928. It is greenbelt land, an area of outstanding natural beauty, and within a Conservation Area. The land is also of archaeological and historical importance, lush in flora, full of indigenous fauna, and has many well established and mature trees. The proposal would have a negative impact on many local services including schools, roads, drainage, utility services and recreational open space.
87. Individual letters of objection were submitted by **H Coombs, Mrs M Lines, Mulcahy & Bullen Property, Mr I Brewer, V Colley-Wall and R & T Wall, and P & G Symes** (letters respectively dated 5 March, 5 March, 2 March, 1 March, 11 February & 11 February 2006, within Document GD2). These generally echo a number of the themes reported in the above paragraphs.

Conditions and Obligation

88. The Council submitted a list of suggested conditions with reasons to the Inquiry (Document NCC6). Following discussion at the Inquiry, it was accepted that Condition 9 could be subsumed into Condition 4 and that Conditions 10, 11, 13, 16 and 18 were unnecessary.
89. The SOCG (Document GD3) notes a need for a Section 106 Unilateral Undertaking to provide a mechanism for ensuring affordable housing provision, the payment of an education contribution, landscape and ecological measures, sustainable transport measures, and measures to ensure that the proposed flood prevention works and open spaces are implemented and maintained in perpetuity.

90. An executed Undertaking was submitted to the Inquiry (Document APP14). This generally provides for the above, apart from the provision of flood prevention works which is now included in the Council's list of suggested conditions. It also effectively duplicates the suggested conditions relating to the provision of landscape and ecological enhancement measures, although the relevant condition is somewhat more prescriptive, and the future maintenance of the flood prevention works. In addition, it provides for the dedication of the open space for use by the public and the option of its transfer to the Council, as well as the attainment of specified 'Eco Homes' ratings. The provisions relating to submission of additional details would be triggered by the granting of planning permission for the Appeal A proposal, with the remaining provisions being triggered by the granting of planning permission for, and the commencement of development on, the Appeal A proposal.

INSPECTOR'S CONCLUSIONS

The figures in brackets [] refer to paragraphs elsewhere in this Report.

In reaching these conclusions I have taken into account the environmental information submitted and, therefore, the likely environmental effects of the proposed developments [1].

Main Consideration

91. The main issue that I identified at the start of the Inquiry, taking the two appeals together, was 'Whether the proposals would result in an unacceptable risk of flooding; and, if not, whether there are benefits sufficient to outweigh the policy objection based on the former

golf course being within an unobstructed flood plain and within Zone C2 of the Development Advice Maps referred to in Technical Advice Note 15: Development and Flood Risk' [40].

92. Having heard the evidence, I am now of the view that the main considerations upon which both decisions should be based are:
- (a) Whether the proposals breach development plan policies and national guidance concerning development in a flood plain; and
 - (b) If so, whether there are material considerations or benefits sufficient to outweigh such a breach and justify a departure from policy.

Flooding

93. The appellants accept that the Appeal A proposal, which includes development and land raising on a flood plain, conflicts with UDP policy U7 [13, 36, 64]. As a result, a determination in accordance with the development plan should lead to a rejection of the proposal. They also accept that this proposal, which includes highly vulnerable development in a Zone C2 flood plain, conflicts with the advice of TAN 15 [37]. Furthermore, both proposals conflict with the advice of TAN 15 in that they fail to meet the justification tests set out in paragraph 6.2 of the TAN [69, 77].
94. The proposed dwellings would have their ground floors at least 600mm above the 1 in 200 year flood level [23, 41]. This floor level would also be higher than the level of a 1 in 1000 year (0.1% probability) flood [66]. It is not appropriate to apply the 1 in 100 year (1% probability) standard of TAN 15 to residential development in Zone C2 (as recognised in Appeal Decisions APP/M6825/X/04/514568-514571) [68, 69]. Nonetheless, Environment Agency advice to planning authorities suggests that residential development should be designed to be flood free during the 1% fluvial flood [41]. In the absence of any other guidance, this gives an indication of what is considered to be the minimum level of acceptable risk.
95. The raising of the land within the flood plain to above the level of a 1000 year flood could result in it being taken out of Zone C altogether at the next review of the Development Advice Maps. Even allowing for climate change at the additional 20% within 50 years cited in TAN 15, the dwellings would still be well above the 100 year flood level [41, 67]. For these reasons, I consider that the Appeal A proposal would not result in an unacceptable risk of flooding on site or to the occupants of the proposed houses.
96. Despite the presence of the flood defence embankment between the sports field and the River Ebbw and the tramway embankment, the areas behind lie within Zone C2 [25, 28, 72]. This is defined in TAN 15 as areas of floodplain without significant flood defence infrastructure. These embankments prevent flooding in more frequent events up to a 275m³/s flood (200 year return period / 0.5% probability), but a considerable proportion of the area of the former golf course to the south of the tramway embankment and part of the sports ground would function as flood plain during more extreme events [25, 29, 42, 72, 73].
97. Notwithstanding that the lowering of the existing embankments would be consistent with the concept of 'managed retreat', this would simply allow the two areas to function as flood plain during more frequent events, rather than create flood plain where non-currently exist. [43, 72]. The Appeal A proposal, with or without the Appeal B proposal, would, therefore, result in the permanent and irrevocable loss of natural floodplain capacity [42, 73, 74]. I will consider the acceptability of such a loss in my overall conclusions.
98. Despite the loss of floodplain to the housing on part of the Appeal A proposal, the two proposals together could provide enhanced protection from flooding up to and including a

265m³/s flood (1 in 160 year return period / 0.625% probability) to around 800 dwellings in the Duffryn area, as well as businesses in the area [45]. A number of these are currently at risk in a 250m³/s flood (1 in 115 year return period / 0.87% probability) and the above would represent a benefit [30, 44, 45, 54]. Whilst there would be some worsening in the more extreme and infrequent events, the effects do not appear to be significant and they could be minimised by optimising the extent of the embankment lowering and other measures [46]. As a result, I am of the view that it would be sensible to utilise available flood storage in higher probability events [47, 75, 76]. I am, therefore, satisfied that the two proposals together would not result in an unacceptable risk of flooding off site.

99. My conclusions do not turn on the return period for a given flow, but the appellants have produced cogent reasons as to why their figures should be preferred [49, 50]. In any event, accepting the figures produced by EAW's consultant would mean that the 250m³/s flood which currently poses a risk to Duffryn would have a 1 in 75 year return period (1.33% probability) [63].
100. The appellants accept that the former golf course proposal would not result in sufficient area and volume of flood storage to provide a sufficiently compelling case for allowing Appeal A in isolation [42, 82]. As a result, this would be likely to conflict with policies SP24 and SP27. As I have found no unacceptable risk of flooding in paragraphs 95 and 98 above, there is no conflict with UDP policy SP24 when the two appeals are considered together [13]. Furthermore, the land raising would ensure that the housing development is designed to cope with the consequences of flooding and the suggested conditions and Unilateral Undertaking would secure appropriate funding and maintenance provision [88, 90, 94]. There is, therefore, no conflict with UDP policy SP27 [13]. However, the lack of conflict with these two specific policies cannot be viewed in isolation and I have already noted that the proposed infilling of the floodplain conflicts with UDP policy U7.
101. The retention of the part of the floodplain where housing is proposed in its existing undeveloped state would not prevent the future lowering of the two embankments. This would be a more sustainable approach and it could provide an even better level of flood protection to downstream communities than the appeal proposals. Although very little evidence was presented to the Inquiry as to the probability of this being undertaken by the EAW using its statutory powers, it is only through these appeals that it has been made aware that Duffryn does not currently enjoy the level of protection previously thought to exist [43, 44, 73].
102. If the EAW decided to undertake such works, they would clearly have to compete for finance with other projects and that would probably require, amongst other things, a Cost-Benefit analysis. However, 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) does not seem to me to be particularly excessive. Even if EAW is unable to carry out such works in the next few years, dismissing the appeals would still keep the option open to future generations, when the benefits could be even greater as a result of climate change [74].
103. Park View clearly suffers from flooding but, on the basis of the evidence before the Inquiry and what I saw on the accompanied site visit, I am satisfied that existing problems would not be exacerbated by the appeal proposals [51, 80, 81, 84]. For similar reasons, I have no doubt that the possibility of tidal influences has been fully considered [51, 81]. The Appeal B proposal would result in the playing fields being unusable in flooding events with a return period of greater than 30 years (or greater depending on the extent of embankment lowering),

but it is likely that weather conditions would result in little or no demand at such times [52, 84]. The rates of inundation would not be so fast as to create an excessive risk.

Other Matters

104. The residential development forming part of the Appeal A proposal would be generally in accordance with UDP policy H2 [15]. It would also provide a substantial portion of the windfall development envisaged by policy SP10, although I note that the housing land supply situation appears to be relatively healthy in any event [12, 78]. The Unilateral Undertaking would provide affordable housing, as required by policy H5, and facilitate the completion of part of the national cycle network, in accordance with policy T14 [15, 90].
105. UDP policy CE33 applies to the Appeal A proposal [14]. The proposal would result in the loss of some trees but that would be minimised by siting the development within the existing tree and woodland framework [55, 81]. Any losses would be compensated by replacement planting and trees of high ecological value would be retained [31, 84]. Other features and habitat areas of high ecological value would also be generally retained and new habitat areas created [24, 55]. The existing or potential environmental qualities of the designated area would, therefore, be improved or complemented overall and any nature conservation interest would be enhanced. There would be no loss of a recreational, open space or amenity resource; indeed the proposal would provide a considerable area of additional public open space, adjacent to communities who have a shortfall at present [35, 81, 86]. I have no doubt that this would be a valuable recreational facility to the people of Newport. As a result, there would be no conflict with policy CE33.
106. Policy CE29 applies to the Appeal B proposals and, given *Cadw's* lack of concern, I find no conflict with this policy [14, 32]. Neither do I have any reason to dispute the agreed position regarding the impact on listed structures and scheduled ancient monuments [14, 32, 55, 86].
107. Turning to the additional concerns raised by interested persons, starting with a possible exacerbation of existing traffic congestion [80, 84, 86]. The queue lengths recorded on 19 October 2004 are not excessive and the proposed traffic lights would be a reasonable distance from both the Forge Roundabout and the existing lights at Pye Corner [57]. Whilst the 19 October 2004 could have been in the autumn half-term period, in all probability, schools would have been open on 9 September 2004 and there is no significant difference between the figures recorded on these two dates. As the additional peak hour traffic generated by the proposal would be within the daily variation in peak hour flows, it would not materially worsen any existing congestion [58, 59]. The detailed design of the access would still be subject to a technical approval and a legal agreement and could incorporate a box marking, if this was deemed necessary, to prevent vehicles queuing in front of the ambulance station exit [33].
108. The possibility of further development would be unlikely given the provisions in the Unilateral Undertaking relating to dedication of the open space [80, 90]. The financial contribution through the Undertaking would enable the Council to make provision for any additional demands on local schools [84, 86, 90]. Whilst the concerns regarding an additional burden on health services are understandable, no evidence was submitted in support. There are no outstanding objections from any of statutory undertakers and I have no reason to believe that there would be a negative impact on utility services [33, 86]. The *UDP Proposals Map* does not show either site as being in the green belt, an area of outstanding natural beauty, or a Conservation Area [11, 86]. Whether or not the land has already been presented to the public is not capable of resolution through the planning process, but I note that both applications were accompanied by the requisite Ownership Certificates [81, 86].

Conditions and Obligation

109. Subject to minor modifications, in the interests of clarity and precision, and the specific matters discussed below, I am satisfied that the Council's suggested conditions, apart from those agreed as being unnecessary, should be imposed for the reasons given, should the appeals be allowed [88]. The specific matters are that the condition relating to the dock feeder stream should not be applied to the sports ground proposal and only relevant parts of the condition relating to details of flood alleviation works should be imposed on each permission. In addition, the standard reserved matters conditions would be required for Appeal A and the requirement for the details to be generally in accordance with the Concept Masterplan can be included therein, rather than forming a separate condition. Furthermore, the standard commencement of development condition would be required for Appeal B. A schedule of recommended planning conditions that comply with Circular 35/95 on *The Use of Conditions in Planning Permissions* is set out in the Annex to this Report.
110. Apart from the areas of duplication, the Section 106 Unilateral Undertaking is necessary to satisfy UDP policies SP11, SP27, H5 and T14 [12, 13, 15, 88, 89]. I also consider that it satisfies the other tests in Circular 13/97 on *Planning Obligations* in terms of being relevant to planning, being directly and reasonably related in scale and kind, and being reasonable in all other respects.
111. The conditions and the Undertaking would also adequately mitigate the likely environmental effects of the proposed developments.

Overall Conclusions

112. I accept 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 [27, 34, 35, 61, 62, 78].
113. The appeal proposals are in breach of policy and undermine the thrust of national guidance to prevent residential development in Zone C2. However, the projects would bring benefits in terms of a reduction in the risk of flooding to a substantial number of residences as well as some businesses in the area, and this is a material consideration that attracts considerable weight. Nonetheless, this would be at the cost of a permanent loss of an area of floodplain on part of the former golf course site. In my opinion, it would be a more sustainable approach to leave the option of securing the reduction in risk, without any loss of floodplain, open to the future. As a result, the loss of floodplain would be unacceptable and I do not consider that the benefits are sufficient to outweigh the conflict with the statutory development plan and national planning advice. The overarching aim of the precautionary framework, in land use planning terms, is to direct new development away from floodplains, Appeal A should, therefore, be dismissed.
114. The Appeal B proposal would bring some benefit, albeit not separately quantified, without the loss of flood plain. Allowing Appeal B and dismissing Appeal A would not trigger the provisions of the Section 106 Undertaking, including those in respect of the future maintenance of flood prevention works [5, 90]. Whilst I do not regard this as critical, given the duplication in the agreed list of conditions, I accept the principal parties' view that the two appeal proposals represent a single project. In any event, the appeal B proposal does not satisfy the tests at section 6 of TAN 15 and it should also be dismissed [77].
115. For the above reasons, I conclude that both appeals should be dismissed.

RECOMMENDATIONS

File Ref: APP/G6935/A/05/1186037

116. I recommend that the appeal be dismissed.

File Ref: APP/G6935/A/05/1193193

117. I recommend that the appeal be dismissed.

E Jones

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr H Spurr, of Counsel	Instructed by the Council's Legal Department
He called	
Mr M Hand MSc BSc(Hons) MRTPI	Newport City Council
Mr G Purnell HND BSc	Environment Agency Wales, Rivers House, St. Mellons Business Park, St. Mellons, Cardiff CF3 0EY

FOR THE APPELLANT:

Mr A Trevelyan Thomas, of Counsel	Instructed by Mr Lander
He called	
Mr D Lander MRTPI	Boyer Planning, Groveland House, Church Road, Windlesham, Surrey GU20 6BT
Mr C Goodrum BSc(Hons) DipLA MLI	LDA Design, 17 Minster Precincts, Peterborough PE1 1XX
Dr C Fenn BA PhD CSci FCIWEM	CFonstream, 9 Reading Road, Goring on Thames RG8 0ET

INTERESTED PERSONS:

Mr B F Collings	28 Park View, Bassaleg, Newport NP10 8LA
Mrs P Copeland	22 Park View, Bassaleg, Newport NP10 8LA

DOCUMENTS

General Documents

Document	GD1	Notification of Inquiry and list of persons notified
Document	GD2	Bundle of responses
Document	GD3	Statement of Common Ground

Documents submitted by the Council

Document	NCC1	Mr Hand's Statement of Evidence
Document	NCC2	Mr Hand's Summary Statement of Evidence
Document	NCC3	Mr Purnell's Statement of Evidence
Document	NCC4	Mr Purnell's Summary Statement of Evidence
Document	NCC5	Appendices to Mr Purnell's Statement of Evidence
Document	NCC6	Suggested list of Conditions
Document	NCC7	Five Year Supply of Land for House Building
Document	NCC8	Updated AMAX data
Document	NCC9	Closing Submissions

Documents submitted by the Appellants

Document	APP1	Mr Lander's Statement of Evidence
Document	APP2	Report on the Access, Highways and Transportation Considerations (Stuart Michael Associates) (appended to above)
Document	APP3	Mr Goodrum's Statement of Evidence
Document	APP4	Mr Goodrum's Summary Statement of Evidence
Document	APP5	Appendix 1 to Mr Goodrum's Statement of Evidence – Drawings and Photograph Panels
Document	APP6	Appendix 2 to Mr Goodrum's Statement of Evidence – Supplementary Information
Document	APP7	Dr Fenn's Statement of Evidence (CF/1)
Document	APP8	Figures and Tables to Dr Fenn's Statement of Evidence (CF/2)
Document	APP9	Appendices to Dr Fenn's Statement of Evidence (CF/3)
Document	APP10	Dr Fenn's Summary Statement of Evidence (CF/4)
Document	APP11	Dr Fenn's Supplementary Statement of Evidence (CF/5)
Document	APP12	Letter to Environment Agency Wales from Rosemary Butler AM

- Document APP13 Dr Fenn's note on 'Flood Risk to People and Property in Duffryn'
- Document APP14 Executed Unilateral Undertaking
- Document APP15 Closing Submissions

Core Documents

Former Golf Course Appeal Documents

- Document A1 Application forms & covering letter, and Certificate B
- Document A2 Application drawings – NC1A & 7147/678
- Document A3 Environmental Statement (Halcrow)
- Document A4 Transport Statement (Mark Baker Consulting)
- Document A5 Flood Modelling Report (Halcrow)
- Document A6 Community Flood Alleviation Benefits Report (www.WaterConsultant)
- Document A7 Environmental Statement Further Information (Halcrow)
- Document A8 Supplementary Traffic Information (letter from MBC to Newport CC, 4 May 2004)
- Document A9 Noise Supplement to Environmental Statement (Halcrow)
- Document A10 Letter from Boyer Planning to Newport CC (11 October 2004)
- Document A11 Supplementary Environmental Statement Information (Halcrow)
- Document A12 Access Report (Capita Symonds)
- Document A13 Letter from www.WaterConsultant to Newport CC (17 January 2005)
- Document A14 Officers Report to Planning Committee
- Document A15 Decision Notice
- Document A16 Environmental Supplementary Report (Halcrow)
- Document A17 Design Statement (HLN Architects) with Concept Masterplan and Topographical Survey
- Document A18 Badger Report (Halcrow)
- Document A19 Badger Report (Halcrow)

Sports Field Appeal Documents

- Document B1 Application forms, covering letter and Certificate B
- Document B2 Application Drawings – 98.203/3 (Boyer Planning) and Figure 5.1 (Wallingford)

- Document B3 Report EX5196 (H R Wallingford)
- Document B4 Report EX5197 (H R Wallingford)
- Document B5 Officers Report to Planning Committee
- Document B6 Environmental Supplementary Assessment

Other Documents Relating to Appeal Applications

- Document C1 Bundle of correspondence with Environment Agency Wales
- Document C2 Tredegar Park Golf Course Flood Risk Assessment – Review of Proposals (Mott MacDonald)
- Document C3 Report EX5302 (H R Wallingford)
- Document C4 Review of Tredegar Park Hydraulic Model (W S Atkins)
- Document C5 Environment Agency Report on Review of Tredegar Park Hydraulic Model
- Document C5a Document D5 with additions from Document C4 highlighted
- Document C6 Dr Fenn's comments on EAW's Review of Tredegar Park Model

National Planning Policy

- Document D1 Planning Policy Wales
- Document D2 Planning Policy Wales – Ministerial Interim Policy Statement 01/2006: Housing (June 2006)
- Document D3 TAN 1: Joint Housing Land Availability Studies
- Document D4 TAN 2: Planning and Affordable Housing
- Document D5 TAN 5: Nature Conservation and Planning
- Document D6 TAN 10: Tree Preservation Orders
- Document D7 TAN 11: Noise
- Document D8 TAN 15: Development and Flood Risk
- Document D9 TAN 16: Sport and Recreation
- Document D10 Circular 11/99: Environmental Impact Assessment
- Document D11 TAN 18: Transport
- Document D12 People, Places, Futures – The Wales Spatial Plan

Development plan and Related Documents

Document	E1	UDP Strategic Options
Document	E2	Extract from UDP Consultation Draft – Committee Version
Document	E3	Tredegar Park Golf Course – evidence to UDP Inquiry
Document	E4	UDP Topic Paper – Developing in Flood Risk Areas
Document	E5	UDP Inspector’s Report
Document	E6	Newport UDP – Adopted Plan
Document	E7	Draft SPG – Planning Obligations
Document	E8	Draft SPG – Flood Risk and Sustainable Drainage Systems
Document	E9	Draft SPG – Affordable Housing
Document	E10	Draft SPG – Outdoor Playspace Provision

Other Publications

Document	F1	PPG25: Development and Flood Risk
Document	F2	Draft PPS25: Development and Flood Risk
Document	F3	Making Space for Water (DEFRA)
Document	F4	Appeal Decisions: a) APP/T6850/A/04/1158211, b) APP/M6825/X/04/514568, 514569, 514570 & 514571, c) APP/L6940/A/05/1177397, d) APP/L6940/X/05/514687, e) APP/L6940/A/05/1195200 and f) APP/Q6810/A/05/1194498
Document	F5	Joint Housing Land Availability Study
Document	F6	River Ebbw Flood Risk Mapping Study (JBA Consulting)

ADDITIONAL PLANS

Plan	A	Ward Boundaries, submitted by the Appellants
Plan	B	Tree Preservation Order No 1 of 2006 (should have been included at Appendix 2.2 of Document APP6)
Plan	C	Extract from Newport A-Z

ANNEX

PLANNING CONDITIONS RECOMMENDED BY THE INSPECTOR

APPEAL A (File Ref: APP/G6935/A/05/1186037)

- 1) Details of the siting, design, external appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. The details submitted shall be generally in accordance with the Concept Masterplan appended to the Design Statement dated January 2006 and shall provide no more than approximately 150 dwellings.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall begin either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) Prior to the commencement of development, further surveys shall be conducted to ascertain the presence of otters, bats, reptiles, badgers, kingfisher, Japanese Knotweed and Giant Hogweed within the site. These surveys shall be submitted to the local planning authority, together with an Ecological Management and Monitoring document which shall be approved in writing by the local planning authority prior to the commencement of development. The Ecological Management and Monitoring document shall include details of all required mitigation measures, the timing of the works, the storage of building materials and equipment, and a programme for the eradication of Japanese Knotweed and Giant Hogweed for the period from pre-construction to at least 5 years from the completion of the last dwelling. If the surveys show that otters are present on site, the Ecological Management and Monitoring document shall provide for a qualified ecologist to be present on site to supervise any works within 20 metres of potential otter resting sites or potential holts. The development, including all required mitigation measures identified, shall be carried out in accordance with the approved Ecological Management and Monitoring document.
- 5) Prior to the commencement of development, full details of the means of securing and implementing the future management of flood defence works shall be submitted to and approved in writing by the local planning authority. The flood defence works shall then be maintained in accordance with the approved management plan.
- 6) Prior to the commencement of development, a 4 metre wide buffer zone, measured from the top of the bank to the Main Dock Feeder, shall be fenced off. This buffer zone shall remain fenced off for the duration of the construction works and at no time shall any materials, spoil or soil be stored, nor vehicles trafficked, within this area.
- 7) Prior to the commencement of development, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include details of any necessary pollution prevention measures, proposed dust suppression measures (including a wheel wash) and a traffic management plan for construction traffic. The approved Plan shall be implemented in its entirety throughout the duration of the construction phase, unless previously agreed in writing by the local planning authority.
- 8) A survey shall be carried out by a suitably qualified specialist of any trees to be removed as part of the development, prior to the felling or pruning of any trees, to establish whether or not the trees are in use by roosting bats. Such trees shall be section felled outside of the bat

roosting season only and in the presence of a suitably licensed bat worker, unless previously agreed in writing by the local planning authority.

- 9) Prior to the commencement of development, a comprehensive survey of trees and woodlands within the site, together with details of replacements for all trees to be felled, shall be submitted to and approved in writing by the local planning authority. The replacement planting shall be carried out in accordance with the approved details within the first full planting season following the completion of the development. Thereafter, all replacement trees shall be adequately maintained until established, and any that die or are damaged or diseased shall be replaced.
- 10) Prior to the importation of any fill material, including that to be used in the construction of the approved flood defence works, bunds or land raising, full details of the origins of that material, including at-source contamination testing, shall be submitted to and approved in writing by the local planning authority. Only inert, non-contaminated material shall be brought onto the site.
- 11) No materials, be they solid or liquid, shall be stored nor any site compound located within 10 metres of the bank top of any watercourse.
- 12) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The bund drainage system shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.
- 13) Unless otherwise agreed in writing by the local planning authority, all existing trees shown to be retained on the approved plans shall be protected as follows:
 - a) Underground services shall be routed clear of trees;
 - b) Prior to building works commencing on site, protective fencing shall be erected around each tree at a minimum radius from the trunk of the tree, or outer trees in the case of a group, equal to the canopy spread or half the tree's height, whichever is the greater;
 - c) The fencing shall remain in place throughout the construction phase. The fencing shall comprise a vertical and horizontal framework of scaffolding supporting a minimum of 20mm exterior grade plywood, or other robust man-made boards, and be at least 2.3 metres high. It shall be constructed and erected in accordance with the recommendations published in British Standard BS 5837:2005 and be maintained for the duration of construction activity on the site;
 - d) No storage of plant or materials, landfill, excavation, burning of materials, cement mixing or other such harmful activities identified in the British Standard shall take place within the fenced-off areas.
- 14) Prior to the commencement of development, details of the means of minimising construction noise impacts on the occupiers of Deer Park House shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.

- 15) No development shall take place until a programme of archaeological work, in accordance with a written scheme of investigation previously submitted to and approved in writing by the local planning authority, has been implemented.
- 16) Prior to the commencement of development, details of the proposed foul and surface water drainage for the site, to include Sustainable Drainage Systems, shall be submitted to and approved in writing by the local planning authority. The details submitted shall include construction phase drainage, measures for the management of post-development run-off from the site and the incorporation of facilities for rainwater harvesting. The development shall be carried out in accordance with the approved scheme which shall thereafter be retained.
- 17) The junction improvement and traffic signalling works shown on drawing No 2006.2487.001 shall be completed prior to the first occupation of any residential unit.
- 18) Prior to the commencement of development, full details of the proposed flood alleviation works shall be submitted to and approved in writing by the local planning authority. The submitted details shall include:
 - a) The raising of the residential development area to the level of the existing 1:200 year flood event level (0.5% probability event) peak flow of the River Ebbw plus a further 600mm;
 - b) Full details of the proposed works to the tramroad embankment and the proposed associated bund, including details of all discharge outlets, to provide a flood water storage capacity of 101,600 cubic metres or more;
 - c) The provision of a corridor of land between the housing development and the main channel of the River Ebbw to provide an overflow channel to ensure improved conveyance of out of bank high flows on the river (to incorporate wetlands), as shown on the Concept Masterplan appended to the Design Statement dated January 2006;
 - d) Measures to ensure that there is no increased risk of flooding to St. Brides Gardens, Maes Glas; and
 - e) Measures to prevent the exacerbation of flood water levels upstream of the former Tredegar Park Golf Course by the development hereby approved.

The residential development area shall not be raised until the other approved flood alleviation works, including those listed at b), c), d) and e) above, and those approved under Condition 11 of Appeal Decision APP/G6935/A/05/1193193, have been carried out in their entirety. The residential development area shall be raised in accordance with the approved details prior to the commencement of the construction of any residential unit.

APPEAL B (File Ref: APP/G6935/A/05/1193193)

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) Prior to the commencement of development, further surveys shall be conducted to ascertain the presence of otters, bats, reptiles, badgers, and kingfisher, Japanese Knotweed and Giant Hogweed within the site. These surveys shall be submitted to the local planning authority, together with an Ecological Management and Monitoring document which shall be approved in writing by the local planning authority prior to the commencement of development. The Ecological Management and Monitoring document shall include details of all required mitigation measures, the timing of the works, the storage of building materials and equipment, and a programme for the eradication of Japanese Knotweed and Giant Hogweed. If the surveys

show that otters are present on site, the Ecological Management and Monitoring document shall provide for a qualified ecologist to be present on site to supervise any works within 20 metres of potential otter resting sites or potential holts. The development, including all required mitigation measures identified, shall be carried out in accordance with the approved Ecological Management and Monitoring document.

- 3) Prior to the commencement of development, full details of the means of securing and implementing the future management of flood defence works shall be submitted to and approved in writing by the local planning authority. The flood defence works shall then be maintained in accordance with the approved management plan.
- 4) Prior to the commencement of development, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include details of any necessary pollution prevention measures, proposed dust suppression measures (including a wheel wash) and a traffic management plan for construction traffic. The approved Plan shall be implemented in its entirety throughout the duration of the construction phase, unless previously agreed in writing by the local planning authority.
- 5) A survey shall be carried out by a suitably qualified specialist of any trees to be removed as part of the development, prior to the felling or pruning of any trees, to establish whether or not the trees are in use by roosting bats. Such trees shall be section felled outside of the bat roosting season only and in the presence of a suitably licensed bat worker, unless previously agreed in writing by the local planning authority.
- 6) Prior to the commencement of development, a comprehensive survey of trees and woodlands within the site, together with details of replacements for all trees to be felled, shall be submitted to and approved in writing by the local planning authority. The replacement planting shall be carried out in accordance with the approved details within the first full planting season following the completion of the development. Thereafter, all replacement trees shall be adequately maintained until established, and any that die or are damaged or diseased shall be replaced.
- 7) Prior to the importation of any fill material, including that to be used in the construction of the approved flood defence works, bunds or land raising, full details of the origins of that material, including at-source contamination testing, shall be submitted to and approved in writing by the local planning authority. Only inert, non-contaminated material shall be bought onto the site.
- 8) No materials, be they solid or liquid, shall be stored nor any site compound located within 10 metres of the bank top of any watercourse.
- 9) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The bund drainage system shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.
- 10) Unless otherwise agreed in writing by the local planning authority, all existing trees shown to be retained on the approved plans shall be protected as follows:

- a) Underground services shall be routed clear of trees;
 - b) Prior to building works commencing on site, protective fencing shall be erected around each tree at a minimum radius from the trunk of the tree, or outer trees in the case of a group, equal to the canopy spread or half the tree's height, whichever is the greater;
 - c) The fencing shall remain in place throughout the construction phase. The fencing shall comprise a vertical and horizontal framework of scaffolding supporting a minimum of 20mm exterior grade plywood, or other robust man-made boards, and be at least 2.3 metres high. It shall be constructed and erected in accordance with the recommendations published in British Standard BS 5837:2005 and be maintained for the duration of construction activity on the site;
 - d) No storage of plant or materials, landfill, excavation, burning of materials, cement mixing or other such harmful activities identified in the British Standard shall take place within the fenced-off areas.
- 11) Prior to the commencement of development, full details of the proposed flood alleviation works shall be submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) Details of the timings, frequency and measures to secure the clearing of gravels from the river bed at Pont Ebbw; and
 - b) Full details of the proposed lowering of the existing flood defence embankment and the proposed bund on the sports ground, including details of all outlet structures, to provide a flood water storage capacity of 163,200 cubic metres or more.

Development shall be carried out in accordance with the approved details.