

DC/2014/01489

**DEMOLITION OF EXISTING DWELLING AND REPLACEMENT WITH NEW RESIDENTIAL DWELLING WITH ASSOCIATED ACCESS, CURTILAGE AND LANDSCAPING WORKS**

**PWLL Y CATH, NEWCHURCH, DEVAUDEN**

**RECOMMENDATION: REFUSE**

Case Officer: Prospero

Registered: 15/01/2015

**Introduction**

This application was presented to Members of the Planning Committee on 8th September 2015, recommended for approval, however Members at that Committee considered that whilst there is no objection to the principle of a replacement dwelling, the movement of the curtilage into the paddock to the north/ east would be unacceptable, with the proposed dwelling likely to be overly prominent in that location, particularly from long views across the valley. Members therefore requested that the application be deferred to allow the applicant to reconsider the siting of the replacement house within the existing curtilage.

The applicant has requested that the proposal be considered as it stands and therefore the application is recommended for refusal for the following reason:

- 1. The proposed replacement dwelling, by reason of its location outside the existing curtilage of Pwll y Cath and in a more elevated position, would represent an overly prominent and unsympathetic form of development within the landscape that would fail to respect its setting. As such the proposal would be contrary to Policies H5 and LC5 of the Monmouthshire County Council Adopted Local Development Plan (February 2014) and the guidance contained within Supplementary Planning Guidance 'Policies H5 and H6 - Replacement Dwellings and Extensions to Dwellings in the Countryside' (April 2015).**

**PREVIOUS REPORT (8th September 2015)**

**1.0 APPLICATION DETAILS**

- 1.1 The application site is located within the scattered community of Newchuch, to the north west of the lane that leads to Valley View. The application site is a paddock approximately 0.2ha that is located adjacent to the dwelling Pwll-y-Cath. To the south of Pwll-y-Cath is a detached bungalow 'Glen View' and Pwll-y-Cath Barn to the rear (north-west).
- 1.2 The existing dwelling is a large detached, modern dwelling (built 2004) with rendered walls and slate roof that faces directly onto the lane. Whilst relatively new, the house is in a poor state of repair and is structurally defective, that needs upgrading in respect of drainage and heating.

1.3 The land rises north to south and the site is surrounded by open fields with mature hedgerows. There is no immediate pattern or style to dwellings in the area.

1.4 The application has been submitted with the following supporting information:

- Planning, Design and Access Statement
- Bat Survey Report. Pwll-y-Cath, Newchurch, Chepstow, NP16 6DJ' dated September 2013 by Merlin Bio-Surveys

## **2.0 RELEVANT PLANNING HISTORY**

None.

## **3.0 LOCAL DEVELOPMENT PLAN POLICIES**

### Strategic Policies

S1 – Spatial distribution of new housing provision

S13 Landscape, Green Infrastructure and the Natural Environment

S17 Place Making and Design

### Development Management Policies

EP1 – Amenity and Environmental Protection

EP5 – Foul sewage disposal

DES1 General Design Considerations

H5 – Replacement dwellings in the open countryside

LC5 - Landscape Character

NE1 – Nature conservation and design

## **4.0 REPRESENTATIONS**

### Consultation Responses

Devauden Community Council – recommends refusal. No objective evidence of the need to demolish and replace a house built in 2004. Moreover, the proposed development would be more visually intrusive than the existing house because it would be significantly higher up the hill and re-orientated by some 45 degrees from the existing alignment thereby exposing the frontal elevation. SPG 2014 Replacement Dwellings, Section 6 requires that there should be no increase in the overall visual impact of the replacement building.

MCC Landscape Officer – 03.08.15 amended plans - I welcome the decision to move the dwelling to a lower point some 5m further south down the slope and reduce the floor level by 1m in recognition of the visual impact and sensitivity of the site.

17.06.15 original comments - my key landscape concerns relate to issues highlighted in H5 (supported by our adopted SPG) and LC5.

In considering Policy H5 and the supporting Replacement dwelling SPG I am of the view that the bulk form and size of the proposed dwelling does not respects its setting;

- situated on a steep elevated slope with long vistas across the valley with substantially increased height to ridge, over 3 floors
- the proposal is more prominent and the large scale 3/4 storey southern frontage with large sections of glass will be more visible within the surrounding landscape.
- orientated south, south west – the proposal will be very prominent in the wider landscape.

In contrast the existing proposal is lower on the hillside, smaller in scale (2 storey) and is tucked into the valley side behind a hedge at a lower level than the proposed replacement dwelling.

Policy H5 makes it quite clear that where a building of a larger scale is proposed this will need to demonstrate that the proposals do not cause unacceptable harm to their setting and the landscape, this is supported by SPG paras 4.4, 6.2 and 6.3. This has not been demonstrated by the applicant and the above issues remain.

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Policy H5 makes it quite clear that where a building of a larger scale is proposed this will need to demonstrate that the proposals do not cause unacceptable harm to their setting and the landscape, this is supported by SPG paras 4.4, 6.2 and 6.3. This has not been demonstrated by the applicant and the above issues remain.

MCC Highways –The existing vehicular access and parking area will be permanently closed as part of the proposal with the creation of a new and improved vehicular access 10m northeast of the existing. The new vehicular access, driveway and parking and turning area proposed is considered to be an improvement over the existing and exceeds the requirements set out in the supplementary planning guidance, Monmouthshire Parking Standards 2012.

In light of the proposed replacement dwelling and improved access, parking and turning area there are no highway grounds to sustain an objection to the application  
 Natural Resources Wales – welcome the bat survey Subject to implementation of mitigation measures set out in the report we do not consider the proposal will result in

detriment to the maintenance of the favourable conservation of bats. Suitably worded suggested. EPS licence required.

MCC Public Rights of Way Officer – The applicants attention is drawn to Public Footpath 39 in the community of Devauden, the alignment of which appears to be wrongly indicated on the application drawings. The legal alignment of footpath 39 very likely runs through and is obstructed by the building it is proposed to demolish. The legal alignment of Footpath 39 must remain open and free for use by the public at all times. It is possible that the proposal may resolve this issue but if not a public path order will need to be obtained. A public path order will also need to be obtained prior to any works further affecting the availability of the path. Additionally if the path is to be made temporarily unavailable by construction work then a temporary path closure will need to be obtained and any damage to the path as a result of the development will need to be made good by the applicant. The applicant should contact Countryside Access Department to discuss.

MCC Tree Officer - I have not carried out a site visit, however, I believe there to be sufficient information on aerial photography and Google Street View for me to make an informed comment. The site itself is fairly open with mature hedgerows on the north eastern and south western boundaries. There is also a mature Sycamore at the far north eastern corner of the site which is protected by one of our older tree preservation orders. I do not feel that a full tree survey in accordance with British Standard 5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations is necessary in this case; however there is a possibility that the hedgerows and any trees that sit within them may be damaged by ground compaction and/or root severance if they are not adequately protected. I would therefore like to see the following condition

MCC Development Plans - Strategic Policy S17 is of relevance relating to Place Making and Design. The site is located in the open countryside where Policy H5 relating to replacement dwellings in the open countryside applies, containing detailed criteria that must be considered. Policy H5 states the design of the new dwelling is of a form, bulk, size and scale that respects its setting and that it shall be of similar size to the replaced. The Replacement Dwellings and Extensions to Rural Dwellings in the Countryside Supplementary Planning Guidance (SPG) should also be referred to as a key consideration. An update to this SPG providing details relating to the LDP policy context has currently been through consultation with the aim to adopting the SPG in March.

Section 4 of the SPG is of particular importance. The Planning, Design and Access Statement submitted with the application refers to the SPG stating ‘the SPG confirms that replacement dwellings shall be of a similar size to that replaced and no larger than a 30% increase will be permitted within the AONB and Conservation Areas of the County or 50% elsewhere’. Paragraph 4.2 of the SPG (September 2014) actually states ‘any increase in the volume of the replacement dwelling over the existing will normally be no more than 30% unless it can be clearly demonstrated either that there will be no harmful intrusive impact in the landscape through the increased size of the dwelling or that there is an enhancement in the appearance of the existing dwelling, subject, in any event to the increase in volume being no more than 50%’. In addition to this, the exceptions to limits for extensions to rural dwellings set out in paragraph

3.10 of the SPG also apply to replacement dwellings. The SPG stipulates that an increase of over 30% for dwellings over 750m<sup>3</sup> in volume will not normally be allowed and that the larger the building the lesser the percentage increase that is likely to be acceptable. The existing building in this case is 2044.54m<sup>3</sup> the proposed replacement dwelling is 2790.6m<sup>3</sup> over 36% larger. The justification of such an increase will need to be looked at carefully to determine whether there is compliance with Policy H5 and Section 3/4 of the SPG.

Additionally, Criterion (c) of Policy H5 refers to the residential curtilage of existing and replacement dwellings noting that it would normally be expected that the residential curtilage is no larger than that of the existing dwelling. The proposed curtilage appears larger in size and is also positioned in a different location. Paragraphs 6.2 and 6.3 of the SPG relate to the siting of the dwelling and size of curtilage and as a consequence must be considered in detail. Replacement dwellings are normally expected to be located on the site of the existing dwelling.

Policy LC5 relating to Landscape Character must also be referred to along with Policies EP1 and DES1 relating to general development considerations.

Welsh Water – No sewers in area – no comment

#### Neighbour Consultation Responses

None received.

## **5.0 EVALUATION**

### **5.1 Principle of Development**

The site is located in the open countryside where Policy H5 of the Local Development Plan (LDP) relating to replacement dwellings in the open countryside applies, containing detailed criteria that must be considered. Policy H5 states the design of the new dwelling is of a form, bulk, size and scale that respects its setting and that it shall be of similar size to the replaced. The Replacement Dwellings and Extensions to Rural Dwellings in the Countryside Supplementary Planning Guidance (SPG) is also a key consideration.

The principle of replacing the existing modern non-traditional dwelling is considered to be acceptable and in accordance with Policy H5. Within this Policy it is deemed acceptable to replace modern dwellings. The reason given for demolition of the building, although relatively new, is that it has structural defects in terms of insulation, drainage and heating that make the property unsustainable.

Initial concerns were made regarding the impact of the proposal on its setting and the surrounding landscape given its position on a different footprint (17m away from existing), higher up a slope with a taller roof.

Following dialogue, it was accepted by the agent, in the absence of a landscape assessment that the original proposal needed to be revisited to reduce any impact upon its setting and the surrounding landscape. Revised drawings were subsequently

submitted with a repositioned footprint of the proposed dwelling circa 5m further south (down the existing slope and closer to the existing property) with a reduced floor level approximately 1m lower than the originally proposed dwelling, built into the slope itself. The Council's Landscape Officer has welcomed these amendments.

Policy H5 exceptionally allows for larger replacement dwellings of high quality sustainable design provided the proposals do not cause harm to their setting or landscape. The existing house is large (over 750m<sup>3</sup>) where a 30% threshold is placed on the size of replacements however it is considered that the proposal, at 36% larger than existing, is not excessive and will result in a much more sustainable building that overall, will be set reasonably into the landscape.

Additionally, Criterion (c) of Policy H5 refers to the residential curtilage of existing and replacement dwellings noting that it would normally be expected that the residential curtilage is no larger than that of the existing dwelling. The proposed curtilage is the same and whilst positioned in a different location would not result in any increase or encroachment as the existing curtilage and dwelling would be restored to paddock. The existing highway arrangement does not necessarily allow for cars to exit in a forward gear whereas the new layout would allow for this.

The amended position of the proposed replacement dwelling with a lower floor level is considered to be generally in accordance with the objectives of Policy H5 that aim to ensure that replacement dwellings do not detract from the special qualities of the open countryside in Monmouthshire.

## 5.2 Visual Impact

Policies H5, LC5 and DES1 of the Adopted Local Development Plan (LDP) are relevant in this instance.

As established within the previous 'Principle of Development' section, it is considered that whilst the proposal is larger and on a different footprint, the revised location of the building - closer to the existing house, lower down the slope and a reduction in the floor level by 1m - reduces the visual impact of the proposal and is considered acceptable.

The building would be stone-faced, set against the hillside and the proposal would keep the same curtilage area as existing, albeit adjacent to that existing. The existing property is painted render. Therefore it is considered that the stone finish would better blend into the hillside and reduce long range views of the property.

All existing hedgerows are to be retained and potentially could be supplemented through additional planting.

The proposal includes all necessary outbuildings with the garage at lower ground floor level that reduces the proliferation of garages, etc., within the open countryside.

In visual terms, the existing property is of limited architectural merit and the replacement building in its amended location is considered to accord with Policies EP1 and DES1 of the Monmouthshire Local Development Plan.

### 5.3 Residential Amenity

Policies EP1 and DES1 should be taken into consideration in relation to Amenity and Environmental Protection and General Design Considerations respectively. The orientation and of the proposed dwelling is such that the front and rear elevations overlook garden or countryside. To the west elevation, there are first floor windows - however given the distances and intervening buildings there would be no direct overlooking of neighbours to the south and west.

There have been no neighbour objections to the proposals. The replacement dwelling is considered to be in accordance with Policy EP1 of Monmouthshire's LDP.

### 5.4 Highway safety

The existing vehicular access and parking area will be permanently closed as part of the proposal with the creation of a new and improved vehicular access 10m north-east of the existing. The new vehicular access, driveway and parking and turning area proposed is considered to be an improvement over the existing and exceeds the requirements set out in the supplementary planning guidance, Monmouthshire Parking Standards 2012. Overall, the Highways Department consider there are no highway grounds to sustain an objection to the application subject to standard conditions.

### 5.5 Biodiversity

The proposals include the submission of an ecological survey that outlined that there were bat species using the building. The Council's Biodiversity Officer and Natural Resources Wales (NRW) have reviewed the information and are satisfied that the development would not have an unacceptable impact on wildlife interests subject to mitigation being implemented on site via conditions. The proposed development would have an acceptable impact on wildlife interests and would be in accordance with Policy NE1 of the LDP.

The Local Planning Authority "must have regard to the requirements of the Habitats Directive....in the exercise of their functions" (Reg. 9(5) Conservation Regulations 2010). This was reinforced by the case law example (Wooley vs Cheshire East Borough Council, May 2009) that established that Local Planning Authority's must engage with the Habitats Directive and this means that they must: Consider whether a European Protected Species (EPS) offence under the Conservation of Habitats and Species Regulations 2010 (Cons Regulations 2010) is likely to be committed by the development proposal. A protected species report has been produced and submitted with this application which identifies the presence of a bat species using the site. However the applicants have proposed mitigation measures to ensure that the proposals do not harm wildlife interests. The application must be subject to the three tests of derogation as described by Article 16 of the Habitats Directive 92/43/EEC and implemented by the Conservation Regulations 2010. The Local Planning Authority must consider whether the three derogation tests will be met and so whether the Welsh Government is likely to grant a licence. With regard to the three tests these are as follows:

1. The proposal must be for the purposes of preserving public health or public safety or other imperative reasons of overriding public interest including those of social or economic nature and beneficial consequences of primary importance for the environment.
2. There is no satisfactory alternative.
3. The action authorised will not be detrimental to the maintenance of the population of the species at a favourable status in their natural range. In relation to the above points, these are addressed in turn in relation to this application.

Test 1 - The proposal must be for the purposes of preserving public health or public safety or other imperative reasons of overriding public interest including those of social or economic nature and beneficial consequences of primary importance for the environment. It is considered that the proposed replacement dwelling would not harm wildlife interests subject to the mitigation measures proposed and it would ensure that a far more sustainably-constructed dwelling which accommodates bat mitigation is sited at the site that is fit for purpose.

Test 2 - This test is concerned with whether the scheme as submitted is the only satisfactory option and that there are no alternatives available. Looking at all the options available, these fall into four main groups: (i) to develop an alternative part of the site, (ii) to do nothing, (iii) to demolish the existing building and construct a new building in situ, or (iv) to allow this proposal. Given the context of the site, the first option would have the same consequences as the current proposal. With regard to the 'doing nothing' option, whilst in the short term at least, doing nothing would preserve the present bat roosts in situ, ultimately if the dwelling is left to deteriorate. The third option would have the same consequences as the submitted proposal. The final option is to construct a replacement dwelling, as proposed. This is considered an acceptable option for the Local Planning Authority. The proposals aim to develop a modern sustainable eco-friendly residential property and provide mitigation measures to ensure the habitats of the European Protected Species (EPS) are ultimately protected at the site. It is considered that this proposed option would be the most appropriate for the site in terms of protection of the EPS and developing the potential of the site.

Test 3 - The final test of the Regulations is concerned with the mitigation and maintenance of the population of the species at a favourable status in their natural range. The scheme submitted provides an ecological survey which highlights the location of the identified roosts in the building. The applicant has offered clear details of how they intend to mitigate for the impact that the proposals will have on the bat population. The submitted report proposes mitigation options and an enforceable working method statement will be submitted to the Local Planning Authority for approval prior to the commencement of development. It is considered that the proposals would not harm bat species at the site.

The proposal does meet the tests and the view is taken that the Welsh Government would grant a licence. The Council's Biodiversity Officer and NRW have reviewed the proposals and are satisfied that subject to appropriately worded conditions and informatives the proposed development would have an acceptable impact on wildlife interests. The Local Planning Authority therefore may legally give consent for the proposals subject to these conditions.



## 5.6 Conclusion

The proposed dwelling would be of a large size but would be of an acceptable standard of design. The revised location of the dwelling would have an acceptable visual impact and would not appear incongruous to the area. It would integrate well with the terrain of the landscape and not harm the character and appearance of the wider landscape. It would be of a high standard of design and constructed with traditional materials that are appropriate for the area, and would be less intrusive in colour than those of the existing dwelling. The proposed dwelling has been designed to be energy efficient and this is considered to be a positive form of development in terms of its sustainability and its impact on the environment. The proposed development is considered to be in accordance with the relevant policies of the LDP and therefore the development would be acceptable.

## 6.0 **RECOMMENDATION: APPROVE**

### Conditions:

1. NC01 Standard 5 years
2. PLAN Plans compliance
3. The new access and driveway shall be constructed of a hard surface permeable material so as to allow surface water to be disposed of within the site and to prevent any loose material from being brought out onto the public highway.
4. No surface water shall drain onto the public highway or into the public highway drainage system.
5. A visibility splay of 2.4m x 40m measured from the centre line of the access shall be provided in each direction. Nothing which may cause an obstruction to visibility shall be placed, erected or grown in the splay.
6. The access shall be a minimum width of 3m. Gates if provided shall not open outwards and shall be set back a minimum of 5m from the highway boundary.
7. Prior to the commencement of the project, a construction exclusion zone in the form of protective fencing such as Heras or 1.4m high chestnut pale or similar shall be erected along the hedgerows within the development site at a minimum distance of three metres from the centre of the hedge. No storage of materials, plant, mixing of cement, bonfires, parking of vehicles or any other construction activity is allowed within the fenced off area. Reason - To protect the root systems of the hedgerows from damage.
8. The hereby permitted works shall not in any circumstances commence unless the local planning authority has been provided with either:
  - a) a licence issued by Natural Resources Wales pursuant to Regulation 53 of The Conservation of Habitats and Species Regulations (Amendment) 2012 authorising the specified activity/development to go ahead; or
  - b) a statement in writing from a suitably experienced ecological consultant; to the effect that it does not consider that the specified activity/development will require a licence. REASON: to ensure that plant and animal species which come within the terms of The Conservation of Habitats and Species (Amendment) Regulations 2012 are effectively protected and that a copy of the NRW development licence is submitted to the LPA.

9. No development shall take place including any demolition, ground works, site clearance until a protected species (bats) method statement for works has been submitted to and approved in writing by the local planning authority. The content of the method statement shall include, as a minimum the:
  - a) purpose and objectives for the proposed works;
  - b) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - c) measures to avoid killing and injuring bats during works
  - d) use of materials (such as timber, roofing membranes),
  - e) persons responsible for implementing the works;
  - f) positioning, size, type & location of bat roosting provision
  - g) positioning and size of entrances of bat mitigation;
  - h) initial aftercare and long-term maintenance (where relevant);

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To safeguard the favourable conservation status of Protected Species in accordance with LDP policy NE1
10. Opportunities for the use of the proposed dwelling by roosting bats shall be incorporated in the scheme to be as a minimum as outlined in Section 9 ‘Recommendations’ and Section 10 ‘Mitigation Plan’ of the revised Bat Survey report undertaken by Merlin Bio Surveys dated February 2015. Reason: To safeguard roosting habitat of Species of Conservation Concern in accordance with Conservation of Habitats and Species (Amendment) Regulations 2012 and LDP policies NE1
11. Notwithstanding the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) no lighting or lighting fixtures shall be installed on the buildings until an appropriate lighting plan which includes low level lighting and allows dark corridors for bats has been produced and agreed in writing with the LPA. Reason: To safeguard roosting and foraging/commuting habitat of Species of Conservation Concern in accordance with Conservation of Habitats and Species (Amendment) Regulations 2012 and LDP policy NE1.
12. The development hereby approved shall be carried out in accordance with the wildlife protection measures made in the ‘Measures to Protect Wildlife’ section of the Phase 1 Habitat Survey report undertaken by Abbey Sanders Ecology dated November 2013; unless otherwise agreed in writing by the Local Planning Authority. Reason: To comply with the provisions of the Wildlife & Countryside Act 1981.
13. PD Rights removed
14. PD rights for enclosures removed
15. Samples of the proposed external finishes shall be agreed with the Local Planning Authority in writing before works commence and the development shall be carried out in accordance with those agreed finishes which shall remain in situ in perpetuity unless otherwise approved in writing by the Local Planning Authority. The samples shall be presented on site for the agreement of the Local Planning Authority and those approved shall be retained on site for the duration of the construction works.
16. The existing dwelling shall be demolished or removed from site no later than two months after the first occupation of the replacement dwelling
17. Prior to the occupation of the building full details of landscape works for the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping of the site shall be implemented as agreed.

18. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Informatives:

1. EPS licence
2. Bats
3. Please see Dwr Cymru Welsh Water letter dated 21/01/2015
4. In the event of a new or altered vehicular access being formed, the requirements of Section 184 of the Highways Act 1980 must be acknowledged and satisfied. In this respect the applicant shall apply for permission pursuant to Section 184 of the Highways Act 1980 prior to commencement of access works via MCC Highways.
5. Research currently underway indicates that breathable membranes pose a significant and avoidable risk to bats and furthermore that using such membranes in bat roosts runs the risks of impairing the ability of the membrane to function properly. We wish to advise that the use of this membrane in bat roosts is therefore unlikely to be granted a licence, if required. A product that has a long and proven track record of suitability in bat roosts is bitumastic felt to BS747, and NRW recommends the use of this material in bat roosts. We therefore advise that if the roof is to have access for bats included, as outlined in the report, that an informative or advisory note is attached to this effect.
6. The applicant's attention is drawn to Public Footpath 39 in the community of Devauden, the alignment of which appears to be wrongly indicated on the application drawings. The legal alignment of footpath 39 very likely runs through and is obstructed by the building it is proposed to demolish. The legal alignment of Footpath 39 must remain open and free for use by the public at all times. It is possible that the proposal may resolve this issue but if not a public path order will need to be obtained. A public path order will also need to be obtained prior to any works further affecting the availability of the path. Additionally if the path is to be made temporarily unavailable by construction work then a temporary path closure will need to be obtained and any damage to the path as a result of the development will need to be made good by the applicant. The applicant should contact Countryside Access Department to discuss.
7. Please see Natural Resources Wales Planning Advice Note.