

Code No. and Date Received	Name and Address of Applicant	Description and Location of Proposed Development
18/0289/NCC 29.03.2018	Newbridge Construction Ltd C/o Boyer Mr S Barry Third Floor Park House Greyfriars Road Cardiff CF10 3AF	Vary Condition 2 of Planning Permission 12/0269/NCC (Vary Condition 02 of Planning Permission 08/0539/OUT (erect residential development and associated access) to provide a further three years for the submission of Reserved Matters) to provide a further three years for the submission of Reserved Matters Gellideg Industrial Estate Gellideg Lane Maesycwmmmer

APPLICATION TYPE: Development without complying with conds

SITE AND DEVELOPMENT

Location: The application site is located to the east of Maesycwmmmer. To the north of the site lies a strip of land previously used for landfill, now restored and re-vegetated with trees and scrub vegetation. The A472 road runs alongside the northern edge of that land. To the east and south lies the Bryn Meadows Golf Club, the boundaries comprising established hedgerows and trees. The western edge of the site is bounded by the road and housing known as Gellideg Heights.

There are existing industrial units to the north and south of the westernmost part of the site.

Site description: The western part of the application site which is within the identified settlement boundary is occupied by three disused industrial/commercial buildings and their curtilage. Access to these buildings is gained direct from Gellideg Lane at a point just north of the access from the lane to Gellideg Heights housing estate. Across the central part of the site the remains of colliery spoil heaps extend from north to south. The northern most part of the heap is still in place and rises to approximately five metres above surrounding ground level. Its surface and slopes are partially vegetated with bramble and gorse, with steep slopes that encroach on to the oak and birch woodland within the north western corner of the site. The ground rises up from 156

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metres AOD at its lowest point at the north east extreme of the northern boundary to a height of 170 metres AOD in the southwest corner of the southern boundary alongside the golf course.

Development: In July 2009 a Planning Inspector allowed an appeal against this Council's refusal of planning permission for residential development and associated access on land at Gellideg Heights, Maesycwmmer, and granted outline planning permission subject to conditions. Condition 2 of that permission requires approval of Reserved Matters to be made no later than three years from the date of the permission. A subsequent renewal of that consent reference 12/0269/NCC was granted in July 2015. Following on from that consent, this application therefore seeks permission to vary Condition 2 to provide a further three years for the submission of Reserved Matters.

The original permission was supported by a Unilateral Undertaking (planning obligation) entered into by the owners of the land. The undertaking included obligations in respect of the provision of affordable housing, a contribution towards education provision, the provision of road improvements, the provision of ecological works, and public open space obligations.

The permission relates to the redevelopment of the site for 95 residential units. With the exception of access all matters were reserved for subsequent approval.

An illustrative layout drawing (the same as submitted with the original application) indicates a scheme for the residential units with associated amenity space, with the provision of a new access road and internal road direct from the A472 linking through the development to Gellideg Heights. The site layout shows low density 4-bed 2-storey houses on the eastern edge of the site next to the golf course, medium density 2/3-bed 2/3-storey houses in the middle, and high density 1/2- bed 3-storey flats and 2/3-bed 2/3-storey houses on the western and north western part. The layout plan also shows an area of public open space, two areas of local play and an ecology buffer located along the southern and eastern boundary. A landscape buffer is also proposed on the western boundary of the site to provide separation between any new housing and the adjoining industrial units.

Dimensions: The application site is 4.13 hectares in size.

Ancillary development, e.g. parking: The proposed access arrangements comprise a new traffic signal controlled junction to the north of the site directly onto the A472 Main Road. The new access would accommodate all vehicles and includes pedestrian and cyclist facilities. Footways are incorporated on both sides of the proposed access road and would link into the existing footway / cycleway network on the A472 . The internal

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highway network has been designed to accommodate both domestic and commercial vehicles as the road will serve residential properties and the existing business units off Gellideg Heights. The illustrative layout shows a possible closure of an existing section of Gellideg Heights. It is suggested that this could beneficially permit existing traffic to divert onto the proposed access road through the new development and enable existing residents to use an improved access onto the A472.

PLANNING HISTORY 2005 TO PRESENT

08/0539/OUT - Erect residential development and associated access - Refused 04.12.08. Allowed on Appeal 21.07.09.

12/0269/NCC - Vary Condition 02 of Planning Permission 08/0539/OUT (erect residential development and associated access) to provide a further three years for the submission of Reserved Matters - Granted 14.07.15.

POLICY

LOCAL DEVELOPMENT PLAN

Site Allocation: With the exception of the access link from the site to the A472, the whole of the site is within settlement limits and the western part which was previously occupied by industrial buildings forms part of a larger allocated housing site. The access link is also within a green wedge.

Policies: SP2 (Development Strategy in the Northern Connections Corridor), SP5 (Settlement boundaries), SP6 (Place Making), SP7 (Planning Obligations), SP15 (Affordable Housing target), SI16 (Green Wedges), CW2 (Amenity), CW3 (Design Considerations - Highways), CW4 (Natural Heritage Protection), CW5 (Protection of the Water Environment), CW10 (Leisure and Open Space Provision), CW11 (Affordable Housing Obligation), CW15 (General Locational Constraints), HG1.40 (Allocated housing site) and TR5.5 (Transport Improvement Schemes - A472 Crown Roundabout to Cwm Du Roundabout).

NATIONAL POLICY

Planning Policy Wales 9th Edition November 2016 and Technical Advice Notes 5 'Nature Conservation and Planning', 12 'Design', 18 'Transport'.

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ENVIRONMENTAL IMPACT ASSESSMENT

Did the application have to be screened for an EIA? Yes previously in respect of the original planning application.

Was an EIA required? No.

COAL MINING LEGACY

Is the site within an area where there are mining legacy issues? An advisory note will be forwarded to the applicant.

CONSULTATION

Rights Of Way Officer - Confirms the existence of public rights of way within the vicinity of the site and provides advice to be conveyed to the developer.

Transportation Engineering Manager - No objection.

Head Of Public Protection - No adverse comments.

Senior Engineer (Land Drainage) - No objection to the variation of condition applied for subject to conditions.

Dwr Cymru - Provides advice to be conveyed to the developer.

Ecologist - Offers no objection to the variation of condition 2 to provide for a further three years for the submission of reserved matters subject to the original ecological planning conditions being transferred to any new consent. However, several years have elapsed since the original surveys were undertaken so the survey conditions need to request updated surveys.

Landscape Architect - A revised survey should be undertaken to ensure that the root protection areas shown on the indicative plan are still relevant and therefore request a revised tree survey given that the original tree survey was undertaken over 6 years ago and will be out of date.

The Coal Authority - Have no objection to the variation of condition 2 as proposed. They note the submission is supported by a Supplementary Mining Investigation Report, dated March 2017 and prepared by Integral Geotechnique (Wales) Ltd but note that there are no conditions relevant to coal mining legacy imposed on the outline consent.

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Maesycwmmmer Community Council - Objects to the application to provide a further 3 years for the submission of Reserved Matters. The Council have been opposed to the application from the beginning and feel that there has been sufficient time to make progress and see no reason for any further delay.

ADVERTISEMENT

Extent of advertisement: The application has been advertised in the press, on site and 17 neighbouring properties have been consulted.

Response: None.

Summary of observations: Not applicable.

SECTION 17 CRIME AND DISORDER ACT

What is the likely effect of the determination of this application on the need for the Local Planning Authority to do all it reasonably can to prevent crime and disorder in its area?

It is not anticipated that the development should give rise to any specific crime and disorder implications.

EU HABITATS DIRECTIVE

Does the development affect any protected wildlife species?

In allowing the appeal and granting planning permission for the original application, and following his consideration of all of the ecological evidence presented at the planning inquiry, the Planning Inspector concluded that there was insufficient evidence to conclude that the proposal would adversely affect any nature conservation interests of the site. He did however attach several conditions to the permission in respect of nature conservation issues and there were ecological obligations contained in the Unilateral Undertaking. The Council's Ecologist considers that all of the original conditions should be retained and recommended an additional one requiring an updated bat roost survey.

COMMUNITY INFRASTRUCTURE LEVY (CIL)

Is this development Community Infrastructure Levy liable? This is an outline application and as such Community Infrastructure Levy is not liable until reserved matters are submitted and approved.

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ANALYSIS

Policies: The application has been considered in accordance with national policy and guidance, local development plan policy and supplementary planning guidance.

The policy context that should apply to the application (see above) has been fully considered and it is concluded that there is no policy objection to permitting another three years for the submission of Reserved Matters subject to the provisions of the Unilateral Undertaking being carried through to the current application in order to ensure compliance with current policy and a revised layout being required which has full regard to relevant National and Local policy. With regards the layout (which is the same one submitted with the original application) the Planning Inspector considered that it failed to address adequately design issues raised in relevant guidance and therefore concluded it was unacceptable, other than in respect of the general alignment of the main connection estate road running between Gellideg Heights and the A472. Officers share that view and therefore recommend that it be reserved for further consideration at the detailed planning stage.

Circular 35/95 'The Use of Conditions in Planning Permissions' states that as a general rule, applications for the renewal of permissions before the expiry of time limits should be refused only where:

- (a) there has been some material change in planning circumstances since the original planning permission was granted (eg. a change in some relevant planning policy for the area, or in relevant highway considerations, or the publication by the government of new planning policy guidance material to the renewal application);
- (b) continued failure to begin the development will contribute unacceptably to uncertainty about the future pattern of development in the area;
- (c) the application is premature because the permission still has a reasonable time to run.

These criteria are considered in turn below.

- (a) There has been a material change in planning circumstances, but this only strengthens the policy stance in favour of the development. At the time of the Planning Inspector's determination of the appeal against the Council's refusal of permission for the original application, part of the application site lay outside the settlement boundary as identified in the Approved Unitary Development Plan and within a green wedge allocated in that Plan. Notwithstanding that policy conflict, the Planning Inspector allowed the appeal and granted planning permission. Currently, with the exception of the access connection with the A472, the whole of the application site lies within the settlement boundary as identified in the Local Development Plan (adopted in November 2010) and is not affected by any other designations (only the access link with A472

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remaining in a green wedge, but as indicated above, this would not materially affect the functioning of the green wedge in terms of preventing the coalescence of the villages concerned).

There has been no change in the highway considerations (The Transportation Engineering Manager has raised no objection) or the publication of any new relevant national policy guidance.

(b) The lack of progress in beginning the development to date is not sufficient to contribute to uncertainty, particularly bearing in mind that the developer has been negotiating with this Council in respect of the purchase of land required to enable the proposed new access to the site to be achieved.

(c) The three years for the submission of reserved matters expires on 21st July 2018 so that part of the permission only has a short time to run.

In terms of the remaining planning conditions attached to the original consent, they will be transferred to any new consent; however, condition 22 is removed in line with Welsh Government revised procedure relating to European Protected Species Licensing and a replacement informative will be conveyed to the developer. This aims to reduce the number of pre-commencement conditions attached to a consent.

Comments from Consultees: With regards the objections of the Maesycwmmmer Community Council, they were amongst the issues considered by the Planning Inspector when he assessed the merits of the original application and allowed the appeal and granted planning permission. Their continued objections are therefore not sufficient to support a refusal of the current application.

Comments from public: None received.

Other material considerations: The requirements of the Section 106 obligation are as follows: the provision of affordable housing, the provision of road improvements, the provision of ecological works, and public open space obligations.

There are statutory tests that have to be considered in respect of an obligation that are considered below:

a) It is necessary to make the development acceptable in planning terms The provision of affordable housing - this is necessary to comply with policies SP15 (Affordable housing target) and CW11 (Affordable housing planning obligation) of the LDP.

A contribution towards education provision - this aspect of the development was considered in respect of the previous renewal of planning consent whereby the contribution was removed because general education contribution is now included in the Community Infrastructure Levy

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The provision of road improvements - this is necessary to comply with policy CW3 (Design considerations: highways) of the LDP.

The provision of ecological works - this is necessary to comply with policy SP10 (Conservation of natural heritage) and CW4 (Natural heritage protection) of the LDP.

Public open space obligations - this is necessary to comply with policy CW10 (Leisure and open space provision) of the LDP

(b) It is directly related to the development The requirements are directly related to the development. The local planning authority can only deliver affordable housing by requiring its provision as part of private housing development such as this one. The traffic generated by the development will have an impact on the local highway. There will also be an increased pressure on existing areas of open space, and the need for new ones, and there will be an impact on wildlife.

(c) It is fairly and reasonably related in scale and kind to the development.

The scale of the provision has been the subject of discussion with the applicants, and has been considered at appeal, and is reasonably related in scale and kind to the proposed scheme.

The duty to improve the economic, social, environmental and cultural well-being of Wales, has been considered in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015. In reaching the recommendation below, the ways of working set out at section 5 of that Act have been taken into account, and it is considered that the recommendation is consistent with the sustainable development principle as required by section 8 of that Act.

RECOMMENDATION (A) that the determination of the application be DEFERRED to allow the applicant to enter into a Variation of Section 106 Obligation to secure the obligations contained within the Unilateral Undertaking that accompanied the original application and ensure compliance with current policy; and (B) on completion of the 106 Obligation the planning permission be GRANTED.

This permission is subject to the following condition(s)

01) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act.

02) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

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REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

- 03) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

- 04) This permission shall not relate to the submitted indicative layout, a revised layout shall be submitted in accordance with Condition 1.

REASON: To clarify the extent of this permission.

- 05) Details of the scale submitted in accordance with Condition 01 shall be substantially in accordance with the scale parameters set out in paragraph 3 of the Planning Inspector's decision letter dated 21/07/09 in respect of planning application Ref. No. 08/0539/OUT.

REASON: To clarify the scale of the development hereby approved.

- 06) No part of the development shall be occupied until such time as a signalised junction on the A472 road and associated access as shown hatched blue on Plan 1 attached to the Unilateral Undertaking (drwg. 0731201-PL-GA-003 D) have been constructed to serve the development in accordance with a detailed scheme based on Drawing No. 2252.011 Rev. B that shall have first been submitted to and approved in writing by the Local Planning Authority. The scheme shall make provision for, inter alia, the following:

a) Dual approach and merge lanes of at least 170m length to the west and east of the proposed junction.

b) Yellow box markings to ensure that vehicles can exit the junction and signage to inform drivers to use both lanes on the approach to the junction.

c) MOVA control together with crossing detectors and kerb side detectors, also a combined pedestrian and cyclist crossing facility to the proposed development access road that will be designed to allow cyclists to cross without dismounting.

REASON: In the interests of highway safety.

- 07) Notwithstanding the submitted plans, no works shall commence on site until details of the spine road layout within the development and linking the development to the A472 and to Gellideg Lane have been submitted to and approved in writing by the Local Planning Authority. The details shall include, inter alia, sections, street lighting and surface water drainage details, and make provision for an appropriately signed 3m wide combined footway and cycleway

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link from the A472 and a traffic calming scheme. The approved details of the spine road layout shall be carried out prior to the occupation of any part of the development.

REASON: In the interests of highway safety.

- 08) No dwellings shall be occupied until details of the road layout alterations necessary in conjunction with the proposed closure to vehicular traffic of Gellideg Lane, together with sections, street lighting and surface water drainage details, have been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until Gellideg Lane has been closed in accordance with the approved details.

REASON: In the interests of highway safety.

- 09) Notwithstanding the submitted access details, the plans and particulars of the layout submitted in accordance with Condition 01 above shall include details (such details to include sections, street lighting and surface water drainage) of the proposed highways providing access from the spine road referred to in Condition 07 to all dwellings. No dwelling shall be occupied until the section of highway linking it to the spine road has been constructed in accordance with the approved plans.

REASON: In the interests of highway safety.

- 10) Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the buildings when the site is developed.

REASON: In the interests of public health.

- 11) Development shall not commence until the measures in the scheme approved under the terms of Condition 10 above have been implemented.

REASON: In the interests of public health.

- 12) No development shall commence until a detailed engineering scheme for the construction of the access road, showing how the integrity of the Maesycwmmer Closed Landfill Site including the drainage will be dealt with, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

REASON: To prevent pollution.

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- 13) Before any soils or hardcore that do not fall within the green category set out in Table 2 of the WLGA document 'Requirements for the Chemical Testing of Imported Materials for Various End Uses and Validation of Cover Systems 2013' are brought on to site, a scheme for their importation and testing for contamination shall be submitted to and agreed in writing with the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme.
REASON: To prevent contamination of the application site in the interests of public health.
- 14) Prior to the commencement of works on site a scheme for the drainage of foul, land and surface water shall be submitted to and agreed in writing by the Local Planning Authority. All works that form part of the agreed scheme shall be carried out before any part of the development to which they relate is occupied.
REASON: To ensure the development is served by an appropriate means of drainage.
- 15) The plans and particulars of the landscaping and layout submitted in accordance with Condition 01 above shall include:
- (a) a plan to a scale and level of accuracy appropriate to the proposal that shows the position of every tree on site with a stem diameter over the bark measured at 1.5 metres above ground level of at least 75 millimetres.
 - (b) the details of each tree as required at para. 4.2.6 of BS5837 in a separate schedule.
 - (c) a schedule of tree works for all the trees in paragraphs (a) and (b) above, specifying those to be removed, pruning and other remedial or preventative work.
 - (d) the details of any proposed alterations to the existing ground levels or the position of any proposed excavations within 5 metres of the Root Protection Area (para. 5.2.2 of BS5837) of any retained tree. (In this condition a "retained tree" means an existing tree which is to be retained in accordance with the plan referred to at paragraph (a) above).
 - (e) the details of all the appropriate tree protection measures for every retained tree before and for the entire duration of the course of the development.
 - (f) a statement setting out the principles of arboricultural sustainability in terms of landscape, spatial integration and post development pressure.
- REASON: In the interests of the visual amenity of the area.
- 16) The plans and particulars of the landscaping and layout submitted in accordance with Condition 01 above shall include details of the quantity, size, species, position of all trees to be planted, together with an indication of how they

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integrate with the proposal in the long term with regard to their mature size and anticipated routine maintenance. In addition, all shrubs and hedges to be planted that are intended to achieve a significant size and presence in the landscape should be similarly specified. The submitted details shall include a schedule and programme of planting: the approved details and schedule shall be implemented in accordance with the approved programme of planting.

REASON: In the interests of the visual amenity of the area.

- 17) The plans and particulars of the landscaping and layout submitted in accordance with Condition 01 above, shall include details of the means of protection and maintenance of the trees, shrubs and hedges referred to at condition 15 above, until they are established.

REASON: In the interests of the visual amenity of the area.

- 18) The plans and particulars of the landscaping and layout submitted in accordance with Condition 01 above, shall make provision for a Local Equipped Area of Play and a kickabout area: these areas shall be provided in accordance with a programme of implementation to be submitted and approved by the Local Planning Authority before construction works commence.

REASON: To ensure that the development is served by play provision for children.

- 19) Works of site/vegetation clearance associated with the development hereby approved shall not take place during the breeding season for birds, from March to August inclusive in any given year, unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that breeding birds are protected. All British birds, their nests and eggs (with certain limited exceptions) are protected by law under Section 1 of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000.

- 20) Unless otherwise agreed in writing with the Local Planning Authority, prior to the commencement of vegetation clearance on site, pre-clearance surveys for badgers and birds shall be carried out by a suitably qualified ecological surveyor. A copy of the results of the surveys, together with any necessary protection and mitigation measures, shall be submitted to and approved in writing by the Local Planning Authority. These protection and mitigation measures shall be implemented as approved.

REASON: To ensure adequate protection to protected species.

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- 21) No development or site/vegetation clearance shall take place until an updated bat roost survey has been carried out by a competent ecologist with proven expertise in bat surveying. The results of the survey, together with an updated assessment of the impact of the development on these species and if necessary, details of any proposed remedial measures shall be submitted for the approval of the Local Planning Authority. The approved measures shall be strictly complied with.
REASON: To ensure proper measures are taken to safeguard the habitat of protected species, in the interests of biodiversity.
- 22) No development or site/vegetation clearance shall take place until details of a translocation programme for any reptiles and amphibians found on the site has been submitted to the Local Planning Authority for approval in writing. Details shall include the installation of one way fencing and provision of refuge area, the location to be agreed with the Local Planning Authority. The measures shall be implemented as approved.
REASON: To ensure adequate protection of protected species.
- 23) No development shall take place until a detailed management plan for the retained areas of informal open space, together with a scheme for the long term management of the existing, retained and newly created habitats, has been submitted to and approved in writing by the Local Planning Authority. The management shall be carried out in accordance with the approved management plan.
REASON: To ensure that the open space and habitats are maintained in the interests of visual amenity and nature conservation.

Advisory Note(s)

The following policy(ies) of the Caerphilly County Borough Local Development Plan up to 2021 - Adopted November 2010 is/are relevant to the conditions of this permission: SP6, CW2, CW3, CW4.

The applicant is advised of the comments of the Public Rights of Way officer.

This planning permission does not provide consent to undertake works that require an EPS licence.

It is an offence to deliberately capture, kill or disturb EPS or to recklessly damage or destroy their breeding sites or resting places. If found guilty of any offences, you could be sent to prison for up to 6 months and/or receive an unlimited fine. To undertake the

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works within the law, you can obtain further information on the need for a licence from Natural Resources Wales on 0300 065 3000 or at:

<https://naturalresources.wales/conservation-biodiversity-and-wildlife/european-protected-species/?lang=en>

