Amandla House ,

Marcross,

Vale of Glamorgan

CF611ZG

12th August 2015

Dear Mr Mathews,

This is a formal and urgent complaint.

The planning committee meeting on the 4th August 2015, particularly in regards to application DC/2013/00456 was in breach of the Planning Codes of Conduct (PCC)for Monmouthshire. These were not adhered to, and the principles of fairness constancy and objectivity were not met. The PCC states:

1.1 *"Monmouthshire County Council will seek to adopt best practice in its administration of the planning process. It recognises that the general public expects the Council to subscribe to the principles of fairness, consistency and objectivity. Members of the Planning Committee have a key role in ensuring that these principles are followed and the Council has stated that the Planning system must be fair and open. Elected Members are critically important in arbitrating between competing arguments."*

1.2 The town and country planning system involves the Council taking decisions about private proposals for the development and use of land, but in the public interest. Planning law requires that all planning applications be determined in accordance with the adopted development plan unless material planning considerations indicate otherwise. The Council must also take account of representations made by members of the public, in as far as they relate to material planning considerations.

At the committee meeting for this application there was no discussion at all about the relevant UDP policies. I wrote a huge amount detailing the relevant UDP polices and nothing was said about any of these in breach of the above.

PCC 1.3 *"As planning affects people's lives and private interests it can be very contentious. It is therefore important that members of the public understand the system and has confidence in its integrity and transparency, and that Members and Officers avoid impropriety or even the suspicion of impropriety."*

Please take time to review the planning committee meeting of the 4th August 2015.There was a fair amount of mirth going on during the determination of these applications,

considering this planning committee and officers had got the law wrong on 4 separate occasions. The members were trying to find ways to pass this application, rather than deal with them objectively. Why wasn't policy looked at and discussed at all? I certainly was given the impression of impropriety, as would the average man in the street.

PCC 2.1 Planning Committee Members

Planning Committee members should:

- *act fairly and openly and avoid any actions which would give rise to an impression of bias*
- *approach each planning application/issue with an open mind*
- *carefully weigh up all relevant planning issues before making a decision*
- *make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality. In this respect, while Committee Members have a special duty to their Ward constituents, including those who did not vote for them, their over-riding duty is to the whole community.*
- *ensure that the reasons for their decisions are clearly stated*

The members certainly did not act fairly and certain gave the impression of Bias.

Clearly these applications were not approached with "an open mind" nor were all the relevant planning issues weighed up at all. The planning grounds were not discussed at all.

The reasons for deferment were not clearly given. The planning reasons for this deferment were not discussed. Indeed Councillor Murphy made a valid point when he said *"if we refuse it (DC/2013/00456) the applicant can come up with a fresh scheme which may be successful we will have to see on its merits. So if we are in any doubt we don't defer we refuse it."*

The application as put before the planning committee was recommended for refusal, the application should have been refused. The applicant could then choose to put forward an alternative application. Or go to appeal. Ill remind you these applications have remained undetermined, and with no enorcement since the permissions we quashed in July 2014.

The applicant has had over 4 months since the landscape officer comments were made to change his application, the determinations were held up all this while whilst he prepared a response. Why has he been granted a deferment to alter this scheme yet again? You could do this with all applications, but the committee does not. Bias has therefore been shown in favour of this application.

3.0 *In considering applications and in advising Members and the public on planning policy, the determination of planning applications, enforcement and other planning matters, Planning Officers shall: -*

- *act fairly and openly and avoid any actions which would give rise to an impression of bias*
- *approach each planning application/issue with an open mind, avoiding pre-conceived ideas*
- *carefully weigh up all relevant planning issues*
- *make decisions purely on planning grounds having regard to the development plan and other material considerations*
- *give professional, objective and consistent planning advice*
- *provide a comprehensive and accurate analysis of the planning issues*
- *abide by the Royal Town Planning Institute's Code of Professional Conduct*

And:

9.0 Officers' Reports to the Planning Committee

9.1 All Planning matters considered by the Planning Committee will be the subject of full evaluation by officers and will include a recommendation. Such reports shall be comprehensive, but succinct in setting out the key planning (and legal) issues to be considered (in terms of the provisions of the development plan and other material planning considerations), the substance of any representations received and any relevant planning history.

The following are serious flaws in the planning report nor brought up by officers nor members at the committee meeting:

The fundamental aspect that is not taken into account in the planning report nor at the committee meeting is that developments are for B2 use.

B2 use is not is not permitted next door to residential properties.

This has not been addressed at all, no mitigating factors have been offered that mitigate this.

This is clearly set out in Policy, the definition of B2 Use *:"General Industrial. B2 building use is for the carrying on of an industrial process other than one falling within class B1 above or within classes B3 to B7 below."*

The relevant section this refers to here is: *"B1 (c)for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."*

If the activities were permitted next door to a residential property, and these activities are directly on the border of our residential property, the class would be B1 but it is not, it is B2.

Mr Thomas accepted this at the meeting I had with him, Mr Tranter and Councillor Webb when he admitted B2 use should not be next door to a residential property because of the harm it does to the amenity. Again I point out very clearly how close our property is.

https://www.youtube.com/watch?v=7bJIrdKZEoU

The assessment done in regards to the detrimental impact this development would have upon the residential property is also therefore seriously flawed.

In regards to the comments from the Environmental Health Officer, it is totally irrational that the recommendation for hours to prevent disturbance, can be altered for the same operations with no other change in circumstance.

In the grounds for the Judicial Review ruled upon by the High Court, it was stated:

"It was irrational to impose weaker planning conditions to protect against potential harm to the AONB and to Mr and Mrs Hatcher as neighbours than had been placed on the earlier, quashed, consents"

The EHO previously stated: *"Although I am not in a position to object to the development in principle, given the proximity of the neighbouring property to this development I do anticipate noise to emanate from activities associated with repair and maintenance of vehicles to cause a level of disturbance likely to result in complaints of noise nuisance to this department"*

The first Judicial Review expands upon the noise impact:

"The EHO's advice was that noise nuisance complaints were likely so the proposal would generate significant levels of noise. ENV6 required the developer to submit information prepared by a suitability qualified person on the likely noise impact. That was not done and the committee were not aware that this part of the policy was breached. Indeed, there was no technical assessment of noise impacts at all. The committee lacked the necessary information to assess the noise impacts. They also failed to take into account the test for determining whether the application should be refused because of noise impacts."

There has still been no noise impact assessment done to date. Therefore the noise impact has not been assessed. Reliance on the EHO is not sufficient. For the EHO to act he must personally observe a level of noise likely to cause a "statutory nuisance". This is a certain

level of noise over a prolonged period. Not a level of disturbance. This assessment should be made in planning applications by the planners, they cannot rely on the EHO. He is only interested in Statutory nuisance. A completely different standard compared to the harm on the amenity. This is a rural peaceful location, introduction of industrial B2 use will by definition cause significant disturbance. A huge number of disturbances have been reported to MCC in regards to these sites. these cannot be ignored. In regards to the comments from the Environmental Health Officer, it is totally irrational that the recommendation for hours to prevent disturbance, can be altered for the same operations with no other change in circumstance.

There is no mention in these Environmental Health Officers reports in regards to protecting the amenity of the AONB. This is of particular significance considering that a Public Right of Way goes through both sites and the users of those footpaths would be considerably impacted by the activities on site.

It is stated to prevent disturbance that the hours of operation including vehicle movements, for DC/2012/00613 restricted to 0800-1800 Monday-Friday and 0800-1300 on Saturdays.

Bizarrely the Environmental health Officer, considers differently the hours for DC/2013/00456, the site directly next door to DC/2012/00613 and that shares the same access and which is as close to the property.

For this site he considers that hours 0600-1900 Monday-Friday and 0600-1300 on Saturdays are acceptable for HGV vehicle movements.

This is simply not rational nor consistent.

For previously quashed permissions for the same operations, to prevent disturbance the condition was placed that "The premises shall not be used for the approved purposes outside the following times; 08.00 - 18.00 Monday to Friday and at no time on a public holiday."

These needed to be the recommendation now.

It was also previously recommended that servicing of vehicles only occurs within the garage buildings and that the doors are kept shut whilst work is carried out. Also that there is no burning of any material on site, a condition the EH Officer admits has been blatantly ignored by the applicant.

These previous recommendations cannot now be ignored. There is an inconsistency between what the EHO says between these 2 sites, he stresses on the Builders site that the hours include any vehicle movements. Then he irrationally allows an HGV to enter and leave the site well outside of those hours, if as he states disturbance will be caused by vehicle

movement, as these sites share an access road the same must apply to both sites.

However the operations proposed, cause an unacceptable amount of disturbance to the residential property next door irrespective of hours of use, conditions cannot mitigate this.

This is supported by the classification given to these activities of B2 use.

This should have been the conclusion in the planning report.

The report also concluded: that although complaints have been received regarding noise disturbance, insufficient evidence has been provided to officers in the Council's Environmental Health team to substantiate the complaints and support any enforcement action involving cessation of the unauthorised use on amenity grounds. Moreover, no significant noise disturbance was witnessed by officers during their numerous unannounced visits to the site.

The disturbance was observed at the site at the site visit I had with Mr Thomas Mr Tranter and Councillor Webb Further the lights were pointed out, the dust from the hard surfaces and the spray from the pressure washer.

https://www.youtube.com/watch?v=7bJIrdKZEoU

Since 2011 to date in 2015, there has been only six other unannounced site visits. Based on this Monmouthshire has stated that it has not witnessed any excessive noise or disturbance.

And yet it has received detailed statements from me and my wife, including the evidence to support the statements, which demonstrate the disturbance and harm being done by these breaches. I can provide the breaches we have reported these shows the huge extent of the harm being done.

The conclusion implied by Monmouthshire Council, *"that there is no excessive noise or disturbance"* is a simply untrue.

The six other site visits are at the end of this complaint some detail:

Footpath

There is also serious flaws in the way the public footpath issue is dealt with. The report contradicts itself several times. It is a legal duty placed upon the Council to keep public highways free of obstruction. It is an obligation that planning applications show the correct line of the foot path. Monmouthshire Rights of Way Improvement Plan says:

"There are approximately 100 paths in Monmouthshire where development has not taken into account public rights of way and have subsequently encroached upon or obstructed them. All such paths now require enforcement action. Rights of way guidance is required to ensure planners and developers are aware of their responsibilities and the issues involved in

developing on or near to a public path. The Local Access Forum and others have said that the achievement of an up to date and accessible Definitive Map and Statement should be a high priority"

There is the maxim "*once a highway, always a highway*"

Once a highway has come into being by whatever means it continues indefinitely no matter whether it is used or not.

Mr Justice Joyce said in the case of *Harvey v Truro RDC* :

"Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper".

The planning policy regarding this has not been used in this report:

Planning permission and public rights of way ROW circular 9

"7.1 Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed."

The report states *"Also, it is advised that MCC Countryside Access is in receipt of an application and is currently processing an order that may resolve the issue but until such time that the order is confirmed the legally recorded alignment will remain obstructed if consent is granted."*

Where is this application? It should be on the planning report.

The report goes on:"Public path orders are not guaranteed to succeed. If unsuccessful it is possible that MCC would require that the legal alignment of the path is made available."

Therefore until it is moved it must be considered as being as existing.

History

The report is again seriously flawed, this has been dealt with before in the Judicial Reviews accepted by the council. So this mistake should simply not be happing again.

The reports sates

"Much of the wider site (which largely encompasses the sites under DC/2012/000613 and DC/2013/00456) was originally granted permission in February 1985 under A21850 for a commercial garage/ workshops for the storage and repair of vehicles solely owned by the

applicant at the time and any successors in title"

This is not true at all. The site granted permission was for a mere 0.08 hectares, considerably less than stated here. It was a private garage for commercial vehicles not a commercial garage, further it was granted as a personal permission for the applicant only, no one else and hence no successor, and for no other business, which included no storage.

Mr Thomas stated that the 1985 permission included the use *"solely owned by the applicant at the time and any successors in title"* This has been dealt with at Judicial review. The permission was a personal permission for the applicants at the time only. That's it, no successor in title for the application site.

DC/2012/00456

The report also erroneously sates for DC/2013/00456 "A 2m high fence to the north of the site has been constructed and forms a reasonable screen to Myrtle(SIC) Cottage's curtilage".

No it doesn't, this is wrong there is no fence by this site. This was clearly pointed out to Mr Thomas, Mr Tranter and Councillor Webb, on the site visit on the 28th February 2015 (this video has been referred to earlier) just how very close this development is to our property showing them the hedge, as the border which was explained to him was not in the control of the applicant. He could clearly see the elevated position of the residential property compared to that of the workshop site, this should have been taken into consideration in this report.

Other policies brought up but not referred to by the report nor at committee meeting:

ENV 14 lighting, Policy S16 - Transport, Policy S11 – Visitor Economy Policy NE1 – Nature Conservation and Development Policy DES3 – Advertisements

In the committee report Mr Thomas assesses the effect the proposal will have on the historic landscape, he quotes, without reference part of a report from CADW\:

"This proposal is located immediately adjacent to the historic park and garden known as Piercefield Park and the Wyndcliffe, which is included in the Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales. Although the application area is located immediately adjacent to this grade 1 registered historic park, it is not in any of the identified essential views. The application area would not be visible, or will be screened from view by the topography, a stone wall and existing vegetation from the majority of the registered park, although close views are possible." (This differs from what the landscape officer wrote.) *"The impact, therefore, is likely to be no more than local and is not considered to harm the registered park itself, although for the reasons set out above, there would be localised harm to the AONB as a result of the development's proximity to the public right of way."*

What he does not make clear is that this report was written by CADW when asked about the need for an Environmental Impact Assessment. Not for an assessment the site would have upon the historic landscape. The report says:

"Cadw's role in the planning process is not to oppose or support planning applications but to provide the local planning authority with an assessment concerned with the likely impact that the proposal will have on scheduled ancient monuments or Registered Historic Parks and Gardens.

It is a matter for the local planning authority to then weigh Cadw's assessment against all the other material considerations in determining whether to approve planning permission. The advice set out below relates only to those aspects of the proposal, which fall within Cadw's remit as a consultee.

Our comments do not address any potential impact on the setting of any listed building, which is properly a matter for your authority. These views are provided without prejudice to the Welsh Government's consideration of the matter, should it come before it formally for determination. Applications for planning permission are considered in light of the Welsh Government's land use planning policy and guidance contained in Planning Policy Wales (PPW), technical advice notes and circular guidance. PPW explains that the desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or not. Furthermore, it explains that where nationally archaeological remains, whether scheduled or not, and their settings are likely to be affected by proposed development, there should be a presumption in favour of their physical preservation in situ. Paragraph 17 of Circular 60/96, Planning and the Historic Environment: Archaeology, elaborates by explaining that this means a presumption against proposals which would involve significant alteration or cause damage, or which would have a significant impact on the setting of visible remains.

This advice is given in response to a screening request as to the need for an environmental impact assessment to be produced to accompany a planning application for retrospective planning consent for the proposed change of use of the site to the storage and repair of light motor vehicles. Storage and repair of up to two HGV motor vehicles and a trailer. Retention of vehicle washing area and ancillary parking."

6.0 Lobbying of Members of the Planning Committee

6.1 Lobbying is the process by which applicants and their agents, neighbours, non-Committee Members and other interested parties seek to persuade Councillors on the Planning Committee to come to a particular decision. It is a legitimate part of the planning process for them to approach Members of the Planning Committee as these discussions can help Members to understand the issues and concerns. As stated in the Nolan Committee

Third Report: "it is essential for the proper operation of the Planning system that local concerns are adequately ventilated"

6.2 In responding to approaches of this kind, Committee Members shall follow the 9 principles outlined in Paragraph 2.1 above and may wish to make a record of the discussion, but may also: -

Explain the potentially conflicting position they are in if they express a final opinion on a proposal before consideration at the Committee/by the Corporate Director

Explain the procedures by which representations can be made; that the public can speak at the Committee (subject to a number of conditions being met), should the application come to the Committee for decision, and that a decision will be taken only when all relevant planning considerations have been taken into account

Explain the kinds of planning issues that the Council can take into account

Report issues raised to the Officers or direct the public to the Officers so that their views can be considered

Advise the public to contact non-Committee Members who may be able to represent local views with less restraint

6.3 Where a Committee member feels that he/she has been unreasonably or excessively lobbied on a particular proposal he/she shall make a declaration at Planning Committee on that application that he/she has been lobbied. However, that member shall still be able to speak and vote on the application if the guidance in Section 2 is adhered to.

I lobbied my local councillor, councillor Webb, she attended a meeting with me and Mr Thomas and Mr Tranter, (please see the video of this meeting url above). At no time during this meeting nor before or after did Mrs Webb ever explain she has a conflict of interest in regards to this site. Yet at the planning meeting she declared an interest and left.

So this " *legitimate part of the planning process"* was denied me. But I did not know this until the meeting itself. I would like to know what interest Mrs Webb declared so as not to be present.

"it is essential for the proper operation of the Planning system that local concerns are adequately ventilated"

My concerns were clearly not adequately ventilated.

10.0 ***Procedure at Planning Committee***

Planning Committee members will then debate the application, commencing with the local member if a member of Planning Committee

- *When proposing a motion either to accept the officer recommendation or to make an amendment the member proposing the motion shall state the motion clearly*
- *When the motion has been seconded the Chair shall identify the members who proposed and seconded the motion and repeat the motion proposed. The names of the proposer and seconder shall be recorded.*
- *An officer shall count the votes and announce the decision*

My local member as shown above declared an interest and ducked out of the meeting.

The motion was not stated clearly, no member proposed the motion and no member seconded the motion. The chair therefore did not identify anyone. No Officer appeared to count the decision. No one knew why they were deferring Councillor Haywood said "*we don't give a reason why we are deferring* "

This is in serious breach of the codes of conduct.

12.0 ***Planning Committee Decisions Contrary to Officer Recommendation***

12.2 It is important that full clear and convincing reasons are set out when any planning decision is made. Where an application is determined in accordance with the officer recommendation the officer report meets this requirement. However, when members determine against officer recommendation the only record of the debate is the minutes. It is therefore essential that members' reasons are recorded and that the minutes of meeting incorporate a full, clear and convincing statement of the reasons.

The reasons for going against the planning Officers recommendation were not clear at all (see above) It is hinted it maybe to give the applicant a chance to mitigate the visual impact now DC/2012/00613 has been refused(although at this point it had been voted to be refused but had not been refused) As Phillip Thomas says in his e-mail of the 10th August "*The applicant have since withdrawn the application DC/2012/00613 which means they will not now be appealing the Committee decision, as the formal decision notice had not been issued before the withdrawal."*

If the formal decision notice had not been issued, the reason for deferring "because it had been refused" is not relevant.

More importantly there was no planning reason that, because DC/2011/00613 had been refused, it would have any effect on mitigating the already assessed impact of

DC/2013/00456. As was clearly seen by Mr Thomas Mrs Webb and Mr Tranter, at the site visit of the 28th February,(https://www.youtube.com/watch?v=7bJIrdKZEoU) the visual impact of the site cannot be mitigated by planting, due to the topography, position of the footpaths, need for access and land not in control of the applicant. This was also the conclusion of MCC's Landscape Officer. He should have made this very clear to the committee members. The views from the West (the site of DC/2012/00613)were not significant on the impact upon the AONB for application DC/2013/00456

12.3 Where planning permission is refused contrary to officer advice, members should be aware of the risk of an award of costs being made against the Council at a subsequent appeal. Advice on the award of costs is contained in Welsh Office Circular 29/93. Paragraph 9 of Annex 3 is relevant.

"Planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers, or received from statutory bodies or consultees. But they will be expected to show that they had reasonable planning grounds for taking a decision contrary to such advice; and they were able to produce relevant evidence to support their decision in all respects. If they fail to do so, costs may be awarded against the authority."

The planning Officers recommendation was to refuse simply there was no planning reason not to do this.

Enforcement

There has been no enforcement upon this site since the permissions were quashed in July 2014. I have complained about this constantly. In my complaint to the ombudsman, the reasons for not perusing enforcement was this report, submitted to the ombudsman by MCC this was for both sites as late as July 2015. See appendix 2

Now read the planning reports. These completely contradict the reasons given in the enforcement report for not taking enforcement action. The enforcement report is biased in favour of the applicant.

Further harm is clearly identified to the AONB by these sites as they stand. Therefore immediate enforcement should have been taken, this should have been brought before the committee before any decision was made. The failure to do so is in clear breach of the PCC.

Chris Hatcher

Appendix 1 The 6 site visits in detail:

1. 6th March 2012 by Guy Delemare;; *"At the time of my visit I noted one person on site, a Mr Good who was operating a JCB to clear the area at the side of the workshops and was in the process of laying down a tarmac surface in this area.*

I firstly stated to him the concerns that have been raised about the hours of operation on this site. He informed me that initially he was unaware of these conditions, but would now not undertake any work before 8am and stated that he would normally be finished by 4.30-5pm

Turning to the issue of the containers, at the time of my visit I noted 2 freight containers within the area he was working in, both of which I was informed contained building materials. One of these was within the hatched area on the marked plans and one of which was not. I have requested that the container outside this area be removed as soon as possible.

Shortly after returning to this office I received a phone call from the site owner, Mr John Stephens regarding my visit. Again I have asked him to the remove this container nearest to the boundary and also informed him of the requirements of the breach of condition notice that was served earlier this year and indeed the conditions that were attached to the original planning consent."

2. 2nd April 2012 by Paula Clarke;: *"Visited site 2 April, the BCN has not been complied with, all the materials have not been moved to approved area and landscaping not done. Advised owner and Mr Hatcher that the Council would commence prosecution proceedings for non-compliance."*

This was never done, as the applicant applied for a new planning permission and no action was therefore taken.

3. 12 February 2013 by Paula Clarke*; "There was no-one on site at the builders yard. There was a worker in the office of the car repair garage however no work was being undertaken either in the garage or outside.*

Builders yard – there were no builders materials stored outside of the approved area; no materials stored in excess of 2 metres in height; the shipping containers were within the approved area. There were 4 vehicles in the yard however there was no indication that these were not in connection with the use as a builders yard."

Vehicles had no permission to be there, they were not construction machinery nor building materials, the shipping containers were outside of the double hatched area and there were materials over 2m in height. I had photographic proof of this.

"Car repair garage – there was no evidence of a car wash facility on the site."

This was an outright lie. On the latest application the applicant has applied to retain the very wash facility Mrs Clarke claims is not there. I had photographic evidence of it in situ and video of it being used.

"There were 2 vehicles being offered for sale in the premises, this is considered to be ancillary to the main use of the site and does not constitute a material change in use requiring planning permission"

Again this is a factually wrong. The selling of vehicles is a separate activity.

"There were no vehicle repairs being done outside the building. The landowner has been advised of the need for planning permission for the small office building and has stated his intention to submit an application for its retention."

Therefore the office building had no planning permission.

"The landowner has advised that the container on the land to the east of the repair garage has been there for many years and is now lawful, it does appear to have been in situ for many years. It is the landowners intention to show that the container is lawful and immune from enforcement action."

The certificate of lawful use failed. The container is outside of the area for which planning has been applied. We proved this container(the rear half of a van) had not been there for 10 years with photographic evidence. The applicant has never proved the container is lawful and immune from enforcement. And yet it is still not enforced against to date.

"With regard to the hours of operation, the owner of the repair garage has stated that his normal hours are 8.45 till 5.00. However one of the landowners keeps his vehicle on the site which is collected around 7am. I have been advised that the applicant intends to appeal against the hours of operation imposed on both sites to allow for continuation of these practices"

So by the applicants own admission the hours conditions, set to preserve the amenity of our property against disturbance, were being broken. Remember the council has stated that the applications can be made acceptable by imposing conditions, therefore not enforcing them causes recognised harm.

"Furthermore I understand you have applied for judicial review to seek the quashing of the recently approved planning permissions therefore any enforcement action is unlikely to be taken until the resolution of these courses of action."

We had not applied for Judicial Review at this point but only sent a pre-action protocol to which the council had not responded. The pile of earth referred to on the map as “noise

bund" is not in the location shown on the map. This had given a much larger area for the storage of building materials than was given permission. This is very clearly visible to Mrs Clarke on her site visit but not mentioned.

4. 18th February 2013- site visit by Paula Clarke;: " *I visited the site unannounced again on 18th February however no breaches of conditions were found at the builders yard site which was locked up. No materials were seen outside of the approved area, the containers were within the approved area and no materials were stored higher than 2 metres."*

See above the breaches here were very clear to see.

"A vehicle was being worked on in the garage building, there were no vehicles being maintained outside of the building. The photograph stated to be attached to your email of 17th February was not attached, however I saw no "development" on site which would require the benefit of planning permission."

And yet the applicant applied for permission at a later date for the wash facility Mrs Clarke said she could not see.

"The container appears to have been sited in excess of 4 years and is now lawful, the container is visible on the Council's aerial photograph in 2000."

It is up to the applicant to prove the container has lawful use(see above where it is stated by Mrs Clarke this will be done). Mrs Clarke now lies about this container, the requirement is for it to have been sited for 10 years not 4 years as Mrs Clarke as a qualified Planning Officer should have been very aware of. It could only be considered as being 4 years if they are "*by virtue of their size, permanence and physical attachment to the land are considered to be operational development"* There is no possible way the rear end of a van can fall into this description, therefore it is clearly 10 years.

"I wrote to the landowner on 14th February requiring the removal of the tyres and car parts from this area. This area has been used for the parking of vehicles in excess of 20 years, as evidenced by the Council's aerial photographs dating back to 1991 and is not within the area covered by the recent permissions."

Yet again Mrs Clarke is lying. She wrote the CLUED report so knows full well that this area does not have lawful use. She states it is outside of the current area applied for. So why is enforcement action not taken? An area with no permission and none applied for.

"I have found no evidence of any breaches of the conditions at the site. However, as stated previously your agent has written to the Council requiring it to consent to the quashing of the permissions. Any further claims of breaches of the conditions must be accompanied by firm evidence in order to justify further site visits."

Firm evidence has been supplied by photographs, video and witness statements, including admissions by the applicants themselves. Mrs Clarke chooses to ignore all this evidence.

Indeed in response to Mrs Clarkes e-mail I responded thus*;(Exb.8)*: *"I have evidence of these breaches, all on video since the permissions were granted.*

This is of course a massive size of file, would the edited high lights be suffice? How do I get this to you?

The size of the building storage area is there awaiting measurement, it is much larger than that granted permission. But I have photographs too.

The Office is clearly in sight when you visited but is also on the video and in photographs.

The owner of the site admitted to breaching the time conditions, but I can still provide video proof. There are clearly vehicles in the builders storage area that are not "construction machinery" they were there when you made your visits. However I'll include photographs of these too."

5. 15th March 2013 Paula Clarke: *"I undertook a further unannounced site visit on Friday however there was no noise whatsoever emanating from the building or the site; one vehicle was being worked on inside the building. The site was clean and tidy however there was a pile of stone outside the gate of the builders yard which I have required to be removed."*

I reported the following breaches on the 15th March 2013 with video evidence*)*:

"15th March 2013 Friday

0639 on site

0646 HGV leaves site

0732-0749 Builders storage area in use."

Also on the 15th March I met and walked the site with the AONB Officer , I responded to Mrs Clarke observation thus*(Exb.8)*: *"You claim on your visit on Friday that the site was "clean and tidy".*

I too visited the site on Friday with the AONB officer, I think I'd beg to differ, there is junk throughout the Builders Yard, clearly visible through the hedge and hole in the gate.

I showed him where they are cleaning cars, the cars for sale, the Office, the areas being used without permission, all clearly in view from the Public footpaths.

Why on your site visit have you not noticed these?

There was indeed a pile of stone this is a breach as are the piles of building materials to the South on an area not included in the Permission."

6. 9th April 2014 Mrs Clarke*;(Exb.8) " I would advise you that I visited the site yesterday and spoke with the occupier of the garage workshop. He advises that he attended the site Monday evening to drop a car off, he did not go into the workshop and the garage was not open for business. This does not constitute a breach of condition which would require enforcement action."*

The hours conditions are very clear, this was use of the site outside of those hours.

"I would remind you that I advised you that the container on the eastern side of the workshops was lawful in my email to you dated 20 February 2013."

Appendix 2

ENFORCEMENT REPORT

Non-Publication

This report contains information which, if disclosed to the public would reveal that the Authority proposes to give under any enactment a Notice under or by virtue of which requirements are imposed on a person (Paragraph 13(a) of Schedule 12A to the Local Government Act, 1972).

LO CASE DETAILS

There has been a series of planning applications and permissions relating to this site which has resulted in two planning consents granted in February 2013 under ref DC/2012/00613 and DC/2012/00886 being quashed by the High Court and remitted back to the Council to redetermine. Application DC/2012/00886 has been withdrawn by the applicant and a new application ref DC/2013/00456 has been submitted.

DC/2012/00613 relates to the "Change of use to allow for the storage of builders materials, construction machinery and equipment, including metal storage containers and retention of security gates".

DC/2013/00456 relates to "Proposed change of use from the storage and maintenance of commercial vehicles to the storage and repair of light motor vehicles. Storage and repair of up to two HGV motor vehicles and a trailer. Retention of a portable office, vehicle washing area and ancillary parking."

The site is currently being used for the previously approved purposes, however as the permissions have been quashed the uses are currently unauthorised and in breach of planning control.

2.0 PLANNING HISTORY

A21850 Erection of a garage for storage and maintenance of commercial vehicles - Approved 08/02/85 Section 52 agreement.

DC/2011/00697 Change of use of existing workshop and adjacent land, to now include for the maintenance of motor vehicles and storage of building materials, in addition to the commercial vehicles granted consent under ref A21850 - Permission granted but quashed by the High Court and remitted back to the Council to redetermine. Withdrawn 05/09/12

El 3/023 Use of land for builders yard, storage of metal containers and gates; storage and repair of lights motor vehicles, 2 HGVs and trailer, office, wash area and ancillary parking.

Land at New Barn Workshops, St Arvans, Monmouthshire St Arvans E12/014 Breach of conditions imposed on planning permission DC/2011/00697.

BCN served 25/01/2012 however planning permission quashed and notice fell away.

DC/2012/00243 Revision to previous consent (ref DC/2011/00697) to allow the storage of metal containers and amendment to operating hours within the area designated for the storage of building materials. Introduction of an office unit for use in conjunction with the workshops and installation of new gates and landscaping Withdrawn

16/05/12

DC/2012/00445 proposed change of use for existing workshop and adjacent land, to now include for the maintenance of motor vehicles and storage of building materials and equipment, in addition to the commercial vehicles granted consent under Ref A21850 - Withdrawn 11/12/12

DC/2012/00594 Certificate of Lawful Use of land for vehicle repairs Withdrawn 25/10/12

DC/2012/00613 Change of use to allow for the storage of builders materials, construction machinery and equipment, including metal storage containers and retention of security gates. Permission granted but quashed by the High Court, remitted back to the Council to redetermine.

DC/2012/00886 Variation of condition 11 of planning application 21850 Permission granted but quashed on appeal, remitted back to the Council to redetermine but withdrawn on 03/06/13

DC/2013/00456 Proposed change of use from the storage and maintenance of commercial vehicles to the storage and repair of light motor vehicles. Storage and repair of up to two HGV motor vehicles and a trailer. Retention of a portable office, vehicle washing area and ancillary parking. Current application

GUIDANCE

Procedural guidance on the use of various powers available to local planning authorities is provided in Welsh Office Circular 24/97 Enforcing Planning Control. National guidance on planning enforcement is provided in Planning Guidance (Wales): Planning Policy and supplemented by Technical Advice Note (Wales) 9 Enforcement of Planning Control.

Responsibility for determining whether unauthorised development should be allowed to continue or should be enforced against rests with the local planning authority. In considering whether enforcement action should be taken, the decisive issue for the local planning authority should be whether the breach of planning control would unacceptably affect public amenity. Enforcement action should be commensurate with the breach of planning control. The effect on public amenity is considered at Para 5.0.

Paragraph 12 of TAN 9 states that "where a LPA considers that an unauthorised development could be made acceptable by the imposition of conditions it should invite the owner or occupier of the land to submit an application for planning permission". In this case the owners have submitted planning applications in an effort to gain the necessary permissions which are now being considered by the Council.

Paragraph 23 of TAN9 states that "where a LPA considers that an unauthorised development is causing unacceptable harm to public amenity, and there is little likelihood of the matter being resolved through negotiations or voluntarily, they should take vigorous enforcement action to remedy the breach urgently, or prevent further serious harm to public amenity". In this case the owners of the site have submitted planning applications in an effort to gain planning permission for the use of the site. In line with the above guidance it is the Council's usual practice not to take enforcement action whilst a planning application for the unauthorised development is being considered by the Authority. (

0 PLANNING POLICY

The relevant policies are:RE1

Proposals for the conversion or rehabilitation of existing buildings in the open countryside to employment use will be permitted provided that all conditions are met.

C2 Within the Wye Valley AONB any development must be subservient to the over-riding necessity to conserve the natural beauty of the area.

ENV1 General development considerations.

ASSESSMENT

In this case, as can be seen from the above planning history, conditional planning permission has previously been granted for the current uses on the site, albeit that these consents have been quashed by the High Court. From discussions with Counsel it is considered that the buildings on the site are lawful, however there is no current lawful use of the buildings or site. The site itself has been in use for many years for various uses such as coal yard; bus depot and storage and maintenance of commercial vehicles which is a material consideration. The site is currently split into 2 separate uses. The western part of the site is occupied as a builder's yard and is used for the storage of builder's materials and containers.

The buildings to the east of the site and its yard areas is in use as a car repair garage. Complaints have been received from the occupiers of the dwelling to the north regarding early morning vehicle movements; vehicles being maintained outside the buildings; the existence of a wash area and office building and breaches of conditions imposed on the quashed permissions. It is claimed that the uses on the site give rise to noise nuisance and disturbance.

Evidence has been provided by the owners to show that an operator's licence for 2 vehicles and 1 trailer has been in existence since at least 1993. Currently 1 lorry is being collected from the site around 7am returning in the evening, this practice appears to have been carried on for many years. Unannounced site visits have been carried out by officers who have not witnessed any excessive noise or disturbance emanating from the site. The advice from the environmental health officer is that whilst some noise disturbance from the development is likely from time to time, he does not envisage a level of problems on which to base an objection. Given the proximity of the nearest property he recommends suitable conditions be imposed. No alterations to the buildings are intended or have been earned out. It is considered that provided suitable conditions are imposed the use of the buildings and the site would not cause harm to the residential amenity of the neighbouring property and therefore comply with policies RE1; ENV1 and DES1.

With regard to the impact upon the Wye Valley AONB. the site is well screened from the A466 by mature tree planting. There is an existing mature row of vegetation along the northern boundary; substantial planting to the south and new planting has been undertaken along the eastern boundary. Public Footpath no. 32 runs through the site and when the gates to the builder's yard are open the site is visible to members of the public using the footpath. However the site is not readily visible in the wider setting of the AONB and the

degree of visual impact is considered to be localised. It is considered that provided suitable conditions are imposed the development would not be contrary to Policy C2.

5.0 RECOMMENDATION

In conclusion of the above, it is considered that the unauthorised development can be made acceptable by the imposition of conditions, therefore in line with Government advice, enforcement action is not expedient at present whilst the current planning applications are outstanding and remain to be determined.

ENF REPORT El 3/023

PC/10/07/2013