

Planning, Taxi Licensing and Rights of Way Committee Report

Application No: HEDG/2017/0005 **Grid Ref:** 298735.15 311392.74

Community Council: Banwy **Valid Date:** 13/09/2017 **Officer:** Richard Edwards

Applicant: Powys County Council

Location: Maes Garthbeibio, Foel, Welshpool, Powys, SY21 0NU

Proposal: Application for hedgerow removal

Application Type: Application for Hedgerow Removal Notice

The reason for Committee determination

The applicant is Powys County Council.

Site Location and Description

The proposed hedgerow to be relocated is to the south-west of the village of Foel adjacent to class 3 road, C2111 towards Felin Fach Bridge. To the north of the proposed site is agricultural land with the river Banwy to the west. Running south and east of the proposed site is the C2111 county highway and beyond this is Twin Rivers Holiday Home Park.

The notification is for the relocation by a maximum of 1.5 metres of approximately 15 metres of hedgerow along the C2111 to facilitate improvements of approach for large vehicles crossing Felin Fach Bridge.

Consultee Response

Banwy Community Council-

No comments received at the time of writing this report

Powys Ecologist

Consultation response received 25/10/2017:

Thank you for consulting me with regards to Hedgerow Removal Application HEDG/2017/0005 with regards to hedgerow removal at Maes Garthbeibio, Foel, Welshpool, Powys.

I visited the hedgerow on 17th October 2017 and undertook a survey in accordance with the methodology set out in the Hedgerow Regulations 1997 to assess the ecological 'Importance' of the Hedgerow as defined by the Regulations. The results of the survey are as follows:

- The hedgerow was found to have 5 woody species (listed in Schedule 3 to the Regulations) present in the surveyed section of the hedgerow – Ash, Blackthorn, Hawthorn, Hazel, Rose spp.
- 4 woodland ground flora species (listed in Schedule 2 to the Regulations) were identified – Barren strawberry, Viola spp., Herb-robert and Wood sorrel
- The hedgerow is not adjacent to a public footpath
- The hedgerow connects with 2 other hedgerow – score 2 points
- The hedgerow is not associated with a bank or wall which supports the hedgerow along at least one half of its length
- The hedgerow is not associated with a ditch along at least one half of its length
- Gaps in the hedgerow do not add up to more than 10% of its length
- No standard trees are present within the hedgerow
- There is a parallel hedgerow within 15m of the hedgerow concerned.

Having taken these results into account, the hedgerow does not meet the criteria of 'Important' as defined by the regulations.

It is important to note that hedgerows are listed as a "habitat of principal importance for the purposes of conserving biodiversity" as identified in on Section 7 of the Environment (Wales) Act 2016, and are beneficial to a wide range of biodiversity including bats, nesting birds, small mammals, lichens and fungi. Hedgerows and linear tree features are also included in the Powys LBAP under the Linear Habitats Action Plan – 'Linear habitats are important to a wide variety of species as refuges, breeding and feeding sites and as links between habitats of high biodiversity value'.

I note that the application states the intention is to translocate the hedgerow to an alternative alignment rather than to remove it completely, this will help retain the biodiversity value of the hedgerow and help to maintain the potentially important foraging/commuting habitat that the hedgerow provides for local biodiversity.

It is noted that the proposed hedgerow removal is associated with works being undertaken to the bridge, I am aware that an otter resting site was identified as part of the ecological assessment of the bridge and that works to the bridge require an EPS Licence. Whilst it is considered that the hedgerow affected by the removal notice does not provide suitable habitat for resting or breeding otters, given the proximity of the hedgerow affected to the bridge there is potential for the translocation works to result in disturbance to otter a European protected species – therefore the applicant should ensure that the works proposed to the hedgerow are covered by the EPS Licence issued for the bridge works.

If a hedgerow removal notice is issued the applicant should be reminded that under the Wildlife and Countryside Act 1981 (as amended) - All nesting birds, their nests, eggs and young are protected by law and it is an offence to:

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird

- intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.
- The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.
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The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built, (usually between late February and late August). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales.

CPAT

Consultation response received 21/09/2017:

Thank you for the consultation on this hedgerow removal notice.

I can confirm there are no archaeological implications for this hedgerow removal under the heritage criteria of the hedgerow regulations 1997.

National Resources Wales

Consultation response received 29/09/2017:

Thank you for consulting Natural Resources Wales (letter dated 21/09/2017) regarding the above.

We have checked our records for the area affected by the proposal and we have some comments to make.

Protected Species

NRW holds a recent record of an otter resting place located just under the Felin Fach bridge. In February 2017 the site had evidence of long term use by otters, with presence of old and fresh spraints.

It is therefore NRW opinion that the hedgerow translocation works could potentially cause disturbance to otters and we advise you seek additional advice from your internal ecologist on this matter.

Otters and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2010 (as amended). Any development that would contravene the protection afforded to bats under the Regulations would require a derogation licence from Natural Resources Wales. A licence may only be authorised if:

- i. There is no satisfactory alternative and

- ii. The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range. In addition,
- iii. The development works to be authorised must be for the purposes of preserving public health or safety, or for other imperative reason of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

We anticipate that disturbance is likely to be minimised or avoided by adopting suitable Reasonable Avoidance Measures. Please discuss details of the proposal with your ecologist who will also be able to advise you on license requirements if needed.

Flood Risk

The hedgerow lies entirely within Zone C2, as defined by the Development Advice Map (DAM) referred to in Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004).

With regards to the proposed hedgerow removal and translocation, we defer detailed comment to Powys CC drainage team as they are the Lead Local Flood Authority (LLFA) for this ordinary watercourse.

We advise that Powys County Council engineers liaise with the drainage team to ensure that ground levels are not altered in a way that could affect overland flow routes.

Biosecurity

Due to the proximity of the watercourse we advise that a Biosecurity Risk Assessment and a Pollution Prevention Plan is prepared and implemented for this proposal.

We consider that the risk assessment must include:

- (i) Appropriate measures to control and INNS on site; and
- (ii) Measures or actions that aim to prevent INNS being introduced to / allowed to disperse from the site for the duration of construction and operational phases of the scheme.

Representations

No letters of public representation have been received at the time of writing this report.

Planning History

None

Principal Planning Constraints

Flood Zone

Principal Planning Policies

National Planning Policy

Planning Policy Wales (9th Edition, November 2016)
Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009)
Technical Advice Note (TAN) 18: Transport (2007)
Hedgerow Regulations Act 1997

Local planning policies

GP1 – Development Control
GP3 – Energy and Conservation
GP4 - Highway and Parking Requirements
ENV1 – Agricultural Land
ENV2 – Safeguarding the Landscape
ENV3 – Safeguarding Biodiversity and Natural Habitats
ENV7 – Protected Species
SP3 – Natural, Historic and Built Heritage
SP14 - Development In Flood Risk Areas

RDG=Powys Residential Design Guide NAW=National Assembly for Wales TAN= Technical Advice Note
UDP=Powys Unitary Development Plan, MIPPS=Ministerial Interim Planning Policy Statement

Officer Appraisal

Section 38 (6) of the Planning and Compulsory Purchase Act 2004

Members are advised to consider this application in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Principle of Development

In considering the proposed hedgerow relocation, regard is given to The Hedgerow Regulations Act 1997. In compliance with regulation 5, prior to the removal of any hedgerow or stretch of hedgerow, the owner must first notify the Local Planning Authority of their intention to remove the hedgerow. In the event that the hedgerow is considered 'important' as per the criteria of Regulation 4, the Local Planning Authority will serve a retention notice prohibiting the removal of the hedgerow.

In determining whether a hedgerow is considered 'important' for the purposes of the regulations, regard must be given to the following:

- Archaeology and History
- Wildlife and Landscape

With regards to the above, the following observations and comments are made.

In terms of archaeology and history, Clwyd Powys Archaeological Trust has been consulted. The response received by Planning Services indicates that there are no archaeological implications under the Hedgerows Regulations Act 1997 for the removal of this section of hedgerow and it does not fulfil the criteria for an 'important hedgerow'.

With respect to wildlife and landscape, PCC Ecologist stated that they had visited the site and carried out an assessment of the hedgerows affected in accordance with the requirements set out in the Hedgerow Regulations 1997. The Officer concluded that the hedgerow concerned does not qualify as an "important" hedgerow as defined by the criteria set out in the Hedgerow Regulations 1997.

RECOMMENDATION

Having carefully considered the proposed hedgerow relocation, it is considered that the hedgerow does not qualify as an important hedgerow under the hedgerow regulations. The recommendation is one of approval.

Informative Notes

Biodiversity

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- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird
- intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.
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