KEYSTONE LAW

53 Davies Street, London W1K 5JH | DX-2307 Victoria | t: 020 7152 6550 | f: 0845 458 9398 | e: enquiries@keystonelaw.co.uk | w: www.keystonelaw.co.uk

The senior planning officer
Planning department
Monmouthshire County Council
PO box106
Caldicot
NP26 9AN

Your ref:
Our ref: BG/HAT5/1
DD: 020 7152 6550
Email: ben.garbett@keystonelaw.co.uk

01 October 2013

Dear Sir,

Site at New Barn Garages, A466, St Arvans NP16 6HE – planning application references: DC/2012/00613 and DC/2013/00456
Objections on behalf of Christopher and Michelle Hatcher

The latest report recommending approval is littered with errors, and, to any impartial observer, would appear biased. It is significantly misleading in the way it presents the planning issues on this site.

For example, how can it be seriously concluded that the impacts from a commercial car servicing operation, coupled with expanded use of the site as a builder's yard, would be acceptable despite any landscape and visual impact evidence? Despite any evidence on traffic impacts in an otherwise quiet rural location? Current national policy puts protection of the AONB on equivalent status to that of a National Park, as underlined by the particular requirements of UDP policy (e.g. policy C2).

Before Members of the committee are effectively duped into granting consent we ask them to reflect on the fact that the original recommendation for approval (DC/2011/000697) was made on the false belief that there was permission for the current site activities. Also, contrary to the conclusion in the current report, the unsightly metal storage containers have been present on the site for less than 4 years, as documented by my client[1]. This development is not lawful, and should be removed, as the council officer himself concluded previously too.

The two judicial review cases (our client was successful in both), together with the applicant's failure to obtain a certificate of lawful use (this was withdrawn to avoid a refusal) demonstrates that there is nothing special about the characteristics of this rural site. How can officers and members therefore believe that granting approval would not lead to a very harmful precedent being set, which would weaken the council's resistance against similar harmful developments elsewhere? How does this achieve fairness, transparency and consistency in public decision-making?

[1] The only long-standing container was originally hidden from view, but was recently moved to a new location and so should be regarded as new unauthorised development

For example, biodiveristy may well have been destroyed by the current unlawful site uses but this does not mean that the site has no long term conservation potential, a requirement of UDP policy C2(e) which has been ignored. Granting consent would surely encourage any future applicants to start development without first obtaining consent simply in order to overcome a potential reason for refusal?

The text of policy C2(b) emphasises the importance of good design where "*higher than average design and control standards*" shall be applied. How then does the council not find objection to industrial sheet metal gates concreted to the floor, close to a public footpath?

Further, the proposed use is commercial and industrial not agricultural. Those matters are very different in their nature and effect, as reflected in planning policy decisions across the UK. Why does this officer think differently?

To give another recent example, at the 06 August planning committee meeting Members refused a development for a commercial garage because "*the garage/workshop use will lead to an increase in traffic using the single access road to and from the site as well generating additional noise and disturbance from the activities within the building which will harm local residential amenity, contrary to Monmouthshire Unitary Development Plan Polices ENV1 d) and e) and DES1 d).*"[2]

There is no special reason for allowing this development to happen. Other non-AONB locations are available which would be able to meet any perceived need for this type of employment development. The proposal would conflict with the council's own development plan – such development would normally have to be refused unless that conflict is outweighed by other material considerations. None have been put forward, except the false basis that the 1985 provided a relevant fall-back. There are no reasons why the section 52 agreement restrictions should be relaxed.

Planning conditions

If conditions are to be fit for purpose (as specifically demanded by the statutory consultees), then fencing and screening needs to be preserved for all time; there should be absolutely no room for expansion or intensification of uses; so too, there needs to be consistency in terms of how previous decisions have responded to these issues; conditions should not be phrased to allow essential requirements to be waived by private agreement e.g. "*unless otherwise agreed in writing*".

In any event the startling evidence is that conditions are ineffective - they have not been complied with in the past e.g. the fence shown on plan 1123/501B was never erected; a previous breach of condition notice was simply ignored; these applications are for retrospective development. The applicant has not observed ordinary town and country planning requirements, but simply does as he pleases.

Conclusion

The courts will always have a role to play in cases where the national policy interest would effectively be overridden in this way. How much more money does the council wish to waste on

[2] Application DC/2011/01240†* - Change of Use from Egg Production Unit to Workshop and Commercial Garage Ty'r Pwll Farm, Hardwick, Abergavenny

making poor planning decisions? We sincerely hope, therefore, that our client's objections are given the seriousness they deserve this time. It has already taken two successive court victories in order to highlight previous errors. The Council still owes our client more than £20,000 for those victories, on top of the £21,000 already paid (or agreed to be paid).

There are really no defensible grounds for approving these applications, whilst a planning refusal would still leave the applicant with a right of appeal. If that were to happen then it would also provide a fair and transparent arena in which to have these matters finally decided.
Yours faithfully,

Keystone Law

Objection to DC/2013/00456 and DC/2012/00613

St Arvans Community Council Planning Representations.

Please see

These sites DC/2012/00613 and DC/2013/00456 should be considered as a single site. This was indicated by the third Judicial Review. The design and access statements are the same. The activities are shared by both sites. The facilities are shared by both sites as is the access road. The owners of the sites are the same. The impact of the sites is compounded.

Please see these videos to provide a visual commentary and evidence of the comments I have made here:

http://youtu.be/fW7O9UxnIBo

https://www.youtube.com/watch?v=ocvVWntCyqc

St Arvans Community Council have not addressed the judgements of the Judicial Reviews in these responses at all, nor given any policy that supports their conclusions.

"DC/2013/00456

Proposed change of use to the storage and repair of light motor vehicles and a trailer. Retention of vehicle washing area and ancillary parking. Land including existing workshops. New Barn Workshop Site, St. Arvans NP16 6HE.

Please find below some observations and/or recommendations regarding the above application, which the Council would be grateful if you would take into account when considering the application.

IT IS RECOMMENDED THAT THE APPLICATION BE ***Approved***

It was unanimously agreed that the recommendation to MCC be Approval as there have been only minor changes to this application since the previous submission. The Council considers its original comments still valid.

If this application is approved, the Council requests that it be advised of any conditions made and it would expect that any such conditions would be strictly enforced due to the history of these applications."

And for DC/2012/00613

"IT IS RECOMMENDED THAT THE APPLICATION BE Refused It was unanimously agreed that the recommendation to MCC be Refusal.

There have been only minor changes to this application since the previous submission. It was therefore decided that the Council should recommend Refusal, as before, and that its previous comments should be taken into account"

<u>It is highly significant that St Arvans Community Council have stated that it considers it's original comments still valid.</u>

These are laid out below and need to be considered when determining these latest applications.

SACC appear not to be aware of public footpaths that run from this site. Footpath 329/32/4 is not on their footpaths map on the St Arvans Community Council website and yet the visual impact of these sites is significant from this.

10th July 2013 St Arvans Community Council made this comment

"Taking into account the business proposed on the site, MCC Planning Department should apply appropriate hours of use restrictions"

And for the application for this site DC/2012/00886 the SACC had said:

13th November 2012

Whilst recommending approval, please note the following observations:

1) The original application had no conditions of hours of usage. It is recommended that suitable hours of use be appended to the application e.g. 7.00am to 18.00pm weekdays, 7.00am to 13.00pm Saturdays and excluding Bank Holidays.

And for the same site on the application prior to this DC/2011/00697 St Arvans Community Council recommended **refusal** and this was at a time St Arvans Community Council and indeed Monmouth County Council believed the site has existing use. This was before this was proved false by the subsequent Judicial Reviews and when the Certificate of Existing use application DC/2012/00594 failed to establish existing use.

Date: 9th October 2012:

Application No: DC/2012/00613 Change of Use of New Barn Workshops to Include Storage of Builders Materials etc. Date: 9th October 2012

IT IS RECOMMENDED THAT THE APPLICATION BE Refused

The Community Council makes the following observations on the Application:

1) The applicant does not make clear how many containers may be stored in the yard nor does there appear to be any height restriction.

2) In the paragraph on Environmental Sustainability it implies that work will be carried out on the site without describing its nature. This would appear to be an additional activity to the "storage" of materials.

3) Without clear conditions on the future management of this section of the yard, it is difficult to see how the development fits in with the requirements of the AONB.

4) The site can be seen from footpath 379/21

5) Whilst the footpath leading down the drive of the yard has been established for many years and will now be a right of way, the definitive path runs slightly to the north within the boundary of the site. The applicant may therefore need to consider an extinguishment of this section of the path before proceeding as under section 5 of the MCC planning pro-forma.

1) **St Arvans Community Council has recommended refusal of this site throughout.**
2) **They are concerned over the number of containers and that there is a height restriction.**
3) **They are concerned about activities other than storage on this site.**
4) **That this application does not meet the policies that protect the AONB**
5) **The site can clearly be seen from the public footpath 379/21**
6) **And that the footpath currently runs through the site and that this should be extinguished before proceeding.**

DC/2011/00697 SACC said:

"IT IS RECOMMENDED THAT THE APPLICATION BE Refused

The Community Council has a number of comments to make on this application:

The workshops have been used for motor vehicle maintenance and not commercial vehicle maintenance for a few years, and as such, there was little concern, and would therefore be no further concern if this activity was continued.

More recently, the workshops appear to have been used as a dumping ground for building waste, and have been the subject of complaint from neighbours reference the burning of noxious materials on the site. The application is therefore factually inaccurate on a number of points:

- *para 3 'Has the building, work or change of use already started?" should read Yes, not No.*
- *para7 should read Yes on both questions given that the application is for storage of waste material.*
- *para I7 should read Yes as above*
- *para24 The Community Council would seek assurance that no hazardous materials are to stored given a neighbour's recent complaint ref the burning of substances unknown which gave off noxious/unpleasant fumes*
- *para 25, the site is clearly seen from the footpath that essentially runs through the property, and at present is very unkempt "*

This application includes <u>both current application sites.</u>

1) **SACC originally refused this application including the site for DC/2013/00456**
2) **They did not want a commercial operation from these sites.**
3) **They object to the building material storage.**
4) **They state the site can clearly be seen from the public footpath that runs through the property.**
5) **That the site is very "unkept".**
6) **That they have serious concerns over the hazardous substances on site.**

Hazardous substances are highly prevalent within the motor industry, these are on site.

Oil, brake and clutch fluid, antifreeze, batteries, tyres, paint, welding gas, de-greasers and cleaning fluids etc.

The breaking of vehicles, which has occurred several times on this site also releases harmful substances.

Other items have been scrapped here too, old caravans, televisions, fridges, ovens and goodness knows what else.

What is contained within these shipping containers? It could be anything.

The building industry also uses a great many hazardous substances.

What exactly is on site?

And what will be permitted can be on site?

There have been several fires on site these should not be permitted at all.

There has been paint spaying of vehicles on site.(to the extent this became a statutory nuisance and Environmental Health served them a notice)

A wood burning stove was installed very recently, this had no planning permission and did not meet building regulations. this caused hazardous substances to escape and cause considerable nuisance and upset to the residential property next door.

A fire not correctly fitted can cause death.

Objections to DC/2012/00613 and DC/2013/00456

Policies

These sites DC/2012/00613 and DC/2013/00456 should be considered as a single site. This was indicated by the third Judicial Review. The design and access statements are the same. The activities are shared by both sites. The facilities are shared by both sites as is the access road. The owners of the sites are the same.

Scrap Yard.

This site has been used as a scrap yard, even in the period after having the permissions quashed. See this video to show the harm this does:

https://www.youtube.com/watch?v=ocvVWntCyqc

Jon Bladon, the current occupier of the "workshops" said *"just what is needed a good scrap yard in the chepstow area"*

This gives a good indication of the intent of the current occupier and the messages given to him from the owners.

Retrospective Applications

It is abundantly clear that the applicants have shown very little regard for the planning process from the outset. The Council ought to remind itself that, for very good reasons of public policy, the planning system requires applicants to seek permission before development is commenced, whereas this applicant has at each and every step chosen to implement his plans prior to submitting retrospective applications. This serves purely private interests wholly at the expense of the AONB, the ecological environment and is detrimental to residential amenity and other lawful third party interests.

Section 52

The site still has a section 52 upon it. This is a legally binding contract, the applicant has ignored this throughout. It is a material consideration, can the section 52 be added to the planning report.

Judicial Reviews

These have made significant impacts upon how this site should be determined.

They are a material consideration and should be added to this application.

Including all the grounds and the decisions.

THIS AGREEMENT is made on the 6th Day of February

One thousand nine hundred and eighty five **BETWEEEN MONMOUTH DISTRICT COUNCIL** of Mamhilad Pontypool in the County of Gwent (hereinafter called "the Council") of the one part and **MR. DENNIS JAMES STEPHENS** of The Highlands St. Arvans Near Chepstow in the County of Gwent and **WILLIAM ALLAN STEPHENS** of 2 Laburnum Cottage St. Arvans aforesaid (hereinafter called "the Owners") of the other part

WHEREAS:-

(1) The Council are the local planning authority for the purposes of the Town and Country Planning Act 1971 for that part of the Monmouth District which is not contained within the Brecon Beacons National Park

(2) Mr. R.G. Hopton Architect/ of Ellinsyde Gower Lane Woodcroft Near Chepstow Gwent acting as agent for the Owners did by a planning application referenced under number 21850 and dated the seventh day of February One thousand nine hundred and eighty-four apply to the Council for planning permission for the construction of a garage on a plot of land adjoining New Barn St. Arvans near Chepstow aforesaid being land within the ownership of the owners all which said parcel of land is situate at and known as land adjoining New Barn St. Arvans Near Chepstow aforesaid (hereinafter referred to as "the application site") in the County of Gwent which said area of land is more particularly shown edged red on the plan annexed to this agreement (hereinafter called "the said plan")

(3) The Owners are inter alia seised in fee simple absolute in possession of all the land more particularly shown edged green on the said plan annexed to this agreement all which said land is under the full control of the Owners and situate outside the Brecon Beacons National Park The

(4) Council have requested that upon *the* completion of the works relating to the erection of the proposed garage in the location shown coloured orange on the land shown encompassed by the red line on the said plan being the application site the existing garage shown coloured yellow and encompassed by the blue line on the said plan being the central site shall cease to be used as a commercial garage

(5) The Council have also requested that once the use of the existing garage on the land shown coloured yellow on the said plan has ceased then the said garage shall henceforth only be used as a garage for the storage of a maximum, of two private motor vehicles and the said garage^ shall be restricted to use as a domestic garage appurtenant to the private residential dwelling house known as Parkfield St. Arvans Near Chepstow aforesaid

(6) The Council have also requested that the proposed garage to be erected on the land shown coloured orange on and encompassed by the red line n the said plan being the application site shall be used as a commercial garage only comprising

the storage and repairing of commercial vehicles owned and used by the Owners of the said garage and their successors in title lessees or occupiers for the time being and for no other purpose whatsoever

(7) The Council have also requested that certain landscaping works shall be undertaken on the site and that the plants duly planted pursuant to the approved scheme shall be retained and maintained to the satisfaction of this Council.

(8) The Council have requested that certain work should be undertaken on the site in accordance with the conditions hereinafter contained in the Schedule hereto.

(9) The Council is satisfied that the proposed development applied for disclosed by ':he plan specifications and particulars deposited is such as may be approved by the Council under the Town and Country Planning Act 1971

(10) The Council are minded to grant planning permission Cor the development applied for subject to certain conditions hereinafter contained provided the Owners covenant in manner hereinafter appearing

NOW THIS AGREEMENT WITNESSETH as follows:-

1(a) This agreement is made pursuant to the provisions of Section 52 of the Town and Country Planning Act 1971 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 11 of the Monmouthshire County Council Act 1970 Section 111 of the Local Government Act 1972 and all other powers enabling the Council and the owner to enter into the agreement and in consideration of the covenants hereinafter contained

(b) Nothing in this agreement is or amounts to or shall be construed as a planning permission or approval

(c) The County Court in whose district the land is situate shall have full jurisdiction to hear and determine any proceedings arising from or relating to this agreement or for the enforcement of its terms or anyone of them.

2. The Owners with intent to bind the total area of land which is encompassed by the green line on the plan annexed hereto being the land comprised within the ownership of the Owners together with the land encompassed by the red line on the said plan (being "the application site") and the land encompassed by the blue line on the said plan (being "the central site") which said areas of land are subject to the provisions of thi3 agreement into whosoever hands the same may fall whether wholly or partly jointly and severally covenant with the Council as

follows-

(a) that upon the completion o£ the works relating to the erection of the proposed garage in the .location shown coloured orange on the plan and is shown land shown encompassed by the red line on the said being the application site adjacent to New Barn then the existing garage shown coloured yellow on the land encompassed by the blue line on the said plan being the central site shall immediately cease to be used as a garage for commercial vehicles including the parking storage or repairing of the said commercial vehicles.

(b) that the Owners and their successors in title shall not cause or permit the said building shown coloured yellow and encompassed by the blue line on the said plan being the garage located on land adjacent to Parkfield St. Arvans aforesaid to be used as a garage for the storage or repairing of commercial vehicles being vehicles owned and U3ed by the said Owners or by the successors in title lessees and occupiers from the date referred to in paragraph (a) hereinbefore contained being the date when the Owners complete the construction of the garage on the application site)

(c) :That the Owners and their successors in title shall ensure that the said building shown coloured yellow and encompassed by the blue line on the said plan being the garage located on land adjacent to Parkfield At. Arvans aforesaid shall be used as a private domestic garage only ancillary to the use of the dwelling house situate at and known a3 Parkfield St. Arvans near Chepstow aforesaid and for no other use whatsoever from the date referred to in sub-clause (a) hereinbefore contained upon which said date the Owners complete the construction of fie garage on the application site shown encompassed by the red line on the said plan)

(d) that when the works relating to the erection of the proposed garage in the location shown coloured orar.ge on the said plan have been completed the said building shall not be used as a commercial garage or for any other purposes whatsoever until the use of the existing garage shown coloured yellow and located within the land encompassed by the blue line on the said plan being the central site has ceased in accordance with the terms of sub-clause (b) hereinbefore contained

(e) that when the use of the existing garage shown coloured yellow on the said

plan as a garage for commercial vehicles has ceased the proposed garage shown coloured orange on the said plan shall henceforth be used only as a garage for commercial vehicles and for no other use whatsoever

(f) for the purpose of the provisions of this instrument the words "use as a garage for commercial vehicles" shall be construed as being limited to the storage and repair of commercial vehicles owned and used by the Owners and their successors in title lessees and occupiers of the said application site and those commercial vehicles owned by the said Owners and their successors in title lessees and occupiers for the time being of the site

(g) that the Owners shall construct and provide a reversing bay on that part of the land shown encompassed by the blue line on the said plan being the central site which is located between the existing garage shown coloured"~yellow on the said plan and the public highway in order to ensure that motor vehicles may gain access to and egress from the site in a forward gear at all times all such works to be completed within a period of three months from the date upon which the commercial use of the garage ceases

(h) that notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1972 the proposed garage shown coloured orange on the said plan shall not be used for any purpose other than the use described in sub-clause (e) hereinbefore contained stated in Class III or Class IV to the said Order

(i) for the purpose of the provisions of this instrument the words 'domestic garage' shall be construed as being limited to the storage and repair/of a maximum of two private motor-vehicles owned and used by the owner of the dwelling house situate at and known as Parkfield St. Arvans near Chepstow aforesaid or his successors in title lessees or occupiers

(j) that they will jointly and severally observe and perform all conditions which are imposed in a planning permission issued by the Council pursuant to the planning application referenced under numbers 21350 hereinbefore recited and which said conditions are contained in the schedule hereto

(k) that on the land encompassed by the red line on the said plan being the application site a landscaping scheme which is duly approved by the Council shall be commenced in the first planting season following the substantial completion of the development of the site or fiat part of the site to which the landscaping relates

and duly completed to the satisfaction of the Council and all plants planted in accordance with the said scheme shall be staked maintained retained (and replaced in the case of failed growth) and shall comply strictly with the' provisions of the approved scheme.

3. This agreement shall be null and void if for any reason the Council decides not to grant planning pertains ion for the development proposed by the Owners hereinbefore recited.

4. The Owners with intent to bind the total area of land which is encompassed by the red line on the said plan being 'the application site' and the total area of land encompassed by the blue line on the said plan being 'the central site' which said areas of land are subject to the provisions of this agreement into whosoever hands the same may fall whether wholly or partly hereby jointly and severally covenant with the Council not to make any claim for compensation nor serve any Purchase Notice pursuant to the provisions contained in the Town a::d Country Planning Act 1971 on the Council in consequence of any refusal of permission to develop the said land in a manner which inconsistent with the covenants contained herein or of any conditions which may be attached to any subsequent permission for any development which are consistent with the covenants contained herein.

IN WITNESS whereof the Council has here unto caused their common seal to be affixed and the owners have here unto set their hands

and seals the day and year first before written

THE SCHEDULE

Conditions intending to apply to planning permissions

1. the development hereby permitted 3hall not be carried out otherwise than in complete accordance with the approved plans and specifications with the exception of the matters referred to in condition 2.

2. The east and west elevation shall be finished with smooth sand/cement render colour washed white or cream.

3. The proposed stonework shall be of local natural stone, properly dressed and coursed.

4. No refuse shall be disposed of by burning on the site.

5. There shall be no storage of materials, products or waste on land on the site outside the buildings hereby approved.

6. The driveway(s) shall be formed to a gradient not exceeding 1 in 8.

7. Nothing which may cause an obstruction to visibility nor any structure exceeding 0.9 m in height shall be placed within the visibility splay of 3 by 125 m notwithstanding the provisions of the Town and Country Planning General Development Order 1977-81..CP3

8. None of the buildings hereby permitted shall be occupied until a service road has been constructed to a standard as may be agreed with the Local Planning Authority

9. A turning space shall be provided within the site o enable vehicles to enter and leave the site in a forward direction.

10. The development hereby permitted must be begun not later than the expiration of five years beginning with the date on which the permission is granted.

11. The premised shall be used for the storage and rep-air of vehicles solely owned by the applicant and for no other purpose (including any other purpose in Class IV of the Town and Country Planning (Use Classes) Order 1972/ without the prior approval of the Local Planning Authority

12. The proposed new access shall be constructed in accordance with drawing No. 460/1A to the detailed retirements and satisfaction of the Local Planning Authority

13. The existing access shall be permanently closed off at its junction with the proposed access and shall not be used in connection with the proposed garage.

14. The hedge shall be replanted behind the visibility splays of 3 x 125 m within 3 months of the occupation of the proposed garage.

THE COMMON SEAL of MONMOUTH DISTRICT COUNCIL

was hereunto affixed

in the presence of:-

Chairman -

Head of.-Administrative & Legal Services

SIGNED SEALED AMD DELIVERED) / by the said DENNIS JAMES STEPHENS) (• in the presence of:-)

SIGNED SEALED AND DELIVERED) by the said WILLIAM ALAN STEPHENS) in the presence of)

Planning Sub Committee 18th April, 1984.

Present Cllr. K. Reece - Chairman
N. Price J. Lewis
D.W. Edwards L.
Biggs. L. Jones L.M.
Mr. Dixon C.C-

P.O.
D.C.C.
Mr. Hopton Agent.
Mr. Foxwell Agent
Mr. Stephens Snr and 2 .sons.
Mr. Woodrow Gwent C.C.
Mr. Sunderland C.C.

D.C.O. did introductions and outlined the application
Hopton I dont think the scheme needs much enlargement. Mr. Hanson has explained it.
It is not trying to enlarge Mr. Stephens empire but to move it out from the village and tidy that up and. this will be beneficial to the village. The garage in the village has had quite a few near misses with accidents. This is an enclosed area and will not be seen and I would think we are going back to what it must have been.

At this stage I went to car to look for notes for J.H.

D.C.O. I did not know that it was your intention to close the premises in the village? if you opened up here.
Applicant Yes that is my intention.
Biggs Are you prepared to enter into an agreement to that effect.
Applicant Yes.
Edwards Would you be prepared to alter the entrance to make it right angles with the road?
Agent There is a legal right of way from the farm gate to the road.
J. Lewis The lorries when they go out stay out all day do they?
Applicant Yes it would be 4 times in and 4 cut.
Reece Do you only do minimum repair work here?
Applicant Yes, it would all be done here except major thing? and these would go to the garage as at present.
Mr. Woodrow. You have mentioned exit to the right angle to the road. There is not very good visibility. We would want 95* and you could only get 45%.Cars tend to put their foot down on the straight road after being stuck behind lorries. I would agree the access at your existing premises is more dangerous than this one and if the other premises were closed and no similar activity carried on there we would withdraw our objection.
D.C.O. I did point out that if this was known it could be covered by a Section 52 agreement, this is a legal agreement (at this point P.O. requested information off file).
Jones The white lines could be extended on the corner if you are worried about people overtaking.
D.C.O. Have you any plans for extending the business in the future?
Applicant Not really, perhaps 1 or 2 vehicles in a few years but it would only be within this wall.
Reece You would have to put in a further application if that arose.
D.C.O. Once you gave permission in principle it is difficult to refuse.
Agent The vehicles are parked here and they come down to the village for maintenance and repair and they find this a bit of bother especially on Saturdays. It would be better if it was all up here.
Edwards Would you retain the wall and tidy the site up here?
C.S. If the access could be squared up it could be brought up further onto the straight part of the road.
Chairman If the Committee was to approve it that is something that could be discussed with the C.S. and applicant.
Chairman thanked the applicant agent etc for attending and they left the meeting.
P.O. We seem to be getting off the right track. It is the principle of development in this area of A.O.N.B. and not the access that we object to. It is the County Surveyor who objects to that.
Lewis I would not agree there is an established used on the site.
D.C.O. No it an unauthorized development.
Lewis Lewis I think the main question is a access here.
Reece I can remember lorries here since I was a boy sertainly since 1962.
C. C. Mr. Sunderland C.C. are behind the application most of the buildings will be behind the wall and the trees and it will get rid of the garage in the village* I have seen some very narrow misses
D. C.O. I think you see it as the lessor or two evils.
C. C. Certainly it is a problem.
Mr. Woodrow If this entrance can be conditioned it would be very beneficial.
Edwards If he takes the other building down it would tidy that site up.
P.O. 9ut it would be creating another building in the area of O.N.B and it is spreading out and is a precedent.
Lewis I don't think he needs to go higher than the wall. He could drop the ground level.
D.C.O. You might undermine the wall.
P.O. You will see it from the road.
Reece It could have green tiles.

D.C.O. It is repair of existing buildings and as you can see there is only one left and that is not capable of repair, so they will all be new buildings. We will be having plans in for those.

Mr. Woodrow (See letter on file from Gwent County Surveyor)

P.O. The former Gwent County Council and us have refused this site for housing and lorry depot before. The County Planning object on this application also.

This is open countryside in an are of outstanding natioanl beauty should we be even considering recommending approval of this type of development in this area.

D.C.O. If you are considering approval of this development, I would ask you to

a. Approach the applicant that the development should be dept to this site and not spread out to their other land in their ownership.

b. Screening

c. Existing access to go across field and land access to be made onto road at that point.

Mr. Woodrow I think the squared up access would be beneficial the vehicles have to turn through 120 130 o coming up from St. Arvans and I think respectable radius that could be avoided.

D.C.O. If the other premises were closed you would think it would be an overhaul benefit and you would withdrawn your objections.

Mr. Woodrow Yes that is so.

Lewis If you put the road in there it would leave a little patch, what would they do with that.

Reece They could plant trees.

Price What will they put on the roof, I think P.O. wants to stipulate that he should. (Inspection of the site of the suggested access took place). !

L.M. I would prefer to have the access where it is at the moment than alter it because people always put there foot down on that straight bit. If you extend the white lines it would be different.

Mr. Woodrow I would have to speak to a colleague of mine on that.

Lewis' I would recommend approval subject to the access being sorted out and a section 52 .

D.C.O. There is objections from the County Planning and the Highways. If they don't agree to the new access you will sustain the objection and issue a directive.

Woodrow We would have to consider this.

DCO Personal to Mr. Stephens business and Section 52 agreement to keep the existing premises closed and look into having the existing building pulled down and subject to new access.

1. New Access

2. Personal to Stephens Business.

3. Section 52.

P.O. You are creating a very serious precedent here.

J.Lewis Look at the top of the Star Pitch.,

Price I think this site has been established on this site for years you can't see it here and I think we should encourage these businesses.

P.O. Read out officers recommendation for refusal and reasons.

J.Lewis You won't change our minds.

P.O. I must read it and stress you're breaching a policy that has rarely ever been breached.

Proposed Approval subject to 2nd by Cllr. N. Price.

A. Personal to Mr. Stephens business.

B. New Access if possible.

C. Section 52 and demolish the existing premise.

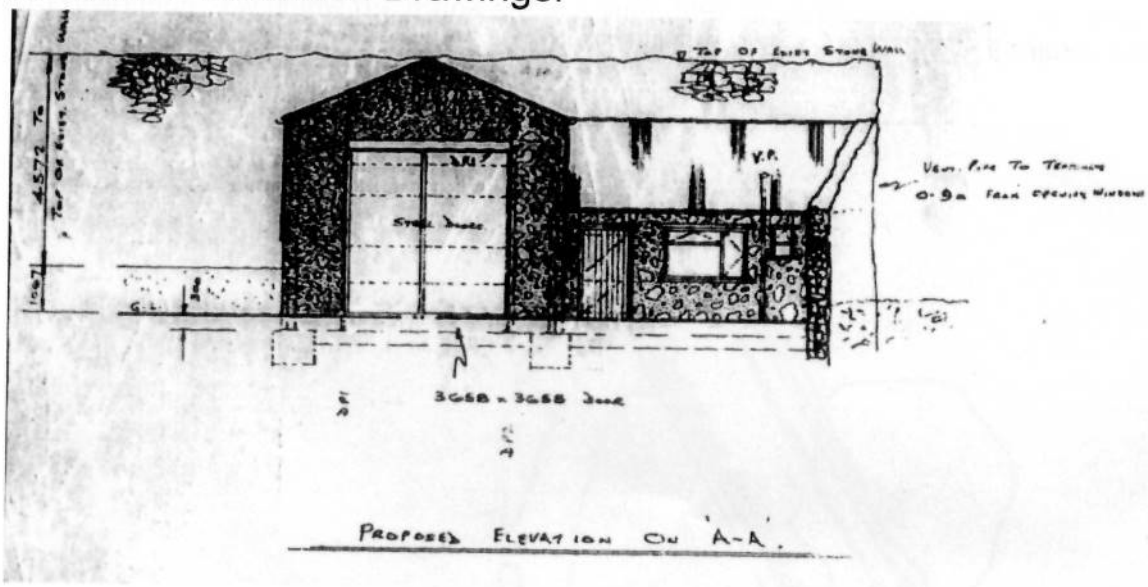
P.O. There will be no hedge left if you have a new access.

Chairman We can ask him to plant some more trees.

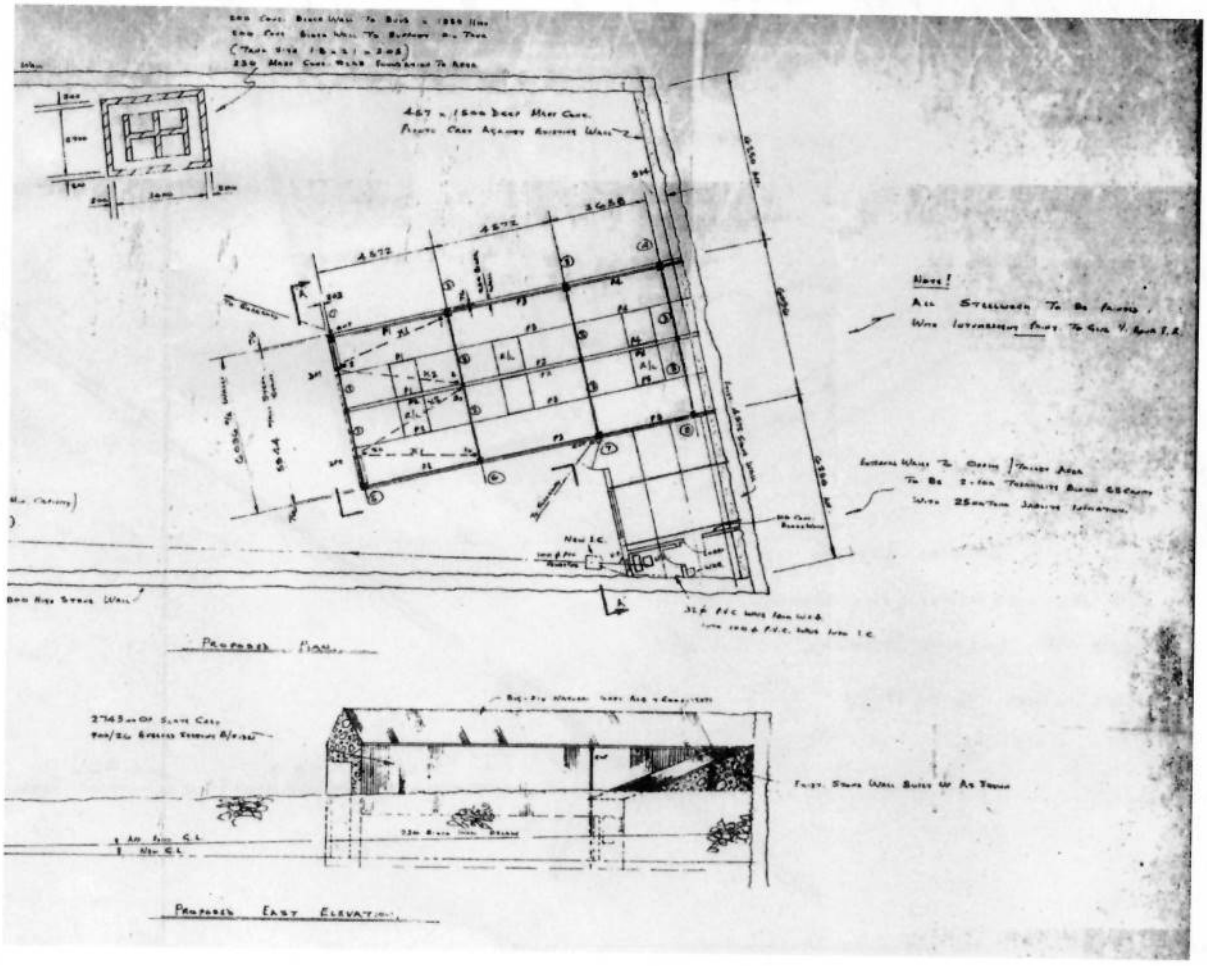
Resolved approve subject to the above.

Unanimous.

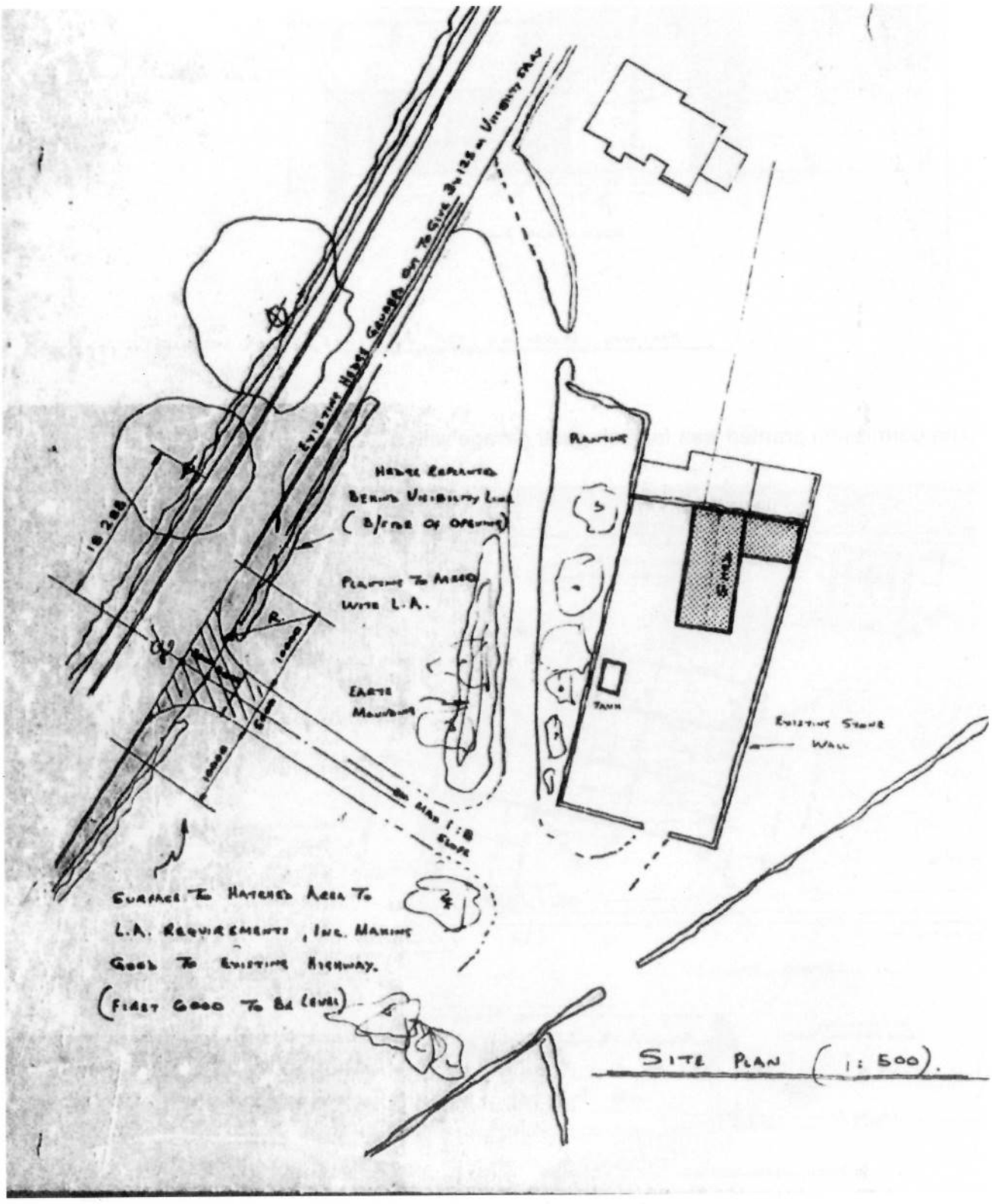
The 1985 Permission Drawings.



The permission granted was for a singular garage with a lean to at the side.



Clearly there is no existing building in 1985 only a stone courtyard which was supposed to have been retained.



Additional Policies in regard to DC/2012/00613 and DC/2013/00456

Re-determining Applications:

"In carrying out the re-determination the Committee will have to have regard to the issues raised in the litigation, notably the need to give reasons to support any grant of planning permission and the need to ensure that the consideration is based on accurate information."

Policy S12 – Efficient Resource Use and Flood Risk

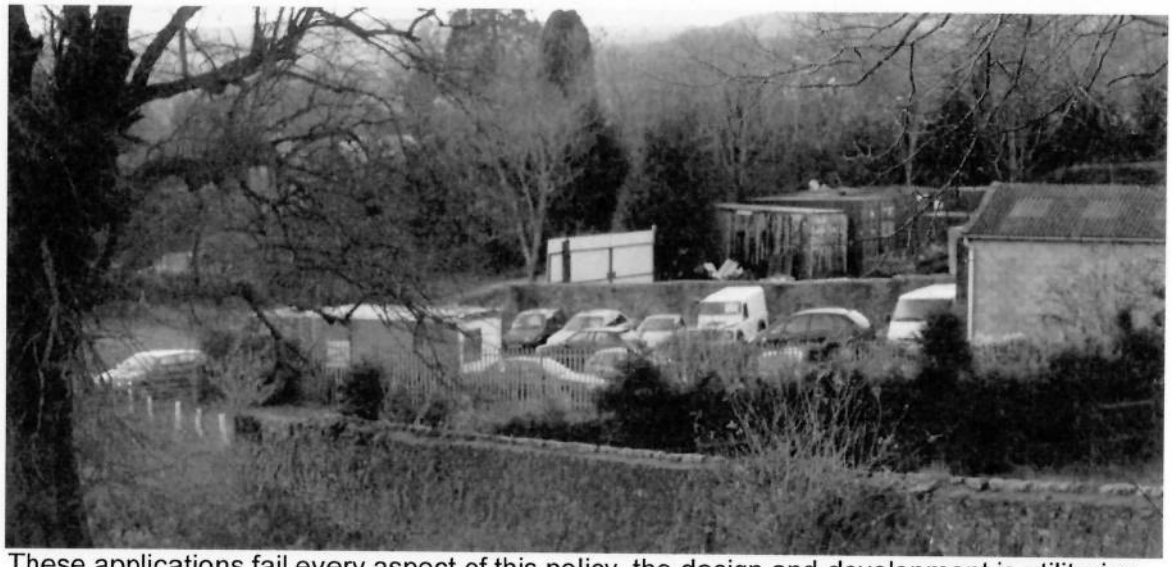
All new development must:

Demonstrate sustainable and efficient resource use – this will include energy efficiency/ increasing the supply of renewable energy, sustainable construction materials/ techniques, water conservation/ efficiency and waste reduction;

The application has not demonstrated this Policy at all on these developments, both of which must be considered as new developments, despite the fact they are retrospective applications..

Policy S17 – Place Making and Design

Development shall contribute to creating high quality, attractive and sustainable places. All development proposals must include and promote high quality, sustainable inclusive design which respects local distinctiveness, respects the character of the site and its surrounding in order to protect and enhance the natural, historic and built environments and to create attractive, safe and accessible places



These applications fail every aspect of this policy, the design and development is utilitarian

industrial, ugly and detracts from the local distinctiveness and the character surrounding area. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this.

Policy RE2 - The Conversion or Rehabilitation of Buildings in the Open Countryside for Employment Use

Proposals for the conversion or rehabilitation of existing buildings in the open countryside, to employment use will be permitted provided that all the following criteria are met:

a) the form, bulk and general design of the proposal, including any extensions, respect the rural character and design of the building;

b) in respect of farm diversification proposals, any necessary rebuilding work should respect or be in sympathy with the location and traditional characteristics of the building; in all other cases the buildings should be capable of conversion without major or complete reconstruction;

c) the more isolated and prominent the building the more stringent will be the design requirements with regard to new door and window openings, extensions and means of access, service provision and curtilage, especially if located within the Wye Valley AONB;

d) the conversion of modern farm and forestry buildings will only be permitted if the building has been used for its intended purpose for a significant period of time. Particularly close scrutiny will be given to proposals relating to buildings that are less than 5 years old, or which are known to have been used for their intended purpose for less than 5 years, and where there has been no change in farming or forestry activities on the unit since the building was erected permission may be refused;

e) the proposal including curtilage and access, is in scale and sympathy with the surrounding landscape and does not require the provision of unsightly infrastructure and ancillary buildings; and

f) the building is capable of accommodating the proposed use without substantial extension.

The above criteria will also be applied to proposals to extend buildings that have already been converted.

These applications will not provide <u>any</u> employment therefore this policy is not met.

Even so these applications fail every aspect of this policy. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this.

Policy LC1 - New Built Development in the Open Countryside

There is a presumption against new built development in the open countryside, unless justified under national planning policy and/or LDP policies S10, RE3, RE4, RE5, RE6, T2 and T3 for the purposes of agriculture, forestry, 'one planet development', rural enterprise, rural / agricultural diversification schemes or recreation, leisure or tourism.

In such exceptional circumstances, new built development will only be permitted where all the following criteria are met:

a) the proposal is satisfactorily assimilated into the landscape and complies with Policy LC5;

b) new buildings are wherever possible located within or close to existing groups of buildings;

c) the development design is of a form, bulk, size, layout and scale that respects the character of the surrounding countryside; and

d) the development will have no unacceptable adverse impact on landscape, historic / cultural or geological heritage, biodiversity or local amenity value

These applications are both in the Open Countryside according to the UDP upon which all planning decisions must be based. These applications also fail Policy LC5 see below.

These applications are not for "*the purposes of agriculture, forestry, 'one planet development', rural enterprise, rural / agricultural diversification schemes or recreation, leisure or tourism*" so the presumption should be against these applications, and so these applications fail this policy. . Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this. The site is isolated from other buildings, and the development design does not respect the surround countryside at all. The development will have an adverse effect on the landscape, the historic and cultural heritage and the biodiversity and the local amenity of the neighbouring residential property. This development is within an area subject to international and national landscape designation. being within the Wye Valley AONB. It is also within an area identified as being of historical and cultural importance.

Policy LC5 – Protection and Enhancement of Landscape Character

Development proposals that would impact upon landscape character, as defined by LANDMAP Landscape Character Assessment, must demonstrate through a landscape assessment how landscape character has influenced their design, scale, nature and site selection.

Development will be permitted provided it would not have an unacceptable adverse effect on the special character or quality of Monmouthshire's landscape in terms of its visual, historic, geological, ecological or cultural aspects by:

a) Causing significant visual intrusion;

b) Causing significant adverse change in the character of the built or natural landscape;

c) Being insensitively and unsympathetically sited within the landscape;

d) Introducing or intensifying a use which is incompatible with its location;

e) Failing to harmonise with, or enhance the landform and landscape;

and /or

f) Losing or failing to incorporate important traditional features, patterns, structures and layout of settlements and landscapes of both the built and natural environment.

Particular emphasis will be given to those landscapes identified through the LANDMAP Landscape Character Assessment as being of high and outstanding quality because of a certain landscape quality or combination of qualities.

These applications fail every aspect of this policy as above. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this. This development is within an area subject to international and national landscape designation. being within the Wye Valley AONB. It is also within an area identified as being of historical and cultural importance.

This area is classified as "outstanding" according to the landmap assessment.

"High Key characteristics of landscape are very vulnerable to change and/or have significant value as a landscape resource. Development should not be taking place in these areas."

It is visually incongruous in the surrounding landscape, being urban and utilitarian, and of very poor design. It detracts for the beauty of the rest of the area, and is situated in a very prominent position. The use is total unsuitable for this location, it's industrial B2 use in a outstanding rural area.

HISTORIC LANDSCAPES

6.3.48 Planning Policy Wales sets out national development control policy on Historic Landscapes and is not repeated here. Chapter 6 Conserving the Historic Environment should be referred to for guidance on protecting Historic Landscapes and their setting.

6.3.49 Part 2 of the Register of Landscapes, Parks and Gardens of Special Historic

Interest in Wales identifies the following landscapes within the plan area:

Blaenavon

Gwent Levels

Lower Wye Valley

These applications fail every aspect of this policy as above. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this.

The whole of the lower Wye Valley, from Goodrich to Chepstow, has been included in the **Register of Landscapes of Outstanding Historic Interest** in Wales.

Further this application is directly adjacent to the grade 1 listed Historic parkland of Piercefield park, and the Racecourse.

Chapter 6 Conserving the Historic Environment states:

"6.1.1 It is important that the historic environment – encompassing archaeology and ancient monuments, listed buildings, conservation areas and historic parks, gardens and landscapes is protected."

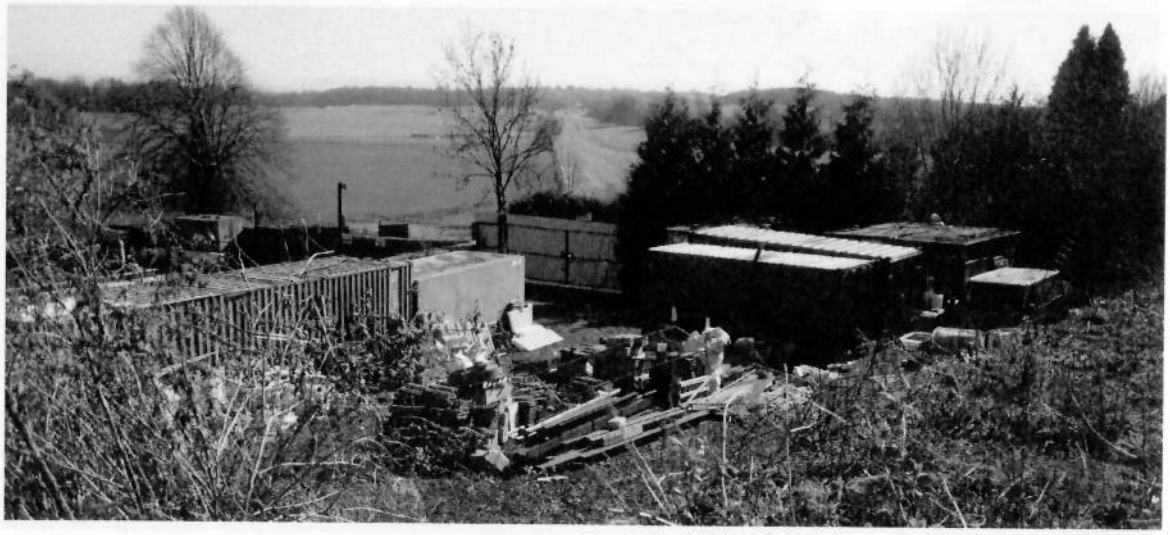
The Welsh Government's objectives in this field are to: preserve or enhance the historic environment, recognising its contribution to economic vitality and culture, civic pride and the quality of life, and its importance as a resource for future generations"

This area has been identified as being within a registered area included in the "Register of Landscapes of Outstanding Historic Interest in Wales." it is therefore an area that needs to be preserved and enhanced.

It goes on:

"6.1.2 Local planning authorities have an important role in securing the conservation of the historic environment while ensuring that it accommodates and remains responsive to present day needs.

This is a key aspect of local authorities' wider sustainable development responsibilities which should be taken into account in both the formulation of planning policies and the exercise of development management functions."



Policy NE1 – Nature Conservation and Development

Development proposals that would have an significant adverse effect on a locally designated site of biodiversity and / or geological importance, or a site that satisfies the relevant designation criteria, or on the continued viability of priority habitats and species, as identified in the UK or Local Biodiversity Action Plans or Section 42 list of species and habitats of importance for conservation of biological diversity in Wales, will only be permitted where:

a) the need for the development clearly outweighs the nature conservation or geological importance of the site; and

b) it can be demonstrated that the development cannot reasonably be located elsewhere.

Where development is permitted, it will be expected that any unavoidable harm is minimised by effective avoidance measures and mitigation. Where this is not feasible appropriate provision for compensatory habitats and features of equal or greater quality and quantity must be provided.

Where nature conservation interests are likely to be disturbed or harmed by development proposals, applications must be accompanied by an ecological survey and assessment of the likely impact of the proposal on the species /habitats, and, where necessary, shall make appropriate provision for their safeguarding.

Development proposals shall accord with nature conservation interests and will be expected to:

i) Retain, and where appropriate enhance, existing semi-natural habitats, linear habitat features, other features of nature conservation interest and geological features and safeguard them during construction work;

ii) Incorporate appropriate native vegetation in any landscaping or planting scheme, except where special requirements in terms of purpose or location may dictate otherwise;

iii) Ensure the protection and enhancement of wildlife and landscape resources by appropriate building design, site layouts, landscaping techniques and choice of plant species

iv) Where appropriate, make provision for on-going maintenance of retained or created nature conservation interests.

These applications fail every aspect of this policy as above. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this.

The fact this site has already been developed should not prevent an assessment based upon the surrounding countryside being made.

The evidence from the surrounding areas shows that this is an ecologically sensitive area and there should be no development of this sort here at all. Extra surveys have been requested, bat surveys particular should have been carried out **BEFORE** development, this not being done is unforgivable at best possibly criminal.

The protected species identified around this site by the ecology report written for the racecourse CS/0029 and the assessment on the fields which adjoin this site and the assessment of the field adjacent to the A466 directly opposite the site CS/0221have been identified to include:

European protected species:

Greater horseshoe bat, Lesser horseshoe bat, Dormouse (potential to be on site only)

Myotis bat (unspecified species), Great crested newt (potential to be on site only)

Soprano pipistrelle, Common pipistrelle, Natterer's bat, Brown long-eared bat, Whiskered bat, Noctule

UK protected species:

Bluebell, Badger, Common frog, Breeding birds, Slow worm,.Grass snake.

The removal of fields in such an important area and the laying down of so much hard standing is totally at odds with the policies set out and should be refused and as it's a retrospective application, the owner should be made to reinstate it all. This is simply not acceptable behaviour.

Policy DES3 – Advertisements

Proposals for advertisements will only be permitted where: advertisements;

b) if located within the open countryside they would not unacceptably detract from the rural setting of the locality;

c) if located in a Conservation Area, they would not unacceptably detract from the character or appearance of the area and if a hanging sign, would not result in undue visual clutter. They should be of an appropriate size and materials for the building from which they hang with a traditional bracket;

d) having regard to the existing number and siting of advertisements in the locality the proposal would not result in an unacceptable clutter of

e) if located within the open countryside or Conservation Areas, illumination is only appropriate to uses that reasonably expect to trade at night.

These applications have had advertisements that Monmouthshire's Planning Officer Paula Clarke has considered to not need planning permission.

She said in an E-mail dated 8th May 2012:

"I would advise you that the sign would be deemed consent under Class 6 of the Advertisement Regulations, therefore express consent from the Council would not be required in this instance."

Therefore we have to presume that as far as enforcement is concerned at MCC, this advertising will be permitted, even although it has not been applied for.

This advertising does not meet the criteria under class 6 of the Advertisement Regulations class 6, this applies to Courtyards, it is not in a courtyard, and the public right of way runs past it. The dictionary definition is :forecourt is a courtyard in front of a building

These applications fail every aspect of this policy as above. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this.

Policy S13 in regard to DC/2012/00613 and DC/2013/00456

Policy S13 – Landscape, Green Infrastructure and the Natural Environment states:

Development proposals must:

1. Maintain the character and quality of the landscape by:

(i) identifying, protecting and, where appropriate, enhancing the distinctive landscape and historical, cultural, ecological and geological heritage, including natural and man-made elements associated with existing landscape character;

(ii) protecting areas subject to international and national landscape designations;

(iii) preserving local distinctiveness, sense of place and setting;

(iv) respecting and conserving specific landscape features, such as hedges, trees and ponds;

(v) protecting existing key landscape views and vistas.

2. Maintain, protect and enhance the integrity and connectivity of Monmouthshire's green infrastructure network.

3. Protect, positively manage and enhance biodiversity and geological interests, including designated and non-designated sites, and habitats and species of importance and the ecological connectivity between them.

4. Seek to integrate landscape elements, green infrastructure, biodiversity features and ecological connectivity features, to create multifunctional, interconnected spaces that offer opportunities for recreation and healthy activities such as walking and cycling.

These applications fail every aspect of this policy as above. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this.

This development is within an area subject to international and national landscape designation. being within the Wye Valley AONB. It is also within an area identified as being of historical and cultural importance.

It fails everyone of these policies and unless there are material reasons that mitigate, (none at all have been provided) this the applications should be failed.

The National Planning Policy Framework (NPPF) for England has a "presumption in favour of sustainable development". However this does not automatically apply in AONBs because (under NPPF paragraph 14 footnote 9) there are other specific policies in the NPPF that indicate that great weight should be given to the purpose of conserving and enhancing the natural beauty of the AONB and major development restricted (paragraphs 115 & 116). This does not constitute a favour against sustainable development in AONBs and indeed reinforces that change (i.e. development) will occur in many aspects of life and the environment but that where change does occur it must be managed in a manner which contributes to a better quality of life for current and future generations, without undermining the quality of the natural environment.

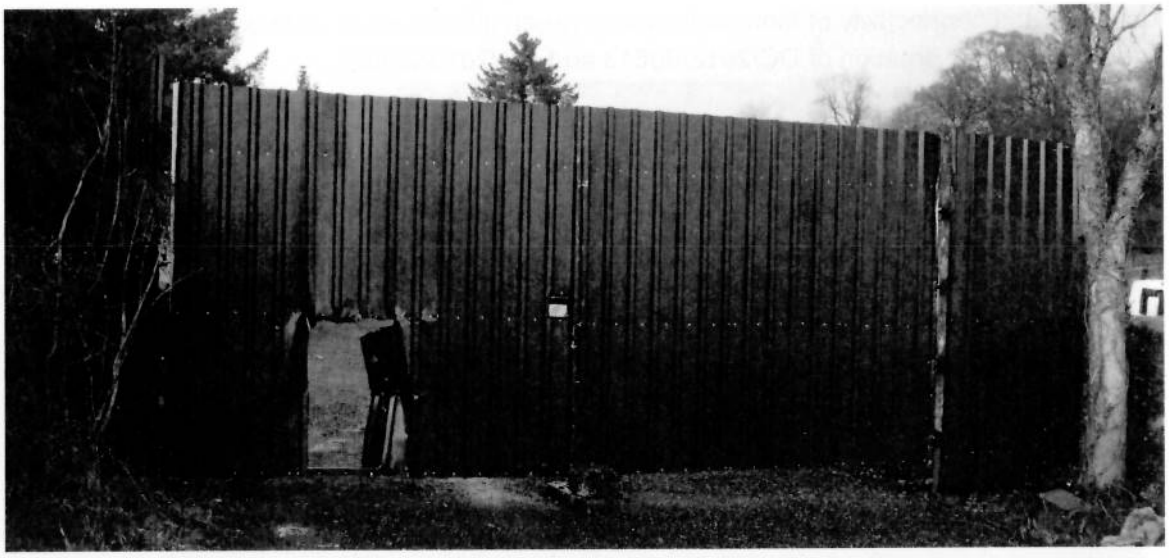
The European Landscape Convention (ELC) promotes the protection, planning and management of landscapes and reinforces the approach to landscape character

Fields have been bulldozed into banks, to form a large flat area of hard-standing, trees removed and hardstand of the most basic kind extensively applied over the majority of the site. Shipping containers, building materials, vehicles, including end of life vehicles stored in the open, bits of cars, domestic appliances and other rubbish stored in full view.

The few trees that have been planted, have been planted as a single row, so close to a protected stone wall, it will cause that wall damage and will provide very little in the way of screening of the site and will it provide only minimal ecological benefit and will not enhance the integrity and connectivity of Monmouthshire's green infrastructure network. In deed the

integrity and connectivity of Monmouthshire's green infrastructure network has been destroyed in the creation of DC/2012/00613 and DC/2013/00456.

The gates and buildings are blatantly ugly utilitarian, out of scale, and of very poor design. Simply painting them green does not overcome this, nor does planting a single row of trees on a small part of the border.



Objection to DC/2012/00613 and DC2013/00456

DES1 – General Design Considerations

"All development should be of a high quality sustainable design and respect the local character and distinctiveness of Monmouthshire's built, historic and natural environment. Development proposals will be required to:

a) ensure a safe, secure, pleasant and convenient environment that is accessible to all members of the community, supports the principles of community safety and encourages walking and cycling;

b) contribute towards sense of place whilst ensuring that the amount of development and its intensity is compatible with existing uses;

c) respect the existing form, scale, siting, massing, materials and layout of its setting and any neighbouring quality buildings;

d) maintain reasonable levels of privacy and amenity of occupiers of neighbouring properties, where applicable;

e) respect built and natural views and panoramas where they include historical features and / or attractive or distinctive built environment or landscape;

f) use building techniques, decoration, styles and lighting to enhance the appearance of the proposal having regard to texture, colour, pattern, durability and craftsmanship in the use of materials;

g) incorporate and, where possible enhance existing features that are of historical, visual or nature conservation value and use the vernacular tradition where appropriate;

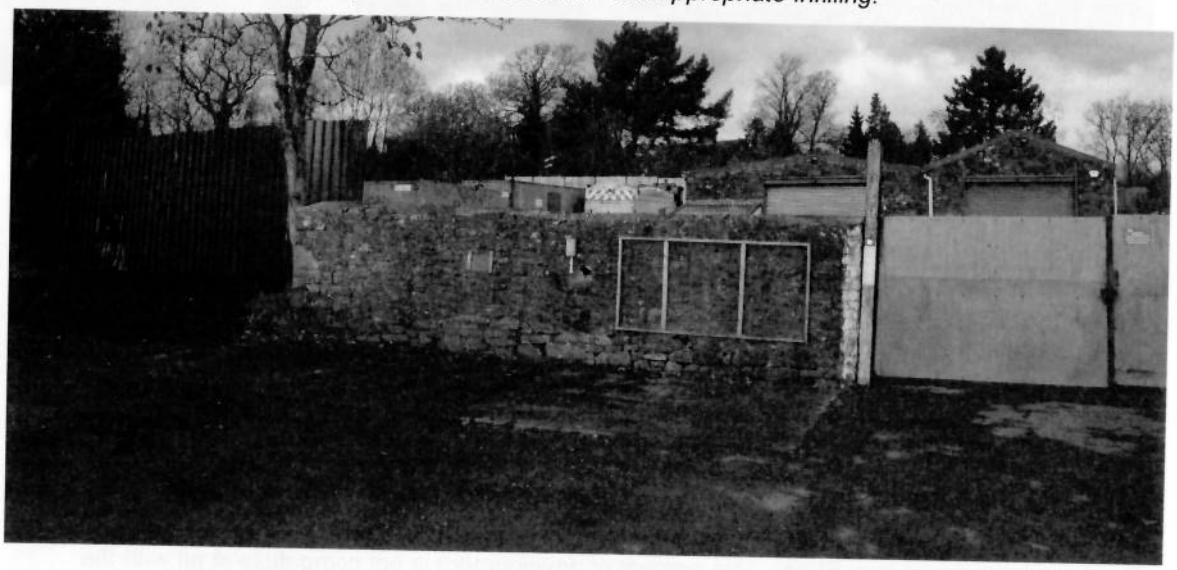
h) include landscape proposals for new buildings and land uses in order that they integrate into their surroundings, taking into account the appearance of the existing landscape and its intrinsic character, as defined through the LANDMAP process. Landscaping should take into account, and where appropriate retain, existing trees and hedgerows;

i) make the most efficient use of land compatible with the above criteria, including that the minimum net density of residential development should be 30 dwellings per hectare, subject to criterion l) below ;

j) achieve a climate responsive and resource efficient design. Consideration should be given to location, orientation, density, layout, built form and landscaping and to energy efficiency and the use of renewable energy, including materials and technology;

k) foster inclusive design;

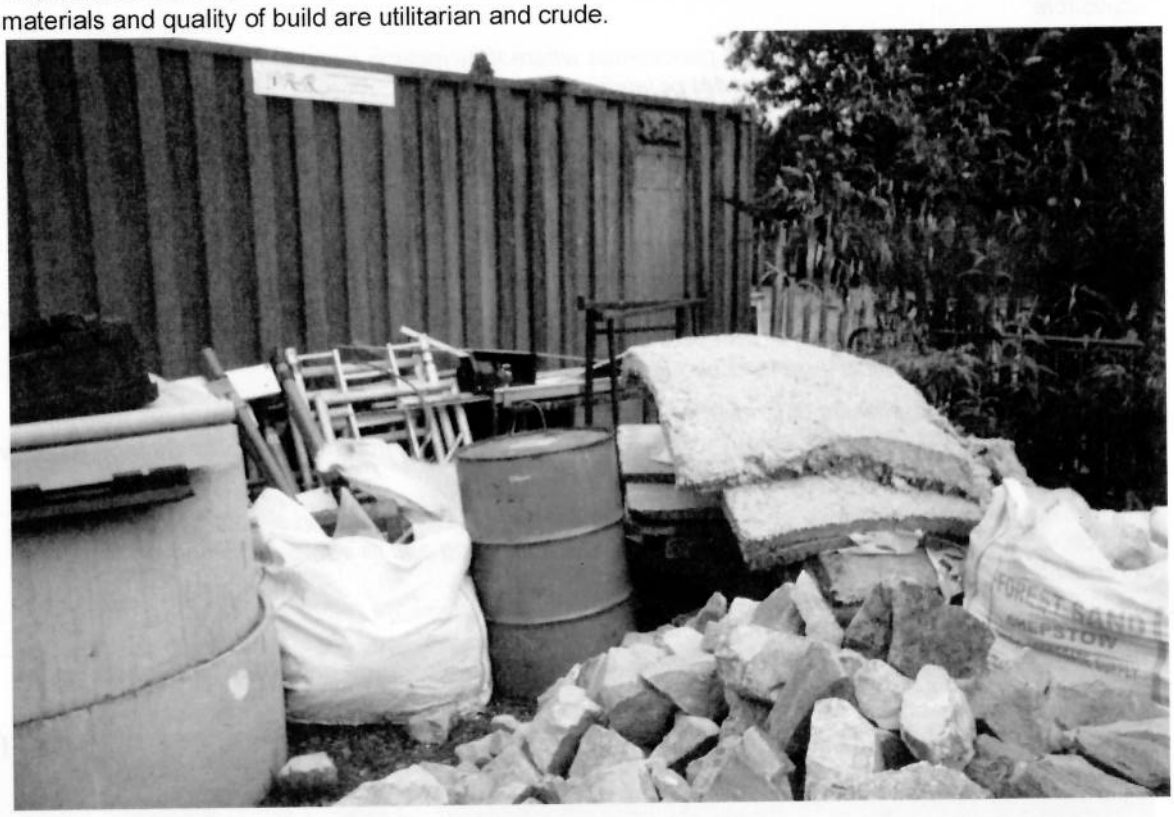
l) ensure that existing residential areas characterised by high standards of privacy and spaciousness are protected from overdevelopment and insensitive or inappropriate infilling."



These applications fail every aspect of this policy as above. Any application that fails policy must be refused unless material considerations indicate otherwise. No material consideration has been proposed that outweighs this.

The National Planning Policy Framework (NPPF) for England has a "presumption in favour of sustainable development". However this does not automatically apply in AONBs because (under NPPF paragraph 14 footnote 9) there are other specific policies in the NPPF that indicate that great weight should be given to the purpose of conserving and enhancing the natural beauty of the AONB and major development restricted (paragraphs 115 & 116). This does not constitute a favour against sustainable development in AONBs and indeed reinforces that change (i.e. development) will occur in many aspects of life and the environment but that where change does occur it must be managed in a manner which contributes to a better quality of life for current and future generations, without undermining the quality of the natural environment.

No one could possibly ever consider this as a high quality development, it does nothing to respect the local character and distinctiveness of Monmouthshire's built, historic and natural environment. The materials and quality of build are utilitarian and crude.



a) this site does not make the immediate area secure nor pleasant. The broken cars and parts as well as rubbish everywhere gives an impression of industrial dilapidation. It encourages crime. We have reported many instances of crime on this site, including drug usage. The site is secluded except the residential property next door, and is open for criminals to drive into and indeed this has been the case. The sites are away from the potential customers and do nothing to encourage walking nor cycling. Indeed many will be put off walking using the footpaths through the site, as it presents an undesirable facade with vehicles in conflict with walkers.

b) The site far from contributing to a sense of place detracts from it.The applications are for a very large area of the site, The original permission in 1985 which was against the advice of the planners at the time, was for 0.08 Ha. The new applications cover an area of 0.4429 Ha.

This is an increase of <u>over 553%.</u> This amount of development is not compatible at all with the existing uses (that is the uses it had as if no development had taken place, as this is a retrospective

application)

c) These developments are of a very poor standard of quality and design. How could anyone say the industrial sheet metal gates are possibly of good design. Nor the roller shutter doors, nor the "wash area", nor the hard standing, nor any of the metal gates, nor the vehicles parked in the open in full view. They do nothing to respect the existing form of the only neighbouring property, a small stone cottage with a slate roof, nor respect the listed stone walls in abundance in the immediate area.

d) The privacy and amenity of the neighbouring property has/will be extremely compromised.There has been 2 Breach of Conditions Notices served on this site.One of these was because of scrapping vehicles see, this video:

https://www.youtube.com/watch?v=ocvVWntCyqc

We have submitted over 200 instances of breaching hours conditions.

There has been a notice served by Environmental Health in regards to Odour Nuisance.

We have submitted numerous logs in regards to Noise Nuisance.

We have submitted numerous logs in regards to Light Nuisance.

We have submitted numerous logs in regards to Smoke Nuisance; See these videos for example:

https://www.youtube.com/watch?v=EaIXudbELMo

http://youtu.be/PDEpKhAehoM

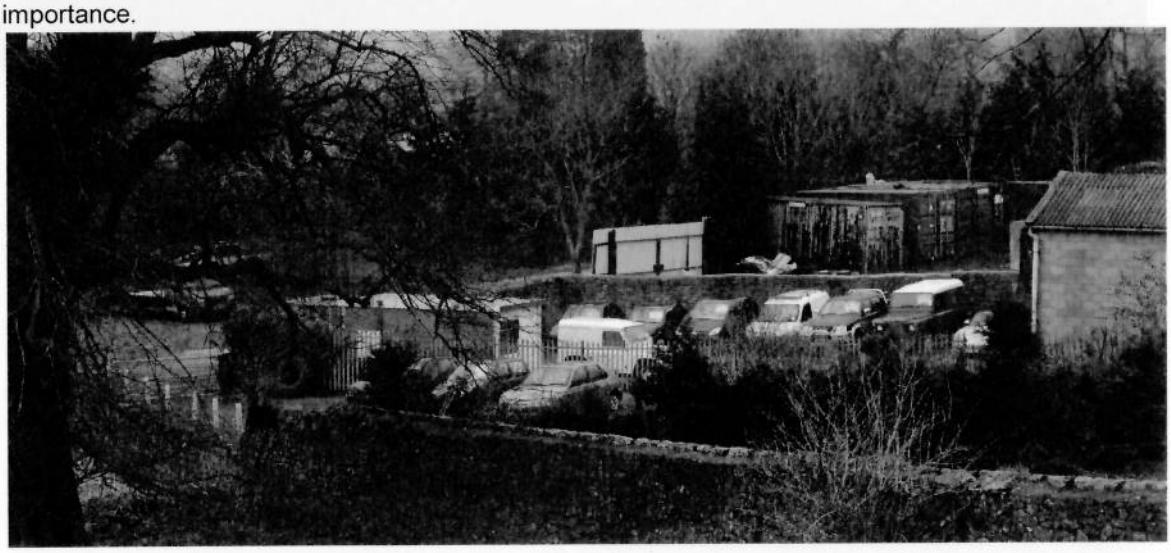
http://youtu.be/2c06Cv4RqOw

We have submitted numerous breaches regarding the serving of vehicles outside of the compound. We have complained of anti-social behaviour on this site, the revving of vehicles, the wheel spinning, the sounding of horns, etc Imagine using the foot path at these times. See these videos for instance:

https://www.youtube.com/watch?v=4y5MGtRr8Ug

https://www.youtube.com/watch?v=WVuqn9g3gn4

e) These applications in no conceivable way respect the built and natural views and panoramas in the landscape, which is an area subject to international and national landscape designation, being within the Wye Valley AONB. It is also within an area identified as being of historical and cultural importance.



f, g, h, j and k) There has been no consideration in the use of building techniques, decoration, styles and lighting to enhance the appearance of the proposal. Everything has been done cheaply and using very basic materials in a very crude way to produce a utilitarian incongruous development completely at odds with the surrounding area. this being an area subject to international and national landscape designation, being within the Wye Valley AONB. It is also within an area identified as being of historical and cultural importance.

The has consequently been no regard what so ever to texture, colour, pattern, durability and craftsmanship in the use of materials. Nor any consideration of design at all, let alone to enhance the landscape.

l) ensure that existing residential areas characterised by high standards of privacy and spaciousness are protected from overdevelopment and insensitive or inappropriate infilling.

The applications for both of these sites are as close to the border of the neighbouring residential property as they could be. There is no reason for this given that there are other locations within the ownership of the applicants that would be further away.

Tourism: Objections to DC/2012/00613 and DC/2013/00456

Policy S11 – Visitor Economy states:

"Development proposals that provide and /or enhance sustainable forms of tourism will be permitted subject to detailed planning considerations.Development proposals that would have an unacceptable adverse impact on features and areas of tourism interest and their settings, or that would result in the unjustified loss of tourism facilities will not be permitted."

These sites fail this policy.

Tourism is of major economic significance within Monmouthshire.

Areas of Outstanding Natural Beauty (AONBs) are some of our finest landscapes. They are cherished by residents and visitors alike and allow millions of people from all walks of life to understand and connect with nature.

Wye Valley Area of Outstanding Natural Beauty (AONB) Management Plan 2014-2019:

*"The lower Wye Valley remains nationally renowned as a **destination for tourism and recreation** with 2.2 million tourist days per annum. Overnight stays, while common, are outweighed by day trips with many people travelling for less than 2 hours to visit the Wye Valley. Amongst these visitors are some of the **29,300 residents** living and/or working in the market towns, villages and hamlets of the Wye Valley AONB"*

*"The **high quality environment** of the lower Wye Valley makes a significant contribution to the area's economic development. The natural beauty of the area is recognised as **contributing to economic activities and well-being** such as tourism and inward investment, as well as the overall **quality of life**, making the Wye Valley a more attractive place in which to live and work."*

"The Wye Valley Area of Outstanding Natural Beauty (AONB) will be a landscape:

- *where the natural and historic assets are in good order, in fully compatible uses, and not denigrated by unsuitable change with a robust mosaic of inter-connected semi natural habitats for native wildlife, particularly around grassland, wetland and woodland*
- *which provides work for local people, who make good use of the varied resources the area has to offer"*

This is an area of tourism and this development does/will have an unacceptable adverse impact upon tourism coming to this area. The footpath running through (for over 60 Meters) and the 2 paths adjacent to the site (with the site in full view for over 100 meters and 300 meters) form part of the network of paths as part of the Wye Valley walk.

MCC promoted "Pathcare" Route 5, uses these footpaths though and adjacent to these sites. These sites have a negative impact for over 160 meters of this route. The Giants Cave and Wye Valley Walk is signposted through this site, this is hardly a good nor favourable introduction to the Area of Outstanding Natural Beauty. The first part of this footpath is blocked by the unauthorised development of DC/2012/00613.

This has been highlighted in detail in another part of my objection regarding footpaths.

This does not encourage anyone to use this footpath, particularly the tourist, quite the reverse it puts people off.

The tourist visiting therefore has to walk through an industrial site, sharing the only available path with cars and HGV's .

The vehicles not only have to drive along the route of the available footpath but also cross the footpath to enter or exit both sites. The path itself is very dusty and vehicles passing cause this dust to rise.

More importantly any vehicle entering or exiting the site has to cross the path perpendicularly, through gates that do not provide good visibility splays. As activities occur both sides of the footpath. This means there is considerable possibility of conflict between the users of the path and the public using the public rights of way.

There have been no figures provided, no survey done to access the vehicular impact this site will have.

The activities proposed are industrial, B2 use, these are likely to lead to significant noise, dust, smoke and odour which will have a detrimental effect upon the enjoyment of tourists to this area.

Public Footpath

There is a Public Right of Way 379/32/1 (this is classed as a "Highway") that runs through both these sites DC/2013/ 00456 and DC/2012/00613 The correct route of this highway is not shown on the map and indeed has been blocked.

This has been blocked for a considerable period, the signs have been allowed to become covered by vegetation, there is a fence and metal gate preventing access.

This was discussed in the previous applications on this site where the correct route was not taken into consideration.

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.

I note in the report written by Anthony Jellard Associates, they too have got this wrong amongst other thing completely wrong.

I have tried to get this resolved with Monmouthshire County Council, but all my efforts so far have been ignored.

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".

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."

There has been no consideration for the right of way to remain open and unobstructed until the statutory procedures authorising closure or diversion have been completed. This is a retrospective application, first made in 2011, it is inexcusable that the footpath has been ignored all this time. The applicant has had informatives on every application for this site, but has ignored all of them. On the application form when asked:"*Do the proposals require any diversions/extinguishments/or diversions and/or creations of Rights of Way?"* The applicant said no.

"7.11 <u>The grant of planning permission does not entitle developers to obstruct a public right of way.</u> It cannot be assumed that because planning permission has been granted that an order under section 247 or 257 of the 1990 Act, for the diversion or extinguishment of the right of way, will invariably be made or confirmed.

Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect. The requirement to keep a public right of way open for public use will preclude the developer from using the existing footpath, bridleway or restricted byway as a vehicular access to the site unless there are existing additional private rights. Planning authorities must ensure that applicants whose proposals may affect public rights of way are made aware of the limitations to their entitlement to start work at the time planning permission is granted. Authorities have on occasion granted planning permission on the condition that an order to stop-up or divert a right of way is obtained before the development commences. The view is taken that such a condition is unnecessary in that it duplicates the separate statutory procedure that exists for diverting or stopping-up the right of way, and would require the developer to do something outside his or her control."

These applications should not have been validated as they fail to show the correct line of the footpath nor to show the footpaths which will be affected by this site.

Copy of the Working Map of Public Rights of Way

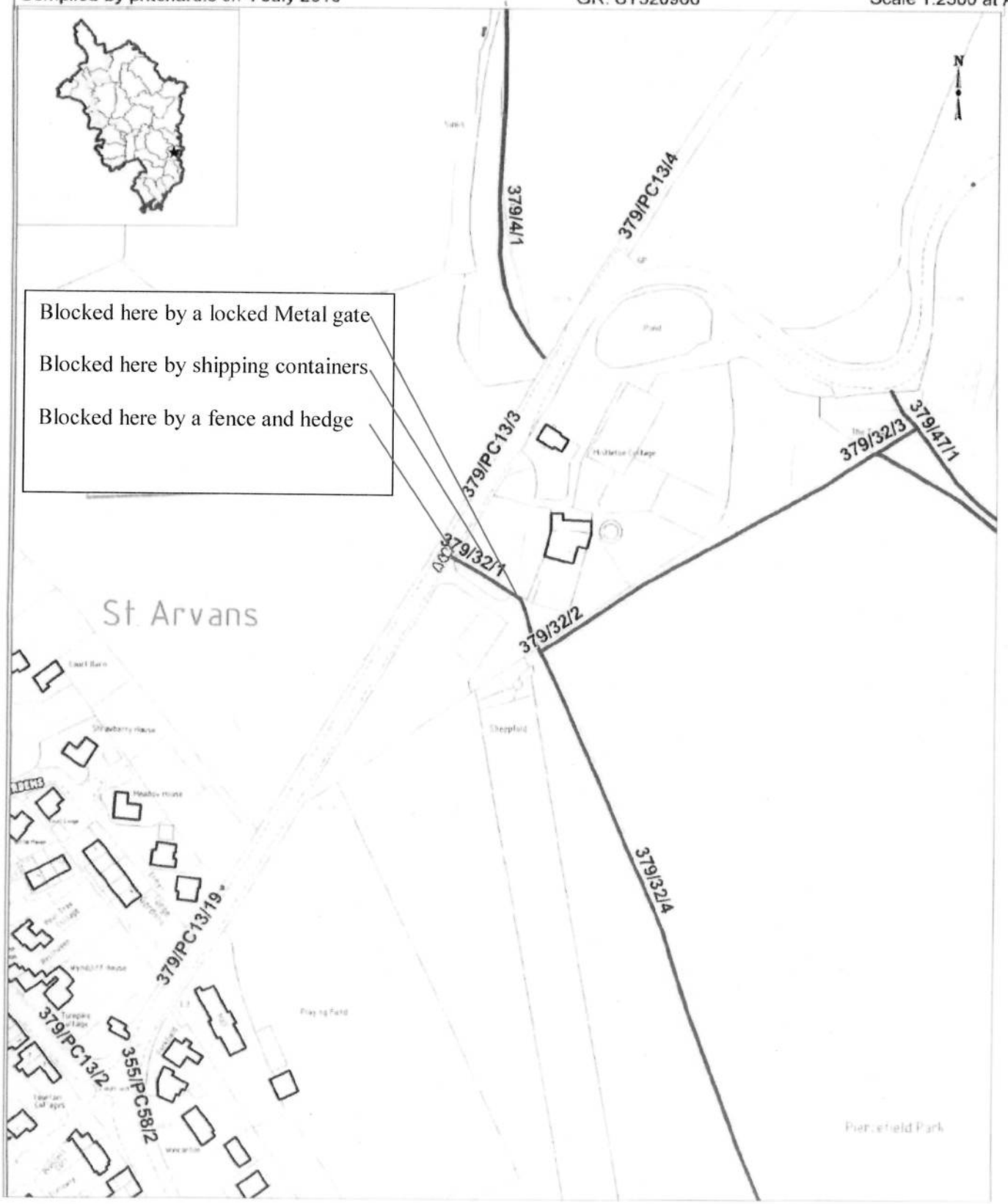
Public Rights of Way
Monmouthshire County Council
PO Box 106
Caldicot
NP26 9AN

monmouthshire
sir fynwy

Compiled by pritchard.s on 4 July 2013

GR: ST520966

Scale 1:2500 at A4



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Landscape Assessment

The Landscape Assessment done by Anthony Jellard Associates is extremely flawed and biased, to such an extent it should be removed from this site.

The most fundamental aspect of this site, in terms of Landscape Assessment is that it is within an AONB. This is stressed in the Landmap notes upon the making of a Landscape Assessment as being fundamental as it's designation has already been determined the Countryside Commission for Wales. In its notes in regard to this says:

"Areas of Outstanding Natural Beauty (AONBs) are areas whose distinctive landscape character and natural beauty are so outstanding that it is in the nation's interest to safeguard them. The primary purpose of an AONB designation is to conserve and enhance natural beauty. The needs of agriculture, forestry, rural industries and the economic and social needs of local communities should also be taken into consideration. The demand for recreation can be met but must be consistent with the conservation of natural beauty."

It is in the National Interest to protect these areas from unsuitable development.

This is unsuitable development.

Anthony Jellard Associates goes on in regard to DC/2012/00613

"3.2 The site is very largely contained visually within a screen of vegetation on the western and southern boundaries, by the buildings of the adjoining garage to the east and the buildings of the commercial cattery business, along with a horse walker and stables, to the north east. Solid metal gates secure the entrance on the southem boundary adjacent to the public footpath."

and DC/2013/00456:

"3.2 The site is very largely contained visually within a screen of vegetation on the western and southern boundaries, by the buildings of the commercial cattery business, along with a horse walker and stables, to the north and by some edge of parkland tree cover to the east.

Solid metal gates, with stone walling on either side, secure the entrance on the southern boundary adjacent to the public footpath."

Fundamentally the correct route of the foot path runs through both sites. This is a glaring error on behalf of the writer. Secondly the sites is not well screened at all, but highly visible.

The garage buildings do not screen the site for DC/2012/00613. The cattery is single story and nowhere near this site, so cannot screen it. Equally the horse walker and stables are not near this site so again cannot screen it. There is no mention of the topography, that the site can be seen from the elevated position of Mistletoe cottage for instance, nor that the site is elevated compared to the public footpath running alongside the Eastern Boundary. All conveniently not mentioned.

Sites taken from the East neither site is " *largely contained visually" as* Anthony Jellard Associates states, on the contrary both are highly visible.

This should be an independent assessment it is not and it makes fundamental errors.

The solid metal gates themselves are a large and obvious eyesore. There is no reason to presume they will be shut, and they will certainly be open at times when people are walking past this has a visual impact, that should not be ignored.

There has been no consideration regarding the movement and parking of vehicles for these sites.

Does anyone think these gate "enhance the natural Beauty" of the AONB?

There is reason to presume the gates will remain shut, they must be opened to allow access an assessment should include the impact when they are open. this is an obvious eyesore and not what one would expect in an Area of Outstanding Natural Beauty. It certainly does not "Enhance the Natural Beauty"

For DC/2013/00456 Anthony Jellard Associates says :

"3.4 In terms of land use, the site currently includes stone buildings used for storage and repair of motor vehicles storage and small ancillary parking areas."

And for DC/2012/00613 :

3.4 In terms of land use, the site currently includes a storage area of builders' materials and equipment and some utilitarian storage containers. The assessment of impacts in this report assumes that the current facilities are retained.

These are retrospective applications, the writer of this report should be fully aware of this. The presumption that the current facilities are retained is a false premise. Currently the sites have no planning permission and hence no legal use. DC2012/00613 has had no legally granted permission ever and DC/2013/00456 has had none since about 1990. This has been proven in the past 3 Judicial Reviews.

For Dc/2012/00613: The decision is between the site as was before development, a green field, and after development with many shipping containers stacked up and a great deal of "building materials and construction machinery". The assessment should be based upon this fact. The writer of this report does not highlight this fundamental aspect at all.

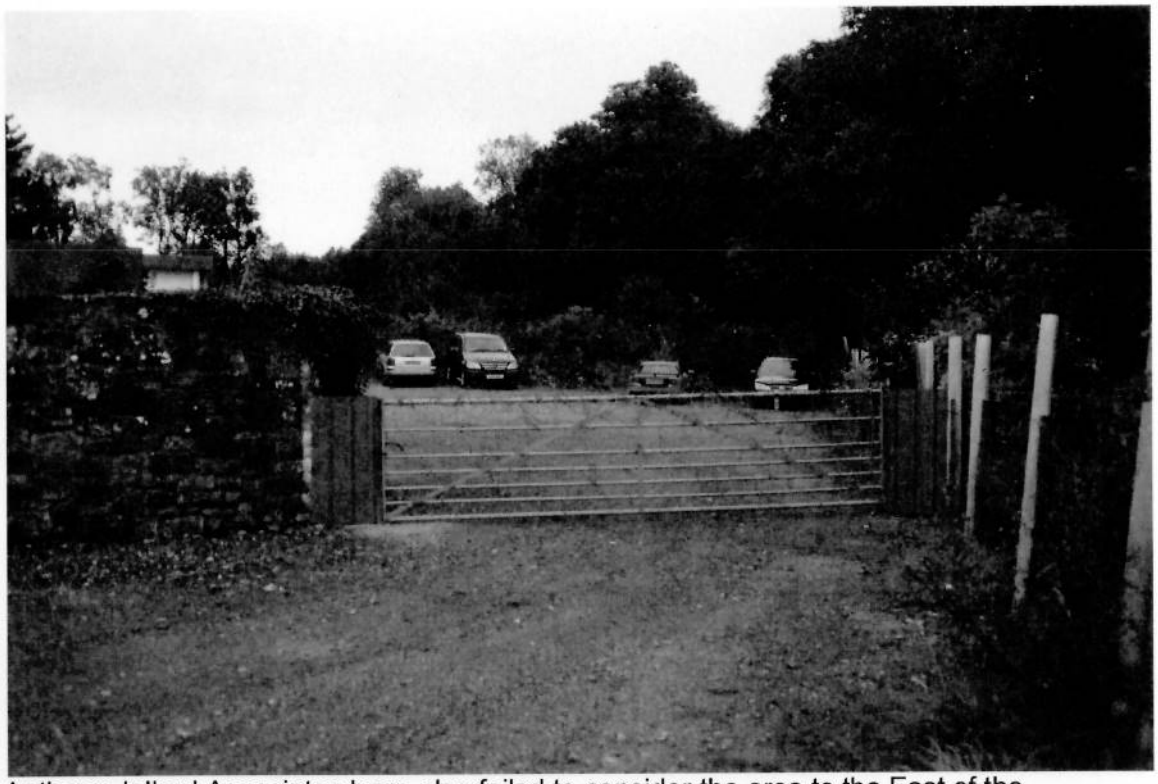
For DC/2013/00456 the decision should be between no use and the intensive B2 use proposed which includes a great deal of land use.

Anthony Jellard Associates ignores the land use outside of the Courtyard and buildings, which the footpath runs through for DC/2013/00456, this has been assigned for parking and washing of vehicles, and maintenance of vehicle also occurs here. The impact of vehicles being parked here, washed and maintained should have been assessed. This is fundamentally important because of the detrimental effect of having parked cars, HGV's and various trailers and caravans stored in the open countryside within the AONB.

Vehicles parked in full view and HGV's being maintained.

Back of a van and scrap in full view

Vehicles parked in full view.



Anthony Jellard Associates have also failed to consider the area to the East of the workshops, and the very ugly gate which has been erected with no planning permission and vehicles and other articles stored here.

3.5 No public rights of way lie within the site but one runs close to the south of the site, connecting the A466 close to the site with the Wye Valley Walk which runs north south

through the woodlands on the right bank of the river. There is a connection north from the A466 opposite Mistletoe Cottage which climbs the hillside near to Wyndcliff Court.

We are led to believe this expert has done a detailed assessment of this area and studied in detail maps and the area on foot.

Why then does he not know that a Public Right of way does indeed run though this site?

Why have no maps been provided showing these footpaths?

Please see the map attached to the footpath section.

THE EFFECTS OF THE DEVELOPMENT ON LANDSCAPE CHARACTER

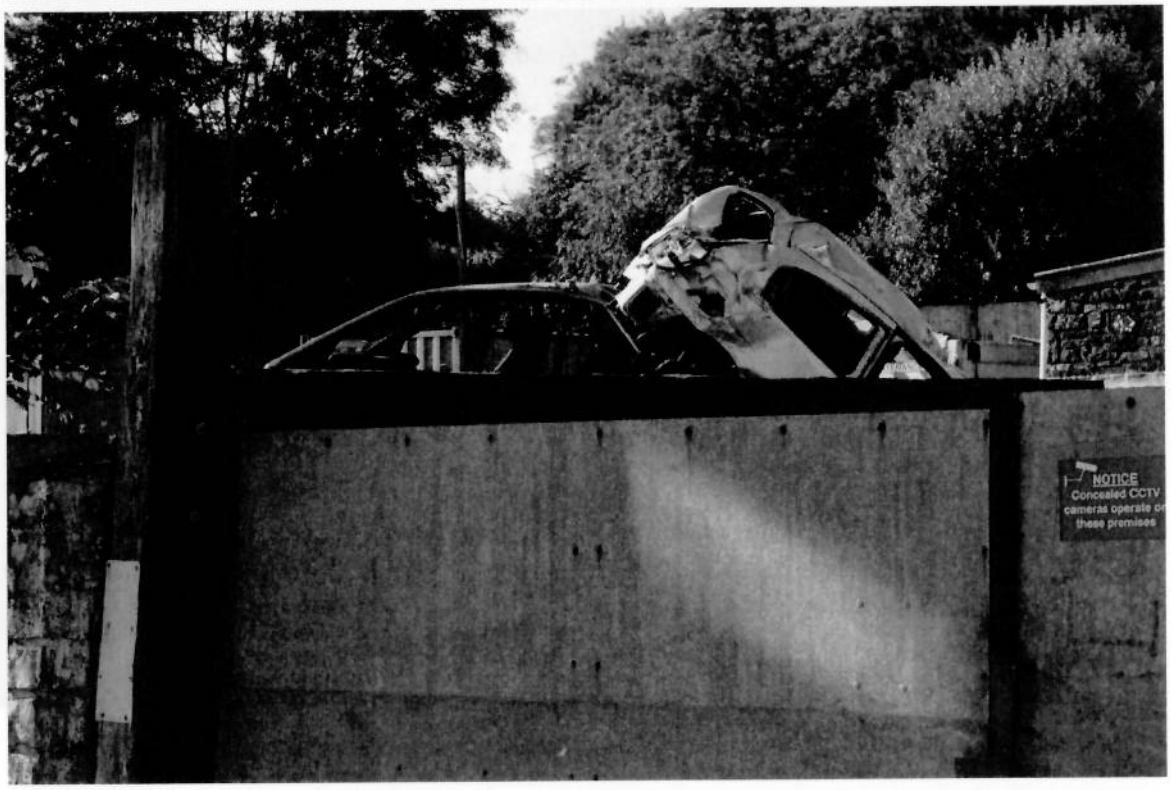
Anthony Jellard Associates after trying to move the area these are situated with, (which you cannot do) then fails to address the issues.

They do not stress that these sites are in an designated area, an Area of Outstanding Natural Beauty with the clearly defined objective of "Enhancing the natural beauty of the area."

All the rest is just waffle, and Anthony Jellard Associates come to the bizarre conclusion:

"The site is well enclosed by tree and hedgerow cover which very comfortably visually assimilates the development within the surrounding landscape."

Simply look at the photos. Does anyone believe this sort of development "*comfortably visually assimilates the development within the surrounding landscape"*



Is this what you expect to see from a public footpath in an Area of Outstanding Natural Beauty? How does this "enhance the natural beauty" of the area?

The "dense vegetation" fails to hide the horror of what lies beyond.

Cultural:

Anthony Jellard Associates concludes:

"The site is on the northern edges of this Aspect Area and the vegetation around its boundary as appears as part of the wooded backdrop on the northern edges of the racecourse. The changed use of the site will have no impact on this Cultural Landscape Aspect Area."

This is simply not true, the site is clearly visible from the racecourse, see the photographs. The one mile straight leads almost directly to the site and the starting line is very close indeed. And what of people using the public rights of way to access the race course, who walk through this site?

The site is very much in the background from the racecourse.

Historical:

Anthony Jellard Associates concludes:

4.11 The discrete location and largely hidden setting of the site does not impinge on the historic characteristics of this Aspect Area. The site and its immediate surrounds have long had buildings as can be seen from the Monmouthshire County 6 inch map published in 1886 (see Appendix 1 Figure AJA03)

This site is not in a discrete location. It is in a very prominent situation, with public footpaths running through and adjacent to it. It is directly next door to Piecefield house's historic parkland, the stone wall it has as a boundary is part of the Estate and has listed protection.

The site as shown is not largely hidden, it is highly visible.

In planning terms what was there or not there in 1886 has no relevance. The current development certainly was not there.

The permission granted in 1985 was for a single garage. The applicants have built 2 over doubling the size granted permission and have continued to develop the site with no permission to do so.

Policy LC5 – Protection and Enhancement of Landscape Character

Development proposals that would impact upon landscape character, as defined by LANDMAP Landscape Character Assessment, must demonstrate through a landscape assessment how landscape character has influenced their design, scale, nature and site selection.

Development will be permitted provided it would not have an unacceptable adverse effect on the special character or quality of Monmouthshire's landscape in terms of its visual, historic, geological, ecological or cultural aspects by:

a) Causing significant visual intrusion;

b) Causing significant adverse change in the character of the built or natural landscape;

c) Being insensitively and unsympathetically sited within the landscape;

d) Introducing or intensifying a use which is incompatible with its location;

e) Failing to harmonise with, or enhance the landform and landscape; and /or

f) Losing or failing to incorporate important traditional features, patterns, structures and layout of settlements and landscapes of both the built and natural environment.

Particular emphasis will be given to those landscapes identified through the LANDMAP Landscape Character Assessment as being of high and outstanding quality because of a certain landscape quality or combination of qualities.

Anthony Jellard Associates concludes:

"4.17 We have above in Paras 4.4 – 4.15 considered the impact of the development against the information contained in the LANDMAP Data base. It is our conclusion, looking at all 5 Aspects Areas, that the change of use has made no significant change to the overall landscape of this part of the Wye Valley around St Arvans. There is no unacceptable adverse effect on the special character or quality of Monmouthshire's landscape."

5. IMPACTS ON THE WYE VALLEY AONB

5.1 In the case of the AONB, the primary policy objectives in the LDP are set out in Policy LC4 –

Wye Valley AONB. This policy is set out below along with our commentary on the degree of fit of the changed use of the development.

Policy LC4 – Wye Valley AONB

Within the Wye Valley AONB, any development must be subservient to the primary purpose to conserve and enhance the natural beauty of the area. In considering development proposals regard will be given to:

a) The long term effect of the proposal, and the degree to which its nature and intensity is compatible with the character, purpose and overall management of the AONB;

b) The degree to which design, quality and use of appropriate materials harmonise with the surrounding landscape and built heritage;

c) The extent of the landscaping proposed;

d) The need to protect features in the landscape identified as important through LANDMAP;

e) The extent to which a proposed new building or use will generate additional traffic and the requirement for improvement of existing roads and lanes, including the surfacing of green lanes; and

f) The impact of the proposed development upon nature conservation interests.

Development proposals that are outside the AONB but would detract unacceptably from its setting

will not be permitted.

AJA Commentary

5.2 Buildings have been present in very close vicinity to this site since at least the later 19th century and the present scale is similar to that shown on the early OS maps. It is a small scale development tucked behind a strong landscape screen and set in a medium scale landscape. Its nature and intensity is compatible with the AONB designation.

5.3 The boundary screening very largely hides the facilities in all wider views in the landscape and it is only in localised views, in particular short lengths of adjacent footpath where the development change of use facilities will be partly visible.

5.4 The strong existing screen of vegetation is supplemented by further tree planting which will add further enclosure.

5.5 The development does respect the local landscape features as identified through LANDMAP

5.6 In summary the development has no unacceptable landscape and visual impact on the AONB.

As demonstrated above Anthony Jellard Associates has made fundamental errors throughout this assessment, they have erred in the location of the public rights of way, they have failed to assess the impact of several features of the development, they have reached the bizarre conclusion the site is well screened and in a discrete location when clearly it is not.

This site is highly visible. A public footpath runs through both sites.

The sites are very clearly visible in the wider landscape.

The sites have no existing use at all, they have no planning permission at all.

They have failed to understand the policies correctly.

And they have failed to deal with each policy of the ones quoted above.

You cannot simply build what you like as long as it can't be seen. In this case the site is highly visible, in a prominent location on a popular footpath.

Anthony Jellard Associates also add for DC/2012/00613 *"The metal security gates are painted green harmonising with the boundary screen of vegetation."*

This is a most bizarre statement. You cannot build whatever you like as poorly designed as these are and make it acceptable by simply "painting it green". If this were the case anyone could build ANYTHING as long as its painted green it a nonsense.

The text of policy C2(b) emphasises the importance of good design where "higher than average design and control standards" shall be applied. How then does anyone not find objection to industrial sheet metal gates concreted to the floor, close to a public footpath?

The status of an AONB is that any development "**Enhances** the natural beauty" this site clearly fails to do this.

The design should be of the highest standard, look at the gates is that acceptable?

The types of activity proposed are not suited to a rural location and certainly not in an AONB.

It would be wrong for anyone to sensibly conclude this site has no adverse affect upon the landscape.

Planning Solicitor Ben Garbett wrote a statement for the Court after the last permissions were granted. he says:

" I visited the application site for the first time immediately following the committee meeting. When I arrived at the site I walked along the route of FP no.32, which runs directly past the metal gates. I would estimate these gates to be about 10-12 feet high, with an ugly, ramshackle appearance.

I followed the footpath route as it passes into the Piercefield Estate via the gate in the listed wall. The footpath is on elevated land at this point with near views directly back across the site.

I was immediately struck by the clear views into the site from the footpath. Those views are not mitigated in any way by the metal gates from this angle, and will not be mitigated by any of the new planting. This was very different t the impression that I had formed earlier in the day, when viewing the photo montage and listening to the planning officer's comments. In my view the photo montage does not give a fair representation of the landscape and visual impact. I found it very hard to reconcile what I saw with the officer's comments about there being no harm to the wider setting of the AONB. I do not believe that anyone could rationally conclude this.

I also noticed that the line of saplings planted on the eastern boundary were very close to the listed wall. In my view the tree roots will, in time, highly likely cause the listed wall to collapse. It will be several years before these trees grow to the point where they will provide any sort of screening, but even so, they would not be able to screen most views from the footpath in this position anyway.

During the debate Philip Thomas stated this:-

"However we are aware that the site has been used for commercial purposes for many years and certainly some of the large containers on the site are lawful, to clarify that, two of the containers to the left of the gate are are new, others, errr, to the right hand side have been,

is that quite right (asks Paula Clarke), the others to the right, have been in situ for certainly beyond the four years in which they would be lawful as a building operation."

This was factually incorrect and highly misleading. At the time of my own site visit I counted about 8 metal storage containers on the land, painted in a variety of different colours, and all of them highly visible. A large lorry was parked on the site, which was also highly prominent.

To give another recent example, at the 06 August planning committee meeting Members refused a development for a commercial garage because "the garage/workshop use will lead to an increase in traffic using the single access road to and from the site as well generating additional noise and disturbance from the activities within the building which will harm local residential amenity, contrary to Monmouthshire Unitary Development Plan Polices ENV1 d) and e) and DES1 d)."(Application DC/2011/01240† - Change of Use from Egg Production Unit to Workshop and Commercial Garage Ty'r Pwll Farm, Hardwick, Abergavenny)*

Why does the same not apply to this site?

Objection to DC/2013/00456 and DC/2012/00613

Existing Use

The whole premise of these applications is based on existing use.

This site has no existing use.

It has been proved via three successful Judicial Reviews that it has none.

All references to existing use used throughout the Design and Access Statement are wrong in law. The following statements taken from the Design and Access Statement are false and thereby deliberately misleading:

"The garage and it's associated land has been used for the above purpose since the consent was issued."

"The commercial motor vehicles owned by Mr Peter Stephens, have been parked and maintained at the site in accordance with a Goods Vehicle Operators Licence, issued by the Welsh Traffic Area with a commencement date of 21st January 1993."

"The planning application now seeks approval for the continuation of an existing use for the storage of builders materials, construction machinery and equipment, including metal storage containers and the retention of security gates."

"The site has operated for a period of in excess of 25 years for the maintenance and servicing of motor vehicles and the access from The A466 provides adequate visibility for both entering and leaving the site."

This makes the Design and Access statements null and void.

It has not had continuous use, it has not has existing use, this was proved at Judicial Review.(See Judicial Review 1 Judicial Review 2 and Judicial Review 3)

This site failed to gain lawful use in the application DC/2012/00594.

MCC's Planning Officer Paula Clarke wrote a report recommending refusal of this application. This report is given at the end of this document.

The planning justification given by the applicant only uses this argument of existing use.

For Policy LC4 – Wye Valley AONB

"Within the Wye Valley AONB, any development must be subservient to the primary purpose to conserve and enhance the natural beauty of the area. In considering development proposals regard will be given to:"

The applicant has written:

"a) the long term effect of the proposal, and the degree to which its nature and intensity is compatible with the character, purpose and overall management of the AONB;"

The applicant has written:

"(a) The use of the site, has existed for a period of in excess of 25 years and therefore, it's long term effect is now established as having little or no impact on the AONB."

This has been proved to be a false statement. This is an application for new use, the new

uses will have additional impacts. The storing of vehicles in the open countryside is significant. The maintaining of vehicles is significant, the uses of materials in the buildings can be altered.

For Policy RE2 - The Conversion or Rehabilitation of Buildings in the Open Countryside for Employment Use. the applicant has written:

"The fact that the workshop buildings have existed for in excess of 25 years and that their uses have been totally appropriate for the extent and scale of the buildings, results in full compliance with the requirements of Policy RE2."

Yet again the justification is existing use, which as clearly established this site does not process.

This is the CLUED report for Application DC/2012/00594 written by Paula Clarke as the designated officer, it has been passed by MCC legal department and was then signed on the on 22nd October 2012:

Application No: DC/2012/00594

Development: Certificate of Lawful Use of land for vehicle repairs

Location: New Barn Yard and Workshops, St Arvans, Chepstow, NP16 6HE

INTRODUCTION

This application seeks a certificate of lawful use or development in respect of the use of land and buildings at New Barn Workshops, St Arvans for the maintenance, servicing and repair of all classes of Motor Vehicles, including commercial vehicles, motor cars and agricultural machinery. The application has been made on the basis that the activity began in breach of a condition more than 10 years before the date of this application. The onus is upon the applicant to prove his case on the balance of probabilities. The application was submitted on 11 July 2012 therefore the applicant must show that between July 2002 and July 2012 there was a continuous breach of the condition.

ISSUES/EVALUATION Background

Planning permission was granted in February 1985 for the erection of a garage for the storage and maintenance of commercial vehicles under ref 21850. Condition 11 imposed on this permission states "The premises shall be used for the storage and repair of vehicles solely owned by the applicant and for no other purpose (including any other purpose in Class IV of the Town and Country Planning Use Classes Order 1972) without the prior approval of the Local Planning Authority. The only issue in this case is whether the use has continued on the site in breach of the planning condition in excess of the ten year period and is immune from any enforcement action.

Evidence submitted

The evidence provided by the applicant comprises statutory declarations from the joint owners, letters from 4 tenants of the workshops and a bundle of company invoices from between February 1995 to June 2012.

It is claimed that the applicant has owned the premises jointly with his two brothers in excess of 15 years. During their ownership the premises have been leased to a number of tenants

who have used the premises for repair, servicing and maintenance of motor vehicles, in addition the applicant undertook regular servicing and maintenance at various times over the past 15 years.

Delegation Report Record

A letter has been received from Mr A Hoskins stating that between July 1990 and November 2008 he was employed by J&D Langley as transport manager who operated from the workshops. He states their business involved the servicing and maintenance of motor vehicles, including commercial vehicles, motor cars and agricultural machinery. A letter from Mr D James states that between May 1998 and July 2000 he leased the workshop where he undertook the servicing and maintenance of motor vehicles including motor cars. A letter from Mr C Klinkert. states that between February 2009 and December 2010 he leased the workshop where he undertook the maintenance of motor vehicles including motor cars for his business. A letter from A Gordon states that he has been leasing the workshop since March 2011 where he undertakes the maintenance and servicing of motor vehicles for his business.

Some 155 invoices have been submitted to show the pattern of activity since 1995, these include invoices for electricity costs; water charges and rent for the workshops.

Objection received

Objections have been received from the adjoining neighbours at Mistletoe Cottage in the form of witness statements which dispute the accuracy of the evidence submitted. It is claimed that the premises was being used as a coach depot in September 2008 but ceased before February 2009. They moved into their dwelling in February 2009 and claim that no one was working at the workshops at this time and for some time afterwards. Prava cars started storing cars there at the beginning of 2010 however it is claimed that they did not use the land for servicing vehicles. It is claimed that noise from the workshops was experienced from March 2011 but did not witness vehicle servicing until April 2012.

Government Advice

Annex 8 of Welsh Office Circular 24/97 advises that by virtue of section 191(2) uses and operations are "lawful" if no enforcement action can be taken against them and they are not in contravention of any enforcement notice.

Also by virtue of section 191(3) a failure to comply with a condition on a planning permission is "lawful" if the time for taking action has expired. Development is lawful if

(4) It benefits from an extant planning permission (9) the time for taking enforcement action has expired

The onus of proof in an LDC application is firmly on the applicant and paragraph 8.12 of Annex 8 states that some information about the history of the site will be peculiarly within the applicant's knowledge. The relevant test of the evidence is "balance of probabilities" not "beyond reasonable doubt". The applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA has no evidence of its own, or from others to contradict the applicant's version of events there is no good reason to refuse an application for a certificate provided the applicant's evidence is sufficiently precise and unambiguous.

Assessment

The starting point in the assessment of the planning history in this case is the planning permission granted in 1985. This permission granted the erection of a garage for the storage and maintenance of commercial vehicles. Condition 11 stated that the premises must be used for the storage and repair of vehicles solely owned by the applicant and for no other purpose (including any other purpose in Class IV of the Use Classes Order 1972) it is clear then that the planning permission granted a use falling under Class IV of the 1972 Order

which then became Class B2 (General Industry) in the 1987 Order. It has been held that planning permissions can only be lost through the abandonment of that use.

The evidence supplied in this application includes invoices for the electricity charges for the workshop for a ' ' ' 1995; i in 1996;

in 1998 and in 1999. From 1998 the building appears to

be let as two separate units with . in Unit 2 and ' renting

Unit 1. left the property in July 2000. Mrs Langley appears to take

over the rental of both units in 2001 and occupied them until 2008. The letter from . confirms that he was transport manager for

id that the workshops were used for the servicing and maintenance of vehicles including commercial vehicles; motor cars and agricultural machinery. There appears to be periods of non-use between November 2008 and February 2009 when Mr Leased the workshop and between

December 2010 to March 2011 when Mr leased the workshop.

It is considered that when the original applicant Mr DJ Stephens retired and passed the business to his sons "Stephens Bros" around 1995 the planning unit had taken on a different use, however one that was not "materially different" from the use granted planning permission in that the vehicles being stored and repaired at the premises now included motor cars as well as commercial vehicles and the premises were occupied by businesses other than the original applicant. There does not appear to have been a material change in use of the site.

The objections received from the neighbours Mr and Mrs Hatcher claim that there was a period of non use of the premises between 2008 and 2010 and also disputes the evidence received from claiming that no

repairs were carried out from the property only storage. However there is no direct evidence to contradict that submitted. It is claimed that no mention of business uses is made by the Council during the determination of their applications, although the reports would only relate to their planning unit under consideration and not adjoining properties.

It is noted that in Mrs Hatcher's email to the Community Council dated April 14 2010 (exhibited as CH8 in Mr Hatchers statement) she states: "The facts are these: There is an industrial unit next door to us now, and it has been there for years - we will not be setting a precedent for commercial units." It therefore appears that Mr and Mrs Hatcher were aware of the commercial use of the workshops at this time.

The Council is aware that there have been short periods of non use of the premises recently indeed during an enforcement investigation in April 2011 it was found that a car valeting business was operating from the workshop which carried on for a few months. Having regard to (Nicholson v Secretary of State for the Environment 1997) it is necessary to show a continuous breach over the 10 year period, ie between July 2002 and July 2012. If non-compliance has ceased by the discontinuance of the offending activity, the breach is at an end, and any subsequent renewed non-compliance would be a fresh breach. The applicant has therefore failed to show that the condition has been breached continuously during the relevant period.

Conclusion

Planning permission was granted for the erection of a garage for the storage and maintenance of commercial vehicles in 1985. It is considered that the inclusion of the storage and maintenance of motor cars would not be a material change in use from that granted planning permission as it falls within the same use class. The condition restricting the storage and maintenance of commercial vehicles to the applicant's own vehicles was

clearly breached prior to 1998 and continued until 2008, however over the relevant period which is July 2002 to July 2012 the breach was not continuous as there were two, 3 month periods of non use and the introduction of a car valeting business for a few months in 2011.

It is considered that condition 11 of planning permission ref 21850 restricting the use of the premises to the storage and repair of vehicles solely owned by the applicant and for no other purpose without the prior approval of the Local Planning Authority has not been breached continuously for the required period and a certificate cannot be issued.

RECOMMENDATION: Refused

Reason: The applicant has failed to show on the balance of probability that the condition has been breached continuously for the required 10 year period.

Environmental Health Comments :

Objection to DC/2012/00613 and DC/2013/00456

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"

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 need 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.

However the operations proposed, upon both sites, 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 of the Environmental Officer

It is very clearly stated in policy that B2 use should not be next to residential properties.

These sites are immediately on the boundary of the residential property and even share a party wall.

The previous conduct of the applicant is also relevant to the question of whether conditions are appropriate, and likely to be effective, given the established pattern of planning abuse (not just on this site, but on other sites owned by the applicants too) from unauthorised development, submission of retrospective applications, and frequent breaches of conditions.

We have reported consistent breaches of the hours conditions over the past 4 years.

These applications must be refused due to the policy B2 use cannot be next door to residential properties. Conditions simply cannot mitigate this.