

PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

Number: 3

Application Number: C20/0190/19/AC

Date Registered: 27-02-2020

Application Type: Removal/Variation of Condition(s)

Community: Bontnewydd

Ward: Bontnewydd

Proposal: Application for works associated with the construction of the proposed A487 Caernarfon to Bontnewydd bypass including;

Use of land as an extension to the existing site compound area and provision of a maintenance shed, office accommodation, welfare and car parking facilities, fuel store, sewage storage tank, mobile concrete batching plant, mobile asphalt batching plant and construction of a haul route (temporary use),

Construction of a new haul road on the northern boundary of the existing quarry with temporary connection to the proposed A487 Caernarfon to Bontnewydd bypass route during the construction period,

Continued extraction of minerals, removal of material from a mineral working deposit and existing stockpile of materials,

Construction of a hardstanding and siting of plant machinery for the processing and screening of materials,

Disposal of inert waste materials for long-term quarry engineering/restoration works.

(Application under Section 73 to vary Condition 3 on planning permission C17/0011/19/MW to reach the ground levels agreed in restoration plan no. 3030/16, excavation materials that are surplus to the requirements of the Caernarfon to Bontnewydd bypass project in addition to excavated materials from other sources, shall be deposited at the site in accordance with the NRW permit)

Location: Seiont Brickworks, Seiont Works Ffordd Felin Seiont, Caernarfon, Gwynedd, LL55 2YL

Summary of the Recommendation: To Refuse Planning Permission

PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

1. Description:

- 1.1 The current permission C17/0011/19/MW was granted subject to conditions on the 5th June 2017 for development proposals associated with the construction of the Caernarfon to Bontnewydd bypass including, amongst other requirements, the use of the former brickworks site as a contractor's compound, engineering works to provide haul routes with direct access onto the bypass construction project and for the importation of materials surplus to the requirements of the scheme to be used in works of restoration and to address land stability issues at the site.
- 1.2 Work has long since commenced on the bypass scheme which will relieve congestion in the Caernarfon and Bontnewydd area and form part of the strategic road network in North Wales providing links with the A55 corridor further along the coast. The import of surplus materials for restoration commenced in November 2019 and in accordance with condition 7, this operation, should be completed within 3 years of notification, unless the requirements of the scheme dictate otherwise. Condition 3 currently restricts the import of surplus materials to that generated by the bypass construction project and this application seeks under Section 73 of the Town and Country Planning Act 1990 to vary that condition so as to allow the importation of materials from elsewhere to address what the applicant considers to be a shortfall of approximately 270,000m³ required to achieve the restoration levels.
- 1.3 Section 73 enables an applicant to apply to develop land without compliance with conditions attached to an extant previous planning permission. Under this section the Local Planning Authority may amend or remove conditions but may not amend any other part of the permission. A successful s.73 application results in the grant of a new planning permission and therefore the original permission remains intact. When determining a s.73 application, the LPA may impose conditions beyond those proposed in the application. However, the conditions imposed should only be ones which could have been imposed on the original permission. It has previously been held that the amendments permitted should not amount to a "fundamental alteration" of the proposal put forward in the original application.
- 1.4 The application site is a former brick clay quarry and brickworks factory located to the south of Caernarfon and consists of quarry workings, large areas of hardstanding on both sides of the River Seiont, rough pasture along the upper face of the workings to the east and a vehicular access connecting Seiont Mill Road and the roundabout at Pont Seiont.

Background Information Relating to Planning Permission C17/0011/19/MW

- 1.5 In the determination of the original application, C17/0011/19/MW, the main thrust of the development proposals and supporting Environmental Statement promoted the benefits of the site as ancillary to the requirements of a national road improvement project as a site compound, office, logistics hub and for its ability to recover the unsuitable materials generated as a by-product of road construction within site restoration.
- 1.6 Given the difficulty in estimating the tonnage of materials generated by the bypass project the developer confirmed that the development could be conditioned to ensure sufficient control is retained over the proposal where the use is specific to and limited to the bypass construction project. It was therefore agreed, amongst other requirements, that any planning permission granted should be subject to the following conditions;
 - Duration of the permission limited to 5 years from the notification of commencement with operations involving

PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

- The import of materials for the restoration of the quarry restricted to the requirements of the bypass scheme and time-limited to 3 years from the notification of commencement of landfilling operations,
- Haulage operations involving the import and export of materials restricted to the use of the dedicated haul routes indicated on the application plans,
- Topographical survey to be submitted for the approval of the mineral planning authority upon cessation of operations to provide a full audit of materials available for restoration. If the volumes of materials derived from the bypass construction works are insufficient to complete the restoration of the site in accordance with the application plans, an amended restoration plan shall be submitted for the approval of the mineral planning authority.
- Revised restoration plan for the northern haul route to restore to agricultural use in accordance with the guidelines in Annex B -D of TAN 1 (Aggregates), specifying the quantities and storage locations of all materials set aside for restoration, i.e. no materials extracted in the formation of the haul road to be exported off-site.

Environmental Impact Assessment:

- 1.7 The original application, C17/0011/19/MW was subject to an Environmental Impact Assessment following a positive screening opinion issued in July 2015. The Environmental Statement addressed the key environmental issues identified in a formal scoping opinion issued in November 2015 for works associated with the construction of the bypass as well as the statutory requirements of the EIA Regulations.
- 1.8 The Waste Planning Assessment submitted with this application confirms the intention to vary condition 3 to import materials from other sources, but in compliance with the requirements of other conditions relating to the hours of operation, the timescale of haulage operations up until the 18th November 2022 and the use of the dedicated haul routes connected to the route of the bypass. However, it is considered that the requirements of Regulation 9 (3) of The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 would apply in respect of ‘subsequent applications’; *“Where it appears to the relevant planning authority that the environmental information already before them is not adequate to assess the significant effects of the development on the environment, they must serve a notice seeking further information in accordance with regulation 24(1).”*.
- 1.9 As the changes to the development involving the import of materials from other sources are both material and significant and the Environmental Statement submitted with the original application C17/0011/19/MW was not initially adequate to assess the impact of the changes to condition 3 involving the import of materials from other sources. The applicant has now submitted additional information in accordance with EIA regulations.
- 1.10 Any indirect impacts on European environmental designations would need to be considered separately as part of the HRA undertaken in accordance with Regulation 61 of the Habitats and Species Regulations 2010. There have been no representations or objections from NRW or Gwynedd Biodiversity concerning any additional impacts of the proposal that have already been assessed with the original proposal (C17/0011/19/MW) in accordance with Regulation 61 of the Habitats and Species Regulations 2010.

PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

2. Relevant Policies:

2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 3.1.2 of Planning Policy Wales emphasise that decisions should be in accordance with the Development Plan, unless material considerations dictate otherwise. Planning considerations include National Policy and the Gwynedd and Môn Joint Local Development Plan 2011 - 2026.

2.2 Under the Wellbeing of Future Generations (Wales) Act 2015 the Council not only have a duty to carry out sustainable development, but must also take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act, and in making the recommendation the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

2.3 Anglesey and Gwynedd Joint Local Development Plan 2011 – 2026

Strategic Policy PS 5: Sustainable Development

Strategic Policy PS 13: Providing Opportunity for a Flourishing Economy

Strategic Policy PS 19: Conserving and/or Enhancing the Natural Environment

Strategic Policy PS 21: Waste Management

Strategic Policy PS 22: Minerals

POLICY AMG 5: Local Biodiversity Conservation

POLICY PCYFF 2: Development Criteria

POLICY PCYFF 4: Design and Landscaping

POLICY GWA 1: Provision of Waste Management and Recycling Infrastructure

POLICY GWA2: Waste Management and Allocated Sites

POLICY TRA 1: Transport Network Developments

POLICY TRA 4: Managing Transport impacts

POLICY MWYN 3: Mineral Developments

POLICY MWYN 8: Borrow Pits

POLICY MWYN 9: Restoration and Aftercare

Supplementary Planning Guidance – Maintaining and Creating Distinctive and Sustainable Communities 2019

Supplementary Planning Guidance – Landscape Character 2009

2.4 National Policies

- Policies, guidance and general principles set out in the Welsh Government Planning Policy Wales, Edition 10 (December 2018),
- Policies, guidance and general principles set out in the Welsh Assembly Government Technical Advice Note (Wales) TAN 5: Nature Conservation and Planning, TAN 11: Noise, TAN 18: Transport, TAN 20: Planning and the Welsh Language, TAN 21: Waste, TAN 23: Economic Development,
- Policies, guidance and general principles set out in the Welsh Assembly Government Minerals Technical Advice Note (Wales) 1: AGGREGATES (March 2004),
- Collections Infrastructure Markets Sector Plan (CIMS) 2012,

PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

3 Relevant Planning History:

- 3.1 Planning Permission No. 390 granted subject to conditions on 22 November 1951 for the continuation of workings at Peblig and Seiont Brickworks Caernarfon - Material has been extracted at the site for approximately 100 years and the site has been worked on a regular basis since that time.
- 3.2 C00A/0441/14/MW dated 10th May 2007 – Environment Act 1995, Determination of conditions and scheme of working under initial review (ROMP) of permission ref. 390 dated 22 Nov 1951.
- 3.3 C00A/0442/14/MW granted subject to conditions on 9th May 2007 – Continuation of use of land for the re-use/dispersion of mineral waste on the former railway line.
- 3.4 C01A/0750/14/TC – Certificate of Lawful Use or Development dated 6th February 2002 for the existing use of the site as a brick stocking area.
- 3.5 C15/0977/19/LL granted subject to conditions on 28th October 2015 for the change of use of land for the siting of 3 temporary buildings, parking areas, 2 storage containers together with security fencing in relation to constructing the Caernarfon by-pass.
- 3.6 Quarry ceased operation in 2008 with the brickworks building and site office demolished in 2010 and 2013 respectively.
- 3.7 C17/0011/19/MW granted subject to conditions on the 5th June 2017; Application for works associated with the construction of the proposed A487 Caernarfon to Bontnewydd bypass including:
- Use of land as an extension to the existing site compound area and provision of a maintenance shed, office accommodation, welfare and car parking facilities, fuel store, sewage storage tank, mobile concrete batching plant, mobile asphalt batching plant and construction of a haul route (temporary use),
 - Construction of a new haul road on the northern boundary of the existing quarry with temporary connection to the proposed A487 Caernarfon to Bontnewydd bypass route during the construction period,
 - Continued extraction of minerals, removal of material from a mineral working deposit and existing stockpile of materials,
 - Construction of a hardstanding and siting of plant machinery for the processing and screening of materials,
 - Disposal of inert waste materials for long-term quarry engineering/ restoration works.
- 3.8 C17/0107/19/LL granted subject to conditions on 4th June 2017; Application for temporary planning permission for works associated with the construction of the proposed A487 Caernarfon to Bontnewydd bypass including:
- Site compound and provision of a maintenance shed, office accommodation, welfare and car parking facilities, fuel store, sewage storage tank, mobile concrete batching plant, mobile asphalt batching plant and construction of a haul route.

4. Consultations:

	1 st Consultation	2 nd Consultation
Bontnewydd Community Council:	No Response	

<p>Waunfawr Community Council:</p>	<p>Request whether it is possible to postpone the determination of the application because of Covid 19. Unable to convene a meeting at the present time to discuss the application in detail and to receive specialist advice on the matter. The application should be considered thoroughly in that it could affect the community for a very long period of time.</p>	
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<p>Caernarfon Town Council:</p>	<p>CONCERNS</p> <ul style="list-style-type: none"> • Import of materials from other sources other than that which is generated from the Construction of the Caernarfon to Bontnewydd bypass. • Increased traffic on Seiont Mill Road. This would mean less space for vehicles to pass, with the risk of damaging the bridge (which is listed), and a significant increase in heavy traffic which could further damage the road and cause misery to the residents of Melin Seiont Road <p>Resolution to support the application in principle subject to some conditions:</p> <ol style="list-style-type: none"> 1. That any additional material from outside required to fill the quarry should be transported along by-pass and that this is restricted for the construction phase of the by-pass. 2. That what enters the quarry hole is safe in terms of toxic and / or dangerous material and plants. 3. That the landfill ends when the bypass is complete. 4. No toxic waste enters the river. 5. If used before the bypass is already in place, Seiont Mill Road is kept clean. 	<p>Assurance that HGV's will not be using the single track road from Bontnewydd through the village of Caeathro which is the shortest route to the quarry.</p> <p>The Pontrug bridge is weak with an 18 tonne restriction. Has this been factored and considered within the application?</p>
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<p>Gwynedd Council Transportation Officer:</p>	<ul style="list-style-type: none"> Recommended that any additional imported material required to fill the quarry be routed along the bypass haul roads and confined to the timeframe for constructing the bypass, Concerns that the variation to condition 3 to allow the import of excavated materials at an undefined annual rate could have a detrimental impact on the local road network, including the existing site office access at Seiont Mill Road which also served the former Brickworks. 	<p>There is a discrepancy between documents in relation to the shortfall required to infill the quarry. Welsh Language Assessment stipulates a shortfall of 270,000 m³ while the ES addendum states 171,422 m³. The difference is significant and could be the equivalent of the operation taking nearly twice as long if import rate of 50,000tpa remains the same.</p> <p>The application relates to gaining access to the temporary haul road along the A4085 between Caeathro and Caernarfon. This is a temporary access arrangement, controlled by traffic management for the duration of the bypass construction period, which I believe is scheduled for completion late in 2021. The application does not include any drawings relating to this access, or expand upon proposals to make it permanent or retain it on an extended temporary basis for the infill operation. Full details are required in relation to this access point.</p>
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<p>Welsh Government Transportation Unit:</p>	<p>Welsh Government as highway authority for the A487 Trunk Road advises that it does not issue a direction in respect of the application.</p>	
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<p>Bypass Project Director Welsh Government</p>	<ul style="list-style-type: none"> No objection in principle but will obviously need reassurances that varying the 	<ul style="list-style-type: none">
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<p>Infrastructure Delivery Division:</p>	<p>existing planning condition do not have any impacts on the bypass construction or increase risks to the Welsh Government,</p> <ul style="list-style-type: none"> • Varying condition 3 essentially means road wagons would need to enter the A487 Caernarfon and Bontnewydd Bypass construction site from the A4085 Caeathro Road and travel along the bypass site for approximately 270 meters in order to access the quarry to tip material. • To comply with planning ref: C17/0011/19/MW, this access would also need to be within the land acquired by the WG for the construction and maintenance of the bypass, • The proposal will have contractual implications between the WG and the Balfour Beatty/Jones Bros Joint Venture (JV). Subject to approval by the Local Planning Authority, any amendment to the current planning conditions will need to be incorporated into the construction contract, <p>Certain conditions and assurances on part of the works contractor are required to ensure there is no additional cost or risks to the Welsh Government or delays to the bypass construction including amongst other requirements;</p> <ul style="list-style-type: none"> • The JV as Principal Contractor for the bypass would need to take on additional duties to safely plan and manage the road wagons entering and leaving the bypass site. This requires a traffic management plan (including method statements and risk assessments) to be prepared for approval by WG to identify how the road wagons would safely access and egress the bypass site, and arrangements to segregate or manage the bypass construction plant and third party road wagons which would be using 	
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	<p>the site haul road simultaneously.</p> <ul style="list-style-type: none"> • The bypass site haul road is adequate for construction plant however it may not be suitable to accommodate road wagons. WG therefore require confirmation that no additional cost will be borne by the bypass scheme to upgrade and maintain the haul road to a standard that allows road wagons usage and that no additional costs or resources would be used to manage road wagons entering and leaving the bypass site. This includes resources to deal with any queries or complaints relating to third party road wagon operation. • WG will need written method statements for approval on how the material would be hauled through the bypass site during earthworks, drainage, and surfacing operations without causing any permanent damage. • Condition 7 of the planning ref: C17/0011/19/MW states that haulage operations involving import of materials shall be completed within three years of notification of condition 4c, which is 18 November 2022. However, the bypass construction is currently programmed to be completed by Autumn / Winter 2021 and therefore the WG need clarity on how this material would be hauled into the quarry when the bypass is completed and opened to traffic. No access will be permitted from the bypass once opened to traffic. 	
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Gwynedd Countryside & Access (PROW):	No Response	
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Dwr Cymru:	No comments to make in relation to this application	
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PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

Gwynedd Archaeological Planning Service:	No Response	
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Scottish Power:	No Response	
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Inspectorate of Quarries:	No adverse comments to make on the revised proposals. It would seem eminently sensible to restore the landform to one of safe public amenity.	
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Welsh Historical Gardens Trust:	No Response	
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CADW:	No Response	
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Local Flood Authority:	No comments on land drainage or the potential risk of flooding.	
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Gwynedd Biodiversity:	No Biodiversity concerns with this particular element on condition that the imported material is safe, does not contain any pollution or non-native invasive plant species.	
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Gwynedd Public Protection:	<p>Request further information from the applicant in order to fully assess the proposal.</p> <p>This application changes the nature of the original permission. Concerns relayed through the service by members of the public on the original application at the time, that the proposal would be a precursor to operate the old quarry as a landfill site. Assurances were given that the works were temporary and essential and which would be counterbalanced by the advantage offered by improved transport infrastructure.</p> <p>This application does not include a noise survey or any other environmental assessment to demonstrate any impact or mitigation measures required to operate the site as a waste disposal and processing facility.</p>	
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<p>Natural Resources Wales:</p>	<p>Significant concerns with the proposed development as submitted and recommend that planning permission may only be granted if the following requirement is met. Otherwise, NRW object to this planning application.</p> <ul style="list-style-type: none"> • Requirement – The applicant updates the contact details in the Construction Environmental Management Plan (CEMP). We note that the CEMP version is dated August 2011, and a vast number of the contacts named in the document no longer work for Cambrian/Jones Bros, including the Environmental Manager named as the person responsible for the CEMP. The applicant must update the CEMP with the current personnel. • Confirm that the site’s Environmental Permit already allows waste to be imported from sources other than the Bypass scheme, • TAN 21 Waste (February 2014) requires any application for waste facilities classified as disposal, recovery or recycling to be supported by a Waste Planning Assessment. If an assessment is required then it should be appropriate and proportionate to the nature and scale of the proposed development, • Advise that in addition to planning permission, it is the applicant’s responsibility to ensure that they secure all other permits/consents relevant to their development. 	
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Public Consultations:	<p>Notices have appeared in the local press and site notices displayed in the vicinity of the application respectively. Nine letters of objection have been received highlighting the following concerns;</p> <p><u>Grounds for Objection:</u></p> <ul style="list-style-type: none"> • Significant increase in traffic along Seiont Mill Road, • Works access visibility, behaviour of drivers & increased risk of collision since the commencement of operations relayed directly to the site manager, • Amenity impacts on residential properties due to early start at 6.00am at the site, • Dedicated route for materials haulage does not account for all traffic movements to and from the site, • Standard of the highway serving properties along Seiont Mill Road and its capacity to deal with traffic movements to and from the site. 	Notices have appeared in the local press and site notices were displayed in the vicinity of the application area.
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Assessment of the material planning considerations:

5. The principle of the development

5.1 Condition 3 currently restricts the import of surplus materials generated by the bypass construction works as follows;

“Nothing other than inert excavation materials, that are surplus to the requirements of the Caernarfon to Bontnewydd bypass project, shall be deposited at the site and used in works of restoration”.

The application proposes the following amendments to the wording of the condition;

“To reach the ground levels agreed in restoration plan no. 3030/16 excavation materials, that are surplus to the requirements of the Caernarfon to Bontnewydd bypass project in addition to inert excavated waste materials from other sources, shall be deposited at the site in accordance with the NRW permit”.

5.2 Section 73 of the Town and Country Planning Act 1990 applies to the determination of applications to develop land without complying with conditions subject to which a previous planning permission was granted. It stipulates that; “(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it

PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application”.

- 5.3 On receipt of an application for planning permission under s.73 of the 1990 Act, the Local Planning Authority must consider the development plan and material planning considerations, but in doing so, shall consider only the question of conditions to which the planning permission ought to be subject and may not go back to their original decision to grant permission.
- 5.4 Planning case law has established that; “a permission under section 73 can only take effect as an independent permission to carry out *the same development as previously permitted*, but subject to the new or amended conditions.” Furthermore, it is well-settled law that a condition on a planning permission will not be valid if it alters the extent or the nature of the development permitted. There is a distinction therefore between the “operative part” or grant of the planning permission on the one hand, and the conditions to which the operative part or grant is subject, i.e. the grant identifies what can be done—what is permitted—so far as use of land is concerned; whereas conditions identify what cannot be done—what is forbidden.
- 5.5 Accordingly, s.73 contains no power to grant a new planning permission with a different operative part from that contained in the original and it would also be unlawful for an LPA to impose a new or amended condition on a planning permission under s.73 which was inconsistent with the operative part of the permission.
- 5.6 A fundamental and important part of the development description, or ‘operative part of the permission’ allows for: “*Works associated with the construction of the proposed A487 Caernarfon to Bontnewydd bypass...*,” and that each subsequent bullet point has to be taken in the context of works associated with the road scheme “... *including*”:
- “*Disposal of inert waste materials for long-term quarry engineering/restoration works.*”
- 5.7 Condition 3 supports the description of the development and the purpose of the proposal appears fundamentally clear. The description should be considered in its entirety and the Authority’s position therefore is that the current application under Section 73 changes the “extent or the nature of the development”, previously approved for “*works associated with the construction of the proposed A487 Caernarfon to Bontnewydd bypass ...*”. Therefore, at the time the original application was determined, the Local Planning Authority would not have been in a position to draft the alternative wording to condition 3 as suggested in the application and accordingly, the Authority considers that condition 3 should not be altered and has no alternative but to recommend refusal in accordance with s.73(2) (b) of the Town and Country Planning Act.

6. Other material planning considerations associated with the application

- 6.1 Although information has been submitted by the applicant in support of the application and to satisfy the requirements of the Environmental Impact Assessment Regulations, it is considered that a full analysis of the application’s merits is premature and should be held in abeyance upon the submission of a new planning application that accords with correct process and regulations.

PLANNING COMMITTEE	DATE: 20/10/2020
REPORT OF THE ASSISTANT HEAD OF ENVIRONMENT DEPARTMENT	

7. Conclusions

- 7.1 Section 73 of the Town and Country Planning Act 1990 contains no power to grant a new planning permission with a different operative part from that contained in the original and it would also be unlawful for an LPA to impose a new or amended condition on a planning permission under s.73 which was inconsistent with the operative part of the permission. A fundamental and important part of the development description, or 'operative part of the permission' allows for; "*Works associated with the construction of the proposed A487 Caernarfon to Bontnewydd bypass*" and that each subsequent bullet point has to be taken in the context of works associated with the road scheme "*..... including*":
- "*Disposal of inert waste materials for long-term quarry engineering/restoration works.*"
- 7.2 The description should be considered in its entirety and the Authority's position therefore is that the current application under Section 73 changes the "extent or the nature of the development", previously approved for. Therefore, the Authority considers that condition 3 should not be altered and has no alternative but to recommend refusal in accordance with s.73(2) (b) of the Town and Country Planning Act.
- 7.3 The proposal has been considered in accordance with the sustainability goals of Planning Policy Wales and The Well-being of Future Generations Act (Wales) 2015.

8. Recommendation

8.1 To authorise the Senior Manager, Planning and Public Protection Services to refuse the application for the following reasons;

The proposal changes the extent or the nature of the development previously approved for "*works associated with the construction of the proposed A487 Caernarfon to Bontnewydd bypass*" and the Authority considers therefore that condition 3 should not be altered in accordance with s.73(2) (b) of the Town and Country Planning Act.