

Planning, Taxi Licensing & Rights of Way Committee

Meeting Venue
**Council Chamber - County Hall,
Llandrindod Wells, Powys**

Meeting Date
Thursday, 25 October 2018

Meeting Time
10.00 am



County Hall
Llandrindod Wells
Powys
LD1 5LG

For further information please contact
Carol Johnson
01597826206
carol.johnson@powys.gov.uk

18 October, 2018

The use of Welsh by participants is welcomed. If you wish to use Welsh please inform us by noon, two working days before the meeting

AGENDA

1.	APOLOGIES
-----------	------------------

To receive apologies for absence.

2.	MINUTES OF THE PREVIOUS MEETING
-----------	--

To authorise the Chair to sign the minutes of the previous meeting of the Committee held on 4 October, 2018 as a correct record.

(To Follow)

Planning

3.	DECLARATIONS OF INTEREST
-----------	---------------------------------

- a) To receive any declarations of interest from Members relating to items to be considered on the agenda.
- b) To receive Members' requests that a record be made of their membership of town or community councils where discussion has taken place of matters for the consideration of this Committee.
- c) To receive declarations from Members of the Committee that they will be acting as 'Local Representative' in respect of an individual application being considered by the Committee.

d) To note the details of Members of the County Council (who are not Members of the Committee) who will be acting as 'Local Representative' in respect of an individual application being considered by the Committee.

4.	PLANNING APPLICATIONS FOR CONSIDERATION BY THE COMMITTEE
-----------	---

To consider the reports of the Head of Regeneration and Regulatory Services and to make any necessary decisions thereon.

(Pages 5 - 6)

4.1. Updates

Any Updates will be added to the Agenda, as a Supplementary Pack, wherever possible, prior to the meeting.

(To Follow)

4.2. P/2014/0910 Land at Llanthomas Lane, Llanigon, Hay-on-Wye, Hereford, Powys HR3 5PU

(Pages 7 - 92)

4.3. 18/0553/FUL Lake Hotel, Llangammarch Wells, Powys, LD4 4BS

(Pages 93 - 104)

4.4. 18/0577/FUL Land At Eric Evans Car Sales, Station Crescent, Llandrindod Wells, Powys, LD1 5BE

(Pages 105 - 124)

5.	APPEAL DECISION
-----------	------------------------

To note the Planning Inspector's decision.

(Pages 125 - 128)

6.	DECISIONS OF THE HEAD OF REGENERATION AND REGULATORY SERVICES ON DELEGATED APPLICATIONS
-----------	--

To receive for information a list of decisions made by the Head of Regeneration and Regulatory Services under delegated powers.

(Pages 129 - 136)

Taxi and other licensing

7.	MINUTES OF TAXI REVIEW PANELS
-----------	--------------------------------------

To authorise the Chair presiding at the following Taxi Review Panel to sign the minutes as a correct record: 13 August, 2018.

(Pages 137 - 138)

<p>On the completion of the meeting the Committee will receive training on the new Planning ICT system and on environmental health issues.</p>

This page is intentionally left blank

Planning, Taxi Licensing and Rights of Way Committee
25th October 2018

For the purpose of the Government (Access to Information) Act 1985, the background papers relating to each individual planning application constitute all the correspondence on the file as numbered in the left hand column.

Applications for consideration by Committee:

Application No:	Nature of Development:
Community:	Location of Development:
O.S. Grid Reference:	Applicant:
Date Received:	Recommendation of Head of Planning:

<p>P/2014/0930</p> <p>Llanigon CC</p> <p>321147.53 240185.76</p> <p>05/09/2014</p>	<p>Application for Removal or Variation of Condition</p> <p>Land at Llanthomas Lane, Llanigon, Hay-on-Wye, Hereford, Powys HR3 5PU</p> <p>Mr John Price c/o agent</p> <p>Recommendation: Refusal</p>
<p>18/0553/FUL</p> <p>Llangammarch Wells</p> <p>294723 247624</p> <p>23/08/2018</p>	<p>Full: Proposed managers dwelling for use in conjunction with the hotel (part retrospective)</p> <p>Lake Hotel, Llangammarch Wells Powys LD4 4BS.</p> <p>Mrs Grace Cleaton, Howey, Llandrindod Wells, Powys, LD1 5PP</p> <p>Recommendation: Conditional Consent</p>

<p>18/0577/FUL</p> <p>Llandrindod Community Council</p> <p>305987 261472</p> <p>11/09/2018</p>	<p>Full: Demolition of existing car sales building, construction of new bus interchange with shelters and cycle racks at south of site and change of use on the northern portion for private car parking</p> <p>Land at Eric Evans Car Sales, Station Crescent, Llandrindod wells, LD1 5BE</p> <p>Powys County Council,</p> <p>Recommendation: Conditional Consent</p>
---	---

assessed. By this we mean that the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere. In extreme flood scenarios (0.1% annual probability event) the retention of the footbridge would provide some betterment to existing properties at Ash Grove.

In summary, we have no objection to the proposed removal of condition 13 attached to this consent and subsequently the retention of the footbridge at Llanthomas Lane.

2nd Response

Thank you for your letter on 16 November 2016 asking us to inform the Planning Authority whether, in light of further information, there has been any change in our advice since that reported to Committee on 18 December 2014.

Having revisited our previous advice, the further information from third parties and in consideration of our own internal guidance; our advice has changed and we wish to raise the following issues.

As you're aware the principle of development was established through P/2008/1607 on the basis that the existing footbridge could increase flood risk on the Phase 1 site due to its potential to obstruct flood debris/block. Therefore the Planning Authority attached condition 13 to ensure its removal.

There has been differences of opinion over recent years on whether the footbridge is likely to obstruct flood debris / block. Previously we have not considered blockage on the footbridge in isolation, but provided advice in the context that the 6 culverts under Llanthomas Lane are the more critical factor in blockage terms. Our reasoning for this is due to the historic flooding evidence we have at this location. For information the current modelling from the applicant includes a 75% blockage on the 6 culverts.

In light of your reconsultation we have considered this issue again. Since our letter dated September 2014 we have been issued new internal guidance (attached) which indicates that for medium to high risk the blockage factors to be applied to bridges are 25% and 80% respectively. It should be noted that local knowledge and engineering judgement can be used to apply varying proportions if considered appropriate. In applying this guidance and taking account of the point raised in the letter from Edenvale Young dated 15 December 2014, it seems reasonable to assess the consequences of flooding in the event the footbridge became blocked.

Our reasons for this is that further model runs, to include a blockage at the footbridge, would ensure all parties are made reasonably aware of the risks and consequences associated with a blockage of the footbridge before any decision is made by the Planning Authority. There are various ways of assessing further blockage, whether this is in-combination with the 6 culverts or in isolation. We can offer further advice on this if necessary, but the approach should be agreed if further modelling is undertaken.

Further model runs to take account of blockage at the footbridge are likely to demonstrate an increase in flood risk to the Phase 1 site and the effects of this increase have not been considered in the application. However, you should note that the site is currently at risk of

flooding and it is our opinion that the site will continue to be at frequent risk of flooding, regardless of the outcome of the application to remove condition 13. We also confirm the site will continue to be situated within flood zone C2 of the Development Advice Maps accompanying TAN 15.

In addition to the above issue, the modelling outputs used in the application include a single "flood relief" culvert (with a cross section of 1.2m²) from the ephemeral channel through the Phase 1 site. This is referenced in Section 3.4.3 of the Hydraulic Modelling report provided by Martin Wright Associates.

However, it is our understanding that the construction of this relief culvert has not been given the appropriate permission(s). Therefore this raises a question over whether the current model can be relied upon in this application. We understand the Planning Authority has discussed this with the applicant. The applicant would need to demonstrate that the conditions in the model can be met on the site. We have concerns with this as there are discrepancies between the proposed relief culvert dimensions applied within the model and the dimensions indicated on FMW's drawing number FMW 0658 – SK03 Rev A. The drawing shows twin culverts with cross section of either 0.72m² or 0.88m² to the model which has a single culvert area of 1.2m². In addition there has been no assessment of a blockage on this culvert, or whether the culvert can be designed, built and maintained as required.

We recommend that you seek the views of your Authority's Drainage Team on consenting this proposal to permanently divert the ephemeral channel, under the requirements of Section 23 of the Land Drainage Act 1991, including any culverting policy that may be in place.

We acknowledge the complexity of these matters, therefore if you have further questions please write to us.

3rd Response

Thank you for your letter dated 30 March 2017. You also forwarded an email from the Applicant's agent dated 8 March 2017 for our information.

Your Authority has sought our technical advice on the risks and consequences of flooding in relation to the removal of condition 13. It is our understanding that the condition had been imposed on the permission due to the footbridge's potential to obstruct flood debris / block. The Applicant hasn't fully demonstrated the effects of a blockage and the potential consequences of flooding remains unknown. We have previously advised that further modelling work should be carried out. In the absence of this we are not able to advise further.

Cllr Geraint Hopkins

I have been contacted by several residents of Llanigon who live near the land given planning approval ref P/2008/1607, asking me to call in application P/2014/0910 for determination by the Planning Committee. The reasons given:-

- a) Significant issues relating to flooding
- b) The level of community interest and concern
- c) The fact that the Planning Committee made the original decision

I would be obliged if you could action this request and acknowledge that it will be so done.

Representations

Representations were received from nine third parties. A third party has also commissioned a planning consultant and hydrologist to comment on the application. The representations raised the following summarised objections:

- The land is agricultural land and is in an unsightly condition, being surrounded by heras fencing and excavations on site.
- The landowner has degraded the local environment, it should be agricultural land but is now scrubland as the applicant describes it.
- Notes errors in the supporting statements including in relation to passing places and the safety of the public highway.
- The bridge is used only in high flow events at other times the lane can simply be used.
- Request to see detail of dialogue with NRW specifically which shows that the flooding and drainage problems have been satisfactorily resolved.
- The comments of NRW are noted and these state that the retention of the footbridge would offer betterment to the existing properties...”, clearly because it allows safe passage of pedestrians up to a certain degree of culvert overflow. It does not however actually state that there is “betterment brought about in flood risk terms...” because the footbridge, it is now admitted, does not affect flooding / flood risk as such so it cannot therefore be “better” than it is now with no action taken: i.e. there is no improvement at all on the current situation by retaining the footbridge.
- Question the discharge and compliance with conditions imposed on condition 8.
- Challenge the question for the last FCA, so it is hard to accept any further comments without the input of our hydraulic expert. The proposed dwellings within phase 1 may remain “flood free during all flood events..” as claimed, but question the impact on other parties such as Ty Golchi and Water’s Edge.
- The importance of the ephemeral channel does indeed seem to be more than a potential flood risk and has been exacerbated by the applicant’s works on site.
- Express concerns regarding the conveying of water over the strip of land next to Ty Golchi and the discharge. Water discharging the other side of the culvert will raise the level of water, which in May 2012 flowed up into Glen-yr-Afon – opposite the rear of Ty Golchi and Llanthomas Lane. The ford is an “Irish Ford” and designed to overflow in high flow levels. Building in this location is inappropriate and risky.
- Any betterment at the site relates to the properties proposed and not to neighbours. The compliance with TAN15 is questioned.
- The applicant’s excavations of the ephemeral channel in 2001 caused backing up the channel.
- The May 2012 flood is not the worst flood that anyone can remember it is one of the worst floods.
- It would be proposed to set the access road level to the site one metre lower than the dwellings within the intention of forming a flood flow route. Where will this discharge, presumably onto the lane – which would be flooded and towards Ty Golchi where previous flood events have already reached the car park area.
- Even if the flood event in May 2012 were 1 in 10 years is it acceptable to wait and be flooded every 10 years. Climate change and its effects are unpredictable.
- It is considered very unfair and inappropriate in the face of all the long history of evidence provided over time by a number of witnesses concerning flooding, water run off, nuisance and safety, if the local planning authority allows this building to take place. We need much

more detailed information for analysis and consideration by our hydraulic expert. Surely it is a matter of simple common sense to understand that it cannot be appropriate to build in an area which is, after all, effectively a flood plain which should be allowed to function as such.

- Representations have also raised concern over any loss of the footbridge and although expressed as objections indicate that they consider that the footbridge plays no part in flooding and provides a valuable link over the ford in times of flooding and should not be removed.
- Permitting this application will allow for the development of family housing in an area of flood risk putting lives at risk.

A representation was received from a hydrological consultant employed by a third party. This representation states the following:

Edenvale Young is a specialist flood risk consultant and at the time of the original representation we wrote several letters to the Local Planning Authority and the Environment Agency (now NRW). At the time we felt that the quality of the hydraulic modelling and the FCA in general was poor and that there were a number of serious omissions and error in the development of the FCA. I would be happy to supply these documents if you do not have them to hand.

Andrew Bevan has now passed me a copy of a new FCA which includes the results of modelling associated with the footbridge. I have had a brief look at the information contained in the various documents which make up the FCA (Martin Wright Associates - MCW) but I can't pretend to have undertaken a detailed review. As you probably realise the reports are aimed at discharging a condition associated with the footbridge. However, when we last looked at this issue, I think that I am correct in saying that the Environment Agency had issued Anne with an apology stating that they had made errors in the assessment of the original FCA submitted by the developer and that the serious concerns raised by Edenvale Young into the FCA were valid. I am not entirely sure what the status of the planning application was following this admission bearing in mind that the EA changed their opinion at a very late stage in the process.

The MWA FCA submitted to the LPA recently compares the "existing" situation (i.e. with the footbridge and housing development) to the proposed situation (without the footbridge but with the housing development). It should be recognised that the former of these two scenarios is not the "existing" situation as the properties have not been built. The existing situation and hence the baseline for the FCA should be pre-development with the footbridge and this scenario should have been considered against the post development situation without the footbridge but with the housing.

1D-2D modelling of this nature was never presented during the original application. However, the modelling contained in the report appears to support the concerns we had at the time for a number of reasons. Firstly the outputs clearly show that the proposed plots 2 and 3 are inundated in the 1 in 100 year event and under these circumstances the flood risks to the properties would be deemed to be unacceptable in accordance with TAN 15. In addition, the two proposed plots adjacent to Llanthomas Lane are surrounded by flood water and access and egress to these properties during flooding must be compromised. These properties must be raised on platforms above the existing land to achieve this "dry" status.

More seriously the plots show flow contracting and accelerating between the above properties clearly changing the flow paths from the "existing" condition (no housing development but with the footbridge). In my opinion there is a very high probability that this contraction and acceleration of flows would have a detrimental impact downstream; notably on Ann's house. I am struggling to see how the development can proceed given this information even if there have been procedural errors in the past. It would be extremely unlikely that the properties would be insurable.

Again, I have not been able to review the information in detail and I think that given the sites history there should be a thorough review of the model. Accordingly we would ask for an extension in the time to evaluate the flood modelling. In particular we would like to have a copy of the model developed by MCW so that we can ensure that the model is robust and meets the high standards required for an FCA.

Planning History

Planning permission P/2008/1607 was granted subject to the following conditions:

1. The development to which this permission relates shall be begun no later than the expiration of five years from the date of this permission.
2. Prior to their first use full details or samples of materials to be used externally on walls and roofs of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority.
3. Areas of hard surfacing within the development hereby permitted shall be paved in materials of a type and colour to be agreed in writing by the Local Planning Authority prior to their first use.
4. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
5. Prior to the occupation of a dwellinghouse erected pursuant to this permission provision shall be made for off highway vehicular parking and turning to serve that dwelling in accordance with the details shown in the approved plans.
6. Prior to the commencement of building operations on the dwellinghouses hereby permitted the Class III road (C74) serving the site shall be widened and a footpath provided in compliance with the details shown in the approved plans.
7. The access road and paviour margins serving the development hereby permitted shall be finally surfaced and kerbed in accordance with the details shown in the approved plans prior to the occupation of any dwellinghouse erected pursuant to this permission.
8. The development hereby permitted shall not be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be implemented

prior to the construction of any impermeable surfaces draining to the system unless otherwise agreed in writing by the Local Planning Authority.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other structures shall be erected within the land to the north of the development site which adjoins the Dgeddi Brook (as shown hatched green on plan bearing the number P/2008/1607 (Plan 1) attached hereto). Nothing shall be stored in this area and ground levels within the area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

10. Before commencement of development a scheme of landscape maintenance in respect of the land referred to in 9 above shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation.

11. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other structures shall be erected or ground levels altered on the land hatched in green as shown the plan bearing the number P2008/1607 (Plan 2) attached hereto (i.e. 5 metres of the top of the bank of the Dgeddi Brook and the 'ephemeral channel').

12. Before commencement of development a method statement including details of the arrangements for its implementation for cutting boundary hedges and mowing grassed areas within the maintenance strip referred to in condition 11 above - such as to keep the said hedges below 1.2 metres in height and the area free of trees and other substantial shrubs - shall be submitted to and approved in writing by the Local Planning Authority. Subsequent to commencement of development, the area shall thereafter be maintained in accordance with the approved method statement.

13. Prior to the commencement of development on the site the footbridge across the Dgeddi Brook (location shown by the abbreviation 'FB' on the plan bearing the number P2008 1607 (Plan 1) attached hereto) shall be removed to the written satisfaction of the Local Planning Authority.

Principal Planning Constraints

C2 Flood Zone

Historic Landscapes Register - Outstanding

Principal Planning Policies

National Policy

Planning Policy Wales (Edition 9, 2016)

TAN 15 - Development and Flood Risk (2004)

Local Policy

Powys Local Development Plan 2018

SP1 – Housing Growth
SP5 – Settlement Hierarchy
SP6 – Distribution of Growth across Settlement Hierarchy
DM5 – Development and Flood Risk
DM6 – Flood Prevention Measures and Land Drainage
DM13 – Design and Resources
H1 – Housing Development Proposals

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

Site Location and Description

The site of development is an area of agricultural land in the settlement of Llanigon adjoining Llanthomas Lane. The development of the land for Erection of 4 dwellings and private access road was granted full planning permission on the 4 November 2014 under planning permission P/2008/1607.

In the Local Development Plan, Llanigon is designated as a small village. No development boundaries are given for small villages and there are no allocations. Open market housing will be restricted to small infill plots capable of accommodating a maximum of two dwellings or larger infill schemes capable of accommodating five dwellings maximum, provided no more than two are for open market.

The site is adjoining the Digeiddi Brook and at the date that planning permission was issued was partially within Zone C2 of the Development Advice Maps that support Technical Advice Note 15 – Development and Flood Risk (2005).

Condition 13 requires that before commencement of development “the footbridge across the Digeiddi Brook ... shall be removed to the written satisfaction of the Local Planning Authority”. The footbridge forms part of the public highway and is under the control of Powys County Council as highways authority. The condition has not been complied with and no agreement has been reached with Powys to remove the bridge. The full wording of condition 13 is given below and the reason for the condition on the decision notice is as follows: “To minimise flood risks in compliance with policy DC13 of the Powys Unitary Development Plan.”

Introduction

This is an application made under section 73 of the Town and Country Planning Act 1990. This is an application to continue with development without complying with conditions previously imposed, Welsh Government Circular 016/2014 describes the nature of such an application in paragraph 2.4, stating the following: “Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73. Section 73 will not apply if the period in the previous condition limiting the duration within which the development could begin has now expired

without the development having begun. Paragraph 5.21 details how section 73 can be used to renew planning permissions.”

Determination of an application made under section 73 is limited to consideration of the merits of the conditions that the application seeks to remove or vary. This limits the consideration of this application to the merits of condition 13 only, this is an important consideration given the concerns and objections expressed by third parties which relate to a wider

The merits of the application – does condition 13 still serve a useful planning purpose?

Conditions should only be imposed where they comply with “The six tests” which are outlined in section 3.0 of WGC 016/2014. Conditions must meet the following requirements: necessary; relevant to planning; relevant to the development; enforceable; precise; and reasonable.

The condition appears to have been imposed as the bridge was seen as contributing to flooding in the locality and a condition to require its removal would improve the flood situation at the site and this is reflected in the reason given for the imposition of the condition. A Flood Risk Assessment (Revised Phase 1) (Updated March 2007) submitted with the original application states that the ‘footbridge just upstream of the culvert’s inlet, however, is a serious flood risk to the site as it is very likely to cause large objects to block the channel and form a damming effect that could lead to very high headwater levels that would result in flooding of the Phase 1 site.’ The assessment concludes that the footbridge over Digedi Brook and Llanthomas Lane and any other features that could cause blockage and damming pose a serious risk.

The case put forward by the applicant is that the condition is not necessary and serves no useful planning purpose. They also consider it to be imprecise in its wording as it does not, in their view, prevent development commencing.

The case that the condition is not necessary forms the main justification for this application. The applicant argues through a supporting flood modelling exercise and flood consequences assessment that the removal of the bridge will have no effect on the flooding situation at the site and that the condition serves no useful planning purpose. It is noted that third parties, including a professional hydrological consultant, have questioned the validity of the assessment and the strength of the conclusions in relation to the bridge. While noting these concerns it is considered that the local planning authority should be guided in these matters by the specialist advice available from Natural Resources Wales (NRW).

NRW initially offered no objection to the proposed development however following the submission of information from third parties were reconsulted on the application. NRW also advised that they had been issues with further internal guidance which led to them amending the advice given. NRW have stated that they require further information to consider whether the removal of the condition is acceptable. NRW state that the applicant would need to demonstrate that the conditions in the model can be met on site. They state that they have concerns with this as there are discrepancies between the information submitted. There has also been no hydrological modelling on aspects of the development.

In a further response NRW state that the applicant has not fully demonstrated the effects of a blockage and the potential consequences of flooding remains unknown and in the absence of this information they can provide no further guidance.

In light of NRW's representation it is considered that insufficient information has been submitted to demonstrate that condition 13 is no longer necessary. It is therefore considered that the application is contrary to policies DM5, DM6, DM13, Technical Advice Note 15 and Planning Policy Wales.

Lawful commencement of P/2008/1607

Any determination of this application will follow the ending of the period of time available for the commencement of planning permission P/2008/1607. Section 73(4) states that:

“This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.”

The position is that consent for this application would not be possible if planning permission P/2008/1607 has not been lawfully commenced.

This raises two questions:

- Were works undertaken at the site begun before the expiration of the planning permission?
- If so, are the works relied upon as constituting implementation lawful?

On the first point the applicant's agent has indicated that in his view development has in fact lawfully commenced at the site. There have been site clearance works undertaken with some excavations apparent on site. There has also been an indication from the agent that further works which unequivocally represent the beginning of development (e.g. material operations under section 55 of the Town and Country Planning Act 1990) will be undertaken prior to the lapsing of the planning permission on the 4 November and that these works will be documented. It has been requested that if this occurs the Authority is notified and the matter appropriately evidenced. It seems likely that works will be undertaken to implement planning permission prior to the expiration of the consent.

This leads onto the second point in relation to whether conditions would prevent a lawful commencement. There is no certificate of lawfulness, but it is considered that a judgement can be made on this in determining the application. A view needs to be taken on this by the local planning authority. A development may not be lawfully implemented where it breaches pre-commencement conditions, requiring actions prior to the commencement of development, Advice on this matter is given in WGC 016/2014, which states in paragraph 3.30:

“Where pre-commencement conditions have not been satisfied the implementation of planning permission may not be lawful. In order to make the development lawful, the conditions would have to be complied with or varied under section 73 of the 1990 Act. However, it has been held that this principle does not apply to all conditions but only those that go to the heart of the permission i.e. those that are fundamental to the development. Pre-commencement conditions should be carefully worded to be expressively prohibitive i.e. state that development must not commence until the condition has been complied with, since non-

compliance with such conditions can mean the permission has not been lawfully implemented.”

The December 2014 report to Committee provides an assessment of the relevant case law with regards to condition precedent. Legal opinion was also taken on this issue. In this report however, the Officer concluded that as NRW offered no objection to the removal of the condition it no longer served a proper planning purpose and as such would not be a condition crucial to the permission, or as stated within *Hart Aggregates*, one that goes to the heart of the permission.

However, clearly since the time of the original reports being written for Committee, NRW have amended their view based on additional information from third parties and their own internal advice. NRW no longer conclude that the condition is not necessary and have requested additional information to inform their opinion. No further information has been received and NRW maintain that there is insufficient information.

As such it is considered that the condition does is necessary and as the condition relates to flood risk for highly vulnerable development, it is considered that the condition does go to the heart of the consent and as such the development could not have been lawfully commenced.

Recommendation

In light of the above it is considered that insufficient information has been submitted to demonstrate that condition 13 no longer serves a proper planning purpose and as such the application is recommended for refusal.

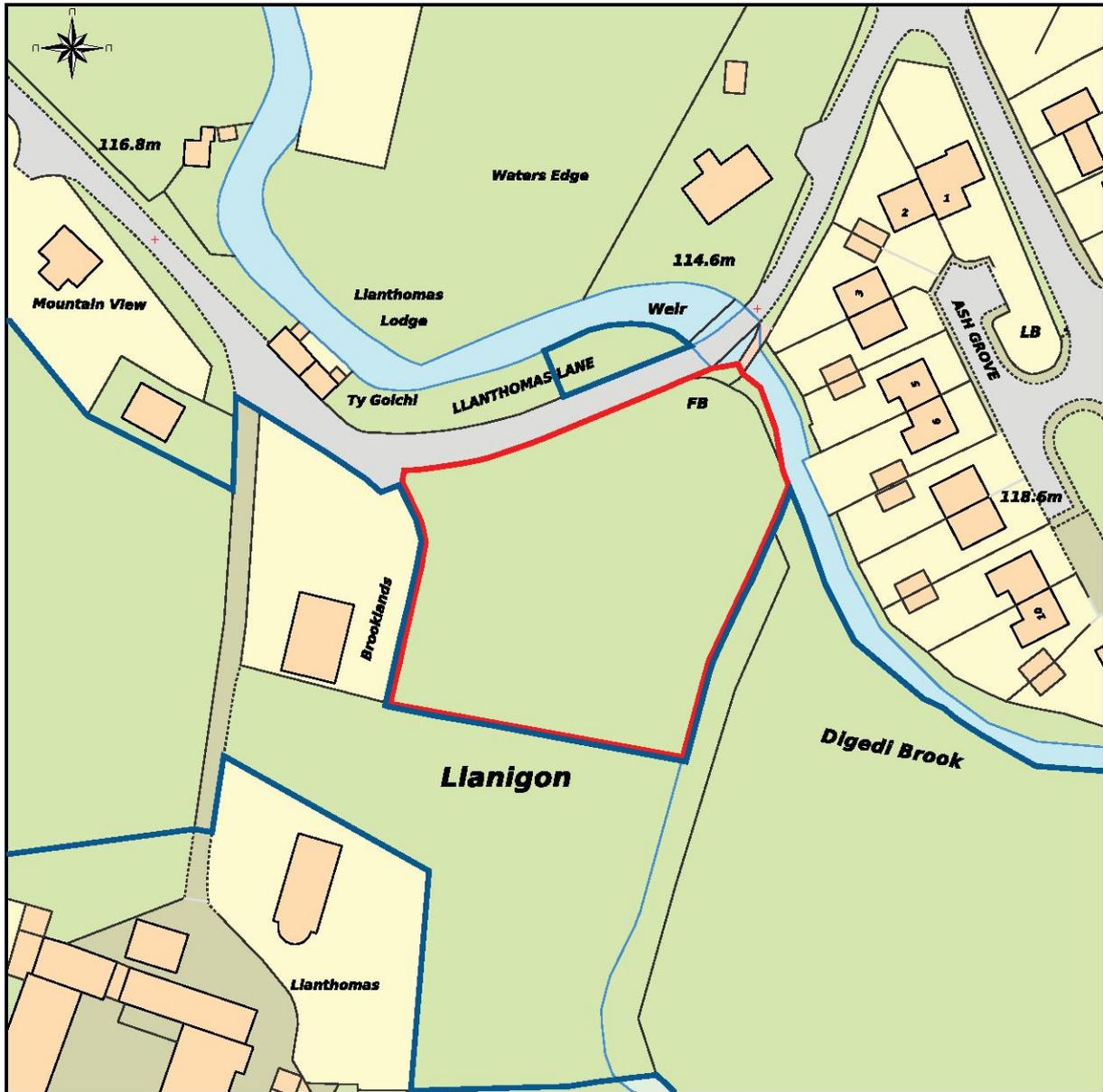
Reason

1. Insufficient information has been submitted to demonstrate that condition 13 no longer serves a proper planning purpose contrary to policies DM5, DM6, DM13, Technical Advice Note 15 and Planning Policy Wales.

Case Officer: Tamsin Law Principal Planning Officer
Tel: 01597 827230 E-mail:tamsin.law@powys.gov.uk

This page is intentionally left blank

Site Location Plan - Llanthomas Lane, Llanigon



This Plan includes the following Licensed Data: OS MasterMap Colour PDF Site Plan by the Ordnance Survey National Geographic Database and incorporating surveyed revision available at the date of production. Reproduction in whole or in part is prohibited without the prior permission of Ordnance Survey. The representation of a road, track or path is no evidence of a right of way. The representation of features, as lines is no evidence of a property boundary. © Crown copyright and database rights, 2014. Ordnance Survey 0100031673

0m 20m 40m 60m 80m 100m

Scale: 1:1250, paper size: A4

This page is intentionally left blank

Wales & West Utilities

No response to date

NRW

Thank you for referring the above planning consultation which we received on 8 September 2014.

The application submitted includes information to demonstrate what the impact of the footbridge is on the flooding regime in this area. Condition 13 of P/2008/1607 was included to minimise flood risk. This information, including the six modelling outputs prepared by Martin Wright Associates (MWA\CH101\GIS\66 – 71) has established what the predicted effects would be on the flooding regime if the footbridge is retained and if the footbridge is removed. Our advice to you, having considered all information in the application and our understanding of flood risk at this site, is that there are only small differences between each scenario assessed. By this we mean that the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere. In extreme flood scenarios (0.1% annual probability event) the retention of the footbridge would provide some betterment to existing properties at Ash Grove.

In summary, we have no objection to the proposed removal of condition 13 attached to this consent and subsequently the retention of the footbridge at Llanthomas Lane.

Cllr Geraint Hopkins

I have been contacted by several residents of Llanigon who live near the land given planning approval ref P/2008/1607, asking me to call in application P/2014/0910 for determination by the Planning Committee. The reasons given:-

- a) Significant issues relating to flooding
- b) The level of community interest and concern
- c) The fact that the Planning Committee made the original decision

I would be obliged if you could action this request and acknowledge that it will be so done.

Welsh Historic Gardens

No response to date

Representations

Representations were received from nine third parties. A third party has also commissioned a planning consultant and hydrologist to comment on the application. The representations raised the following summarised objections:

- The land is agricultural land and is an unsightly condition, being surrounded by heras fencing and excavations on site.
- The landowner has degraded the local environment, it should be agricultural land but is now scrubland as the applicant describes it.
- Notes errors in the supporting statements including in relation to passing places and the safety of the public highway.
- The bridge is used only in high flow events at other times the lane can simply be used.
- Request to see detail of dialogue with NRW specifically which shows that the flooding and drainage problems have been satisfactorily resolved.

- The comments of NRW are noted and these state that the retention of the footbridge would offer betterment to the existing properties...”, clearly because it allows safe passage of pedestrians up to a certain degree of culvert overflow. It does not however actually state that there is “betterment brought about in flood risk terms...” because the footbridge, it is now admitted, does not affect flooding / flood risk as such so it cannot therefore be “better” than it is now with no action taken: i.e. there is no improvement at all on the current situation by retaining the footbridge.
- Question the discharge and compliance with conditions imposed on condition 8.
- Challenge the question for the last FCA, so it is hard to accept any further comments without the input of our hydraulic expert. The proposed dwellings within phase 1 may remain “flood free during all flood events..” as claimed, but question the impact on other parties such as Ty Golchi and Water’s Edge.
- The importance of the ephemeral channel does indeed seem to be more than a potential flood risk and has been exacerbated by the applicant’s works on site.
- Express concerns regarding the conveying of water over the strip of land next to Ty Golchi and the discharge. Water discharging the other side of the culvert will raise the level of water, which in May 2012 flowed up into Glen-yr-Afon – opposite the rear of Ty Golchi and Llanthomas Lane. The ford is an “Irish Ford” and designed to overflow in high flow levels. Building in this location is inappropriate and risky.
- Any betterment at the site relates to the properties proposed and not to neighbours. The compliance with TAN15 is questioned.
- The applicants excavations of the ephemeral channel in 2001 caused backing up the channel.
- The May 2012 flood is not the worst flood that anyone can remember it is one of the worst floods.
- It would be proposed to set the access road level to the site one metre lower than the dwellings within the intention of forming a flood flow route. Where will this discharge, presumably onto the lane – which would be flooded and towards Ty Golchi where previous flood events have already reached the car park area.
- Even if the flood event in May 2012 were 1 in 10 years is it acceptable to wait and be flooded every 10 years. Climate change and its effects are unpredictable.
- It is considered very unfair and inappropriate in the face of all the long history of evidence provided over time by a number of witnesses concerning flooding, water run off, nuisance and safety, if the local planning authority allows this building to take place. We need much more detailed information for analysis and consideration by our hydraulic expert. Surely it is a matter of simple common sense to understand that it cannot be appropriate to build in an area which is, after all, effectively a flood plain which should be allowed to function as such.
- Representations have also raised concern over any loss of the footbridge and although expressed as objections indicate that they consider that the footbridge plays no part in flooding and provides a valuable link over the ford in times of flooding and should not be removed.
- Permitting this application will allow for the development of family housing in an area of flood risk putting lives at risk.

A representation was received from a hydrological consultant employed by a third party. This representation states the following:

Over the last few years Edenvale Young has represented Anne Connell relating to her opposition to the development of properties in Llanigon. Edenvale Young is a specialist

flood risk consultant and at the time of the original representation we wrote several letters to the Local Planning Authority and the Environment Agency (now NRW). At the time we felt that the quality of the hydraulic modelling and the FCA in general was poor and that there were a number of serious omissions and error in the development of the FCA. I would be happy to supply these documents if you do not have them to hand.

Andrew Bevan has now passed me a copy of a new FCA which includes the results of modelling associated with the footbridge. I have had a brief look at the information contained in the various documents which make up the FCA (Martin Wright Associates - MCW) but I can't pretend to have undertaken a detailed review. As you probably realise the reports are aimed at discharging a condition associated with the footbridge. However, when we last looked at this issue, I think that I am correct in saying that the Environment Agency had issued Anne with an apology stating that they had made errors in the assessment of the original FCA submitted by the developer and that the serious concerns raised by Edenvale Young into the FCA were valid. I am not entirely sure what the status of the planning application was following this admission bearing in mind that the EA changed their opinion at a very late stage in the process.

The MWA FCA submitted to the LPA recently compares the "existing" situation (i.e. with the footbridge and housing development) to the proposed situation (without the footbridge but with the housing development). It should be recognised that the former of these two scenarios is not the "existing" situation as the properties have not been built. The existing situation and hence the baseline for the FCA should be pre-development with the footbridge and this scenario should have been considered against the post development situation without the footbridge but with the housing.

1D-2D modelling of this nature was never presented during the original application. However, the modelling contained in the report appears to support the concerns we had at the time for a number of reasons. Firstly the outputs clearly show that the proposed plots 2 and 3 are inundated in the 1 in 100 year event and under these circumstances the flood risks to the properties would be deemed to be unacceptable in accordance with TAN 15. In addition, the two proposed plots adjacent to Llanthomas Lane are surrounded by flood water and access and egress to these properties during flooding must be compromised. These properties must be raised on platforms above the existing land to achieve this "dry" status.

More seriously the plots show flow contracting and accelerating between the above properties clearly changing the flow paths from the "existing" condition (no housing development but with the footbridge). In my opinion there is a very high probability that this contraction and acceleration of flows would have a detrimental impact downstream; notably on Ann's house. I am struggling to see how the development can proceed given this information even if there have been procedural errors in the past. It would be extremely unlikely that the properties would be insurable.

Again, I have not been able to review the information in detail and I think that given the sites history there should be a thorough review of the model. Accordingly we would ask for an extension in the time to evaluate the flood modelling. In particular we would like to have a copy of the model developed by MCW so that we can ensure that the model is robust and meets the high standards required for an FCA.

A representation was received from a solicitor employed by a third party. This representation states the following:

We have seen the various exchanges of emails on this matter between yourselves and our client's agent, Andrew Bevan. We understand that your Planning Committee is due to consider an application under section 73 TCPA made by John Price when it meets tomorrow.

Our understanding of the matter is that this consent has now expired without having been lawfully implemented. We would submit this on the following basis:

1. The duration of the planning consent was 5 years from the 4th November 2009 and as such the consent would have expired by effluxion of time at midnight on the 3rd November 2014 unless lawfully implemented prior to that date.
2. We understand that material operations within the meaning of section 56 TCPA have been undertaken on site prior to the above deadline (though please note we are making no admission in this respect).
3. We understand that the applicant has been advised by the LPA that all conditions precedent have been discharged within the said period save for condition 13 which remains outstanding and is the subject matter of the section 73 application.
4. Condition 13 (as a condition precedent) needs to be considered in the light of the cases commencing with *Whitley & Sons v Secretary of State for Wales* and as usefully summarised in the case of *Bedford Borough Council v Secretary of State for Communities and Local Government (1)* and *AS Murzyn (2)*
5. We would suggest that condition 13, relating as it does to the minimising of flood risk (the reasons set out in the above consent along with conditions 8, 9, 10, 11 and 12) is a condition that is manifestly about the essential subject matter of the permission granted under planning consent P/2008/160 and as such a true condition precedent i.e. the minimising of flood risk was something that went to the heart of this planning consent.
6. As such, and given point 5 above, the failure to discharge this condition within the lifetime of the consent must render unlawful the development as a whole.
7. Given that there is now no extant planning consent there can be nothing to vary, via section 73 TCPA, and as such there is nothing for the LPA's Planning Committee to consider when it meets tomorrow – if the Planning Committee were to proceed to determine this application then they would be doing so unlawfully and any decision reached would be quashed on an application for judicial review. The only outcome that can be reached by your Planning Committee is to confirm that there is nothing for them to lawfully determine given the above. We would also just point out that the applicant and his agent have had 5 years to deal with condition 13 and have not done so within the lifetime of the consent.

A representation was received from a planning consultant employed by a third party. This representation states the following:

My clients are concerned that again this matter will be 'rushed' to determination with insufficient time for my clients and those experts (especially the solicitor and the hydrologist) advising them to consider the implications of the information that you are relying on in your report.

Please therefore ensure that this inequitable situation is not allowed to prevail and seek urgent arrangements to facilitate the sharing of the key information that is required to allow all parties to engage in the planning process fairly and reasonably.

I suggest the least that should be done is for the LPA to make the advice you are basing your report on available NOW and in that context please treat this email as a formal/FOI request for that information and or your report should be released as soon as it is available as the LPA review of matters and that should be released now and not only a few days before the Committee. Alternatively release the information now and report or re-report the matter to the January Committee allowing all parties sufficient time to consider the material facts surrounding this critical issue.

Again I draw attention to the fact that the LPA and NRW accept they are now dealing with an application that (if approved) will locate new dwellings/their curtilages at significant risk of flooding and cause off-site flooding impacts.

The LPA have stated that the application would not be supported if it were to be remade with the current information known at the time of determination of the main application and as such it appears that the objective of ensuring hi-risk flood development does not occur is not being fully considered and evaluated openly and in a timely way – because the LPA appear again to be 'rushing' the discharge and determination of the removal of critical conditions without full and open disclosure.

My client has asked again for me to relay their request for an urgent meeting with the Head of Planning Service as they have not been offered the meeting they have now been requesting for months and months!

Planning History

Planning permission P/2008/1607 was granted subject to the following conditions:

1. The development to which this permission relates shall be begun no later than the expiration of five years from the date of this permission.
2. Prior to their first use full details or samples of materials to be used externally on walls and roofs of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority.
3. Areas of hard surfacing within the development hereby permitted shall be paved in materials of a type and colour to be agreed in writing by the Local Planning Authority prior to their first use.

4. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
5. Prior to the occupation of a dwellinghouse erected pursuant to this permission provision shall be made for off highway vehicular parking and turning to serve that dwelling in accordance with the details shown in the approved plans.
6. Prior to the commencement of building operations on the dwellinghouses hereby permitted the Class III road (C74) serving the site shall be widened and a footpath provided in compliance with the details shown in the approved plans.
7. The access road and paviour margins serving the development hereby permitted shall be finally surfaced and kerbed in accordance with the details shown in the approved plans prior to the occupation of any dwellinghouse erected pursuant to this permission.
8. The development hereby permitted shall not be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be implemented prior to the construction of any impermeable surfaces draining to the system unless otherwise agreed in writing by the Local Planning Authority.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other structures shall be erected within the land to the north of the development site which adjoins the Digeiddi Brook (as shown hatched green on plan bearing the number P/2008/1607 (Plan 1) attached hereto). Nothing shall be stored in this area and ground levels within the area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
10. Before commencement of development a scheme of landscape maintenance in respect of the land referred to in 9 above shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation.
11. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other structures shall be erected or ground levels altered on the land hatched in green as shown the plan bearing the number P2008/1607 (Plan 2) attached hereto (i.e. 5 metres of the top of the bank of the Digeiddi Brook and the 'ephemeral channel).
12. Before commencement of development a method statement including details of the arrangements for its implementation for cutting boundary hedges and mowing grassed areas within the maintenance strip referred to in condition 11 above - such as to keep the said hedges below 1.2 metres in height and the area free of trees and other substantial shrubs - shall be submitted to and approved in writing by the Local Planning Authority. Subsequent to commencement of development, the area shall thereafter be maintained in accordance with the approved method statement.

13. Prior to the commencement of development on the site the footbridge across the Dgeddi Brook (location shown by the abbreviation 'FB' on the plan bearing the number P2008 1607 (Plan 1) attached hereto) shall be removed to the written satisfaction of the Local Planning Authority.

Principal Planning Constraints

Flood Zone

Historic Landscapes Register - Outstanding

Principal Planning Policies

Planning Policy Wales (Edition 7, July 2014)

TAN 15 - Development and Flood Risk (2004)

UDP GP1 – Development Control

UDP HP4 - Settlement Development Boundaries and Capacities

UDP HP5 – Residential Development

UDP DC13 - Surface Water Drainage

UDP DC14 – Flood Prevention Measures

UDP 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

Summary of relevant law

Beginning development

Condition 1 of planning permission P/2008/1607 reflects the requirements of s 91(1)(a) of the Town and Country Planning Act 1990 (as amended) (“the Act”). For the purposes of that section development is taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out (s 56(2), (3) of the Act).

The term “material operation” is defined in s 56(4) so as to include:

“(a) any work of construction in the course of the erection of a building;

(aa) ...

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building; ...”

Case law on s 56 and its statutory predecessor is referred to in the Encyclopaedia of Planning Law and Practice at P56.09-56.11, 56.13, 56.15 and 56.17. From those authorities the following principles have emerged:

- So long as the works are more than de minimis, very little need be done to satisfy the requirements of the section. The focus of inquiry is not on how extensive the works are but whether they are related to the development¹.
- An objective approach is required. The intention with which the works were carried out is irrelevant².
- Where the works done deviate from the permission, it is necessary to consider not just the existence of differences between the plans and the operations relied on, but also to consider the significance of those differences. Consideration of the similarities, or degree of compliance of the operations relied upon, with the approved plans is also relevant, together with the substantial usability of those works in the permitted development, and the degree of alteration required to them in order for them to be effective to that end. The question whether the operations done were comprised within the development involves looking at what has been done as a whole and reaching a judgment as a matter of fact and degree upon that whole³.
- Broadly speaking, operations carried out in contravention of a condition attached to a planning permission cannot be relied on as beginning the development authorised by the permission (the “Whitley principle”)⁴. There are a number of recognised exceptions to the Whitley principle⁵.

One exception to the Whitley principle of particular relevance to the present case is that “where it would be unlawful, in accordance with public law principles, notably irrationality or abuse of power, for a local planning authority to take enforcement action to prevent development proceeding, the development albeit in breach of planning control is nevertheless effective to commence development”⁶.

Conditions precedent

An issue raised by this application is whether condition 13 has the effect of prohibiting development until the footbridge across Diggedi Brook is removed, or whether it merely seeks the early removal of the footbridge without in any way barring the commencement of development.

In *Greyfort Properties Ltd v Secretary of State for Communities and Local Government* [2012] JPL 39 a similar issue arose in relation to a condition that said, “Before any work is commenced on the site the ground floor levels of the building hereby permitted shall be agreed with the Local Planning Authority in writing”. The issue was addressed by the Court of Appeal in paras 29-34 of the judgment of Richards LJ, the most pertinent paragraphs are 29-31:

¹ *Malvern Hills District Council v Secretary of State for the Environment and Another* [1982] 46 P&CR 58, at 70; *Thayer v Secretary of State for the Environment* [1992] JPL 264. In the case of commencement by the digging of a trench, see the cases cited in the *Encyclopedia of Planning Law and Practice* at P56.15.

² *Staffordshire County Council v Riley* [2002] PLCR 5, paras 26-28.

³ *Commercial Land Limited v Secretary of State for Transport, Local Government and the Regions* [2003] JPL 358, paras 33, 35.

⁴ *Whitley & Sons v Secretary of State for Wales* (1992) 64 P&CR 296, 302

⁵ See, for example, *Greyfort Properties Ltd v Secretary of State for Communities and Local Government* [2012] JPL 39, at paras 8-11.

⁶ *R (Hammerton) v London Underground Ltd* [2003] JPL 984, at para 127; *R (Prokopp) v London Underground Ltd* [2004] JPL 44; *Norris v First Secretary of State* [2006] JPL 1574; *Greyfort Properties* at para 11.

“29. Mr Kingston's second main argument on construction is that only conditions in the form ‘no development shall take place ...’ are sufficiently express to amount to a condition precedent within the Whitley principle, and that the wording of condition 4 (‘Before any work is commenced ...’) does not contain an express prohibition sufficient to achieve that result.

30. Mitting J. rejected that argument. First, he said at [26] that condition 4 was in substance exactly that which Sullivan J. gave in Hart Aggregates as an example of an express prohibition. Secondly, he said at [27]:

‘There is in any event, in my judgment, no material difference between a condition which expressly prohibits development before a particular matter is approved and one which requires a particular matter to be approved before development commences. The effect is the same.’

31. I agree with the judge’s conclusion and his reasons for it. The passage in Hart Aggregates to which the judge referred was at [59], quoted above, where Sullivan J. gave two examples of express language that could have been used by the local planning authority if it had wished to prohibit extraction before a restoration scheme for the worked out areas was agreed: it could have imposed a condition in the form ‘No extraction shall take place ...’; or it could have imposed the standard form of condition used in the grant of outline planning permission, namely ‘... before any development takes place’. Sullivan J. plainly, and in my view rightly, regarded the two forms of words as equivalent.”

In the case of Hart Aggregates to which Richards LJ referred, Sullivan J (as he then was) had found that a condition attached to a mineral extraction permission requiring backfilling and restoration in accordance with a scheme to be approved before extraction commenced was “a ‘condition precedent’ in the sense that it requires something to be done before extraction is commenced, but it is not a ‘condition precedent’ in the sense that it goes to the heart of the planning permission, so that failure to comply with it will mean that the entire development, even if completed and in existence for many years, or in the case of a minerals extraction having continued for 30 years, must be regarded as unlawful.” He went on to hold that even if the condition had been

“... a condition precedent of a kind to which ‘the Whitley principle’ applied, I would have concluded that there had nevertheless been an effective implementation of the 1971 permission. I would have reached that conclusion on the basis that, limestone having been extracted from the original quarry for some 34 years and the restoration scheme mentioned in condition 10 having been overtaken by the restoration provisions in the 1989 and 1996 permissions, it would be both irrational and an abuse of power for the defendant now to commence enforcement action ...”

Officer Appraisal

Introduction

This is an application made under section 73 of the Town and Country Planning Act 1990. This is an application to continue with development without complying with conditions previously imposed, Welsh Government Circular 016/2014 describes the nature of such an

application in paragraph 2.4, stating the following: “Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73. Section 73 will not apply if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun. Paragraph 5.21 details how section 73 can be used to renew planning permissions.”

Determination of an application made under section 73 is limited to consideration of the merits of the conditions that the application seeks to remove or vary. This limits the consideration of this application to the merits of condition 13 only, this is an important consideration given the concerns and objections expressed by third parties which in part relate to a wider concern over flooding at the site.

Background

On 4 November 2009 Powys County Council granted planning permission for the erection of four dwellings at a site on Llanthomas Lane, Llanigon, Hay-on-Wye. The site is adjacent to Dgeddi Brook. The permission is subject to a number of conditions. Condition 1 requires the permitted development to be begun within five years of the date of the permission. Condition 13 states:

“Prior to the commencement of development on the site the footbridge across the Dgeddi Brook (location shown by the abbreviation ‘FB’ on the plan bearing the number P2008 1607 (Plan 1) attached hereto) shall be removed to the written satisfaction of the Local Planning Authority.”

This condition was imposed “To minimise flood risks in compliance with policy DC13 of the Powys Unitary Development Plan”.

On 3 November 2014 an area of the site was cleared and a trench dug. The trench is put forward by the applicant to constitute the excavation of a drainage channel forming part of the permitted development. An area of the access and private drive was also pegged out and excavated with hard core material placed in the position where the access was excavated.

An email of the 15 July 2013 from the local planning authority discharged conditions 10 and 12 on the planning permission. This email acknowledged the submission of information for condition 8, but left some matters outstanding. This condition relates to the submission of a surface water regulation system at the site. The applicant’s agent has been seeking to address this condition and has been liaising directly with Powys County Council land drainage authority. Following the submission of additional information to address matters outstanding from the 15 July 2013 email, condition 8 was discharged on the 31 October 2014. Therefore at the date where operations were carried out all other pre-commencement conditions had been satisfied, save for condition 13.

Notwithstanding the terms of condition 13, the landowner considers that the development has been begun for the purposes of condition 1.

Legal officers of the Authority have requested Counsel advice on whether condition 13 is a valid condition and whether the permission has been validly begun.

The merits of the application – does condition 13 still serve a useful planning purpose?

Conditions should only be imposed where they comply with “The six tests” which are outlined in section 3.0 of WGC 016/2014. Conditions must meet the following requirements: necessary; relevant to planning; relevant to the development; enforceable; precise; and reasonable.

The condition appears to have been imposed as the bridge was seen as contributing to flooding in the locality and a condition to require its removal would improve the flood situation at the site, allowing the development to be considered acceptable. This is reflected in the reason given for the imposition of the condition.

The case put forward by the applicant is that the condition is not necessary and serves no useful planning purpose. They also consider it to be imprecise in its wording as it does not, in their view, prevent development commencing.

The case that the condition is not necessary forms the main justification for this application. The applicant argues through a supporting flood modelling exercise and flood consequences assessment that the removal of the bridge will have no effect on the flooding situation at the site and that the condition serves no useful planning purpose. It is noted that third parties, including a professional hydrological consultant, have questioned the validity of the assessment and the strength of the conclusions in relation to the bridge. While noting these concerns it is considered that the local planning authority should be guided in these matters by the specialist advice available from Natural Resources Wales (NRW); they have commented on the application and stated that they have no objections to the removal of the condition. They have reviewed the model and concluded that: “the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere”.

In light of the NRW representation it is considered that no objection to the removal of the condition should be offered.

Consideration of the lawful commencement of P/2008/1607

Determination of this application now falls after the end of the period of time available for the commencement of development in planning permission P/2008/1607. Section 73(4) states that:

“This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.”

Therefore while offering no objection to the removal of the condition, the position is that consent for this application would not be possible if planning permission P/2008/1607 has not been lawfully commenced.

This raises two questions:

- Were works undertaken at the site begun before the expiration of the planning permission? (Has the permission been begun?)
- If so, are the works relied upon as constituting implementation lawful? (Is condition 13 a condition precedent?)

Has the permission been begun?

The case law in *Commercial Land Limited v Secretary of State for Transport, Local Government and the Regions* [2003] JPL 358, paras 33, 35, has been considered in assessing the works undertaken. This requires that there is a need to consider the similarities, or degree of compliance of the operations relied upon, with the approved plans, together with the substantial usability of those works in the permitted development, and the degree of alteration required to them in order for them to be effective to that end. The question whether the operations done were comprised within the development involves looking at what has been done as a whole and reaching a judgment as a matter of fact and degree upon that whole.

Excavations at the site were undertaken by a mechanical digger on 3 November, an area in the location of the access was excavated, a trench was excavated for a drainage channel, an area of the private drive of the site was scraped and pegged out. These are claimed to constitute implementation of works approved by the permission and related plans. This is a matter of fact for the local planning authority to determine. Members are advised, based on a site inspection, that the works were within the scope of the permission, the scale of the works undertaken are beyond de minimis and amount to a material operation effective to begin development. Taken as a whole it is considered that any deviation from the approved plans is not critical and the works are substantially useable for the development permitted.

Is condition 13 a condition precedent?

Having regard to the decision of the Court of Appeal in *Greyfort Properties* it is considered that the effect of condition 13 is to prohibit the beginning of development before the footbridge is removed to the written satisfaction of the local planning authority. The starting point therefore is that development begun before removal of the footbridge would not be development in accordance with the terms of the permission.

That is the starting point. Even where a condition has the form of a condition precedent, its breach might not engage the Whitley principle. Looking to the substance of condition 13, while it was justified on the basis of advice from the Environment Agency Wales (now NRW) in 2009, the position has changed. In response to the current application to “delete” condition 13, NRW has commented:

“The application submitted includes information to demonstrate what the impact of the footbridge is on the flooding regime in the area. ... This information ... has established what the predicted affects would be on the flooding regime if the footbridge is retained and if the footbridge is removed. Our advice to you, having considered all information in the application and our understanding of flood risk at this site, is that there are only small differences between each scenario assessed. By this we mean that the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere. In extreme flood scenarios (0.1% annual probability event) the retention of the footbridge would provide some betterment to existing properties at Ash Grove.

In summary, we have no objection to the proposed removal of condition 13 attached to this consent and subsequently the retention of the footbridge at Llanthomas Lane.”

The view expressed above is to offer no objection to the removal of the condition.

If the conclusion is drawn from the above that condition 13 now serves no good purpose, it would not be a condition crucial to the permission or, as it was put in *Hart Aggregates*, one that goes to the heart of the permission. There would be no rational reason to enforce the condition. In these circumstances, a material operation comprised in the permitted development would be capable of beginning the development, notwithstanding a breach of condition 13.

Conclusion

Based on the most recent advice of NRW it is concluded that planning condition 13 does not serve a useful planning purpose and an objection to it is removal is not sustainable. It is also concluded that the development has been lawfully commenced based on:

- condition 13 has ceased to serve a useful purpose and its enforcement would not be expedient or appropriate and it would not therefore be a condition that goes to the heart of the grant of planning permission;
- the scale of the operation carried out on 3 November 2014 was more than de minimis;
- the works fell within the scope of the permission and were a material operation effectively beginning the development.

Recommendation

Conditional consent

1. Prior to their first use full details or samples of materials to be used externally on walls and roofs of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority.
2. Areas of hard surfacing within the development hereby permitted shall be paved in materials of a type and colour to be agreed in writing by the Local Planning Authority prior to their first use.
3. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
4. Prior to the occupation of a dwellinghouse erected pursuant to this permission provision shall be made for off highway vehicular parking and turning to serve that dwelling in accordance with the details shown in the approved plans.
5. Prior to the commencement of building operations on the dwellinghouses hereby permitted the Class III road (C74) serving the site shall be widened and a footpath provided in compliance with the details shown in the approved plans.
6. The access road and paviour margins serving the development hereby permitted shall be finally surfaced and kerbed in accordance with the details shown in the approved plans prior to the occupation of any dwellinghouse erected pursuant to this permission.

7. The surface water regulation scheme as approved in writing by the local planning authority on the 31 October 2014 shall be implemented prior to the construction of any impermeable surfaces draining to the system unless otherwise agreed in writing by the Local Planning Authority.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other structures shall be erected within the land to the north of the development site which adjoins the Dgeddi Brook (as shown hatched green on plan bearing the number P/2008/1607 (Plan 1) attached hereto). Nothing shall be stored in this area and ground levels within the area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

9. The land referred to in 8 above shall be maintained and implemented in accordance with the landscape maintenance scheme approved in writing by the local planning authority on the 15 July 2013.

10. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other structures shall be erected or ground levels altered on the land hatched in green as shown the plan bearing the number P2008/1607 (Plan 2) attached hereto (i.e. 5 metres of the top of the bank of the Dgeddi Brook and the 'ephemeral channel').

11. The maintenance strip referred to in condition 10 shall be maintained in accordance with the method statement approved in writing by the local planning authority on the 15 July 2013. The area shall thereafter be maintained in accordance with the approved method statement

Case Officer: Matthew Griffiths- Senior Planning Officer
Tel: 01874 612280 E-mail:matthew.griffiths@powys.gov.uk

ANNEX 1 PREVIOUS COMMITTEE

Planning, Taxi Licensing and Rights of Way Committee Report

Application No:	P/2014/0910	Grid Ref:	321147.53 240185.76
Community Council:	Llanigon CC	Valid Date:	Officer: 05/09/2014 Matthew Griffiths
Applicant:	Mr John Price C/O Agent		
Location:	Land at Llanthomas Lane, Llanigon, Hay-on-Wye, Hereford, Powys HR3 5PU		
Proposal:	Removal of condition 13 of planning approval P/2008/1607 (in relation to removal of footbridge)		
Application Type:	Application for Removal or Variation of a Condition		

Reason for report to Committee

The application is reported to Committee as the application relates to a condition which was imposed by the planning Committee.

Site Location and Description

The site of development is an area of agricultural land in the settlement of Llanigon adjoining Llanthomas Lane. The development of the land for Erection of 4 dwellings and private access road was granted full planning permission on the 4 November 2014 under planning permission P/2008/1607.

The site is adjoining the Digeiddi Brook and at the date that planning permission was issued was partially within Zone C2 of the Development Advice Maps that support Technical Advice Note 15 – Development and Flood Risk (2005).

Condition 13 requires that before commencement of development “the footbridge across the Digeiddi Brook ... shall be removed to the written satisfaction of the Local Planning Authority”. The footbridge forms part of the public highway and is under the control of Powys County Council as highways authority. The condition has not been complied with and no agreement has been reached with Powys to remove the bridge. The full wording of condition 13 is given below and the reason for the condition on the decision notice is as follows: “To minimise flood risks in compliance with policy DC13 of the Powys Unitary Development Plan.”

Consultee Response

Llanigon CC

No comments to date.

Powys Highways

Do not wish to comment on this application

Powys Building Control

No response to date

Wales & West Utilities

No response to date

NRW

Thank you for referring the above planning consultation which we received on 8 September 2014.

The application submitted includes information to demonstrate what the impact of the footbridge is on the flooding regime in this area. Condition 13 of P/2008/1607 was included to minimise flood risk. This information, including the six modelling outputs prepared by Martin Wright Associates (MWA\CH101\GIS\66 – 71) has established what the predicted effects would be on the flooding regime if the footbridge is retained and if the footbridge is removed. Our advice to you, having considered all information in the application and our understanding of flood risk at this site, is that there are only small differences between each scenario assessed. By this we mean that the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere. In extreme flood scenarios (0.1% annual probability event) the retention of the footbridge would provide some betterment to existing properties at Ash Grove.

In summary, we have no objection to the proposed removal of condition 13 attached to this consent and subsequently the retention of the footbridge at Llanthomas Lane.

Cllr Geraint Hopkins

I have been contacted by several residents of Llanigon who live near the land given planning approval ref P/2008/1607, asking me to call in application P/2014/0910 for determination by the Planning Committee. The reasons given:-

- a) Significant issues relating to flooding
- b) The level of community interest and concern
- c) The fact that the Planning Committee made the original decision

I would be obliged if you could action this request and acknowledge that it will be so done.

Welsh Historic Gardens

No response to date

Representations

Representations were received from nine third parties. A third party has also commissioned a planning consultant and hydrologist to comment on the application. The representations raised the following summarised objections:

- The land is agricultural land and is in an unsightly condition, being surrounded by heras fencing and excavations on site.
- The landowner has degraded the local environment, it should be agricultural land but is now scrubland as the applicant describes it.
- Notes errors in the supporting statements including in relation to passing places and the safety of the public highway.
- The bridge is used only in high flow events at other times the lane can simply be used.

- Request to see detail of dialogue with NRW specifically which shows that the flooding and drainage problems have been satisfactory resolved.
- The comments of NRW are noted and these state that the retention of the footbridge would offer betterment to the existing properties...”, clearly because it allows safe passage of pedestrians up to a certain degree of culvert overflow. It does not however actually state that there is “betterment brought about in flood risk terms...” because the footbridge, it is now admitted, does not affect flooding / flood risk as such so it cannot therefore be “better” than it is now with no action taken: i.e. there is no improvement at all on the current situation by retaining the footbridge.
- Question the discharge and compliance with conditions imposed on condition 8.
- Challenge the question for the last FCA, so it is hard to accept any further comments without the input of our hydraulic expert. The proposed dwellings within phase 1 may remain “flood free during all flood events..” as claimed, but question the impact on other parties such as Ty Golchi and Water’s Edge.
- The importance of the ephemeral channel does indeed seem to be more than a potential flood risk and has been exacerbated by the applicant’s works on site.
- Express concerns regarding the conveying of water over the strip of land next to Ty Golchi and the discharge. Water discharging the other side of the culvert will raise the level of water, which in May 2012 flowed up into Glen-yr-Afon – opposite the rear of Ty Golchi and Llanthomas Lane. The ford is an “Irish Ford” and designed to overflow in high flow levels. Building in this location is inappropriate and risky.
- Any betterment at the site relates to the properties proposed and not to neighbours. The compliance with TAN15 is questioned.
- The applicants excavations of the ephemeral channel in 2001 caused backing up the channel.
- The May 2012 flood is not the worst flood that anyone can remember it is one of the worst floods.
- It would be proposed to set the access road level to the site one metre lower than the dwellings within the intention of forming a flood flow route. Where will this discharge, presumably onto the lane – which would be flooded and towards Ty Golchi where previous flood events have already reached the car park area.
- Even if the flood event in May 2012 were 1 in 10 years is it acceptable to wait and be flooded every 10 years. Climate change and its effects are unpredictable.
- It is considered very unfair and inappropriate in the face of all the long history of evidence provided over time by a number of witnesses concerning flooding, water run off, nuisance and safety, if the local planning authority allows this building to take place. We need much more detailed information for analysis and consideration by our hydraulic expert. Surely it is a matter of simple common sense to understand that it cannot be appropriate to build in an area which is, after all, effectively a flood plain which should be allowed to function as such.
- Representations have also raised concern over any loss of the footbridge and although expressed as objections indicate that they consider that the footbridge plays no part in flooding and provides a valuable link over the ford in times of flooding and should not be removed.
- Permitting this application will allow for the development of family housing in an area of flood risk putting lives at risk.

A representation was received from a hydrological consultant employed by a third party. This representation states the following:

Over the last few years Edenvale Young has represented Anne Connell relating to her opposition to the development of properties in Llanigon. Edenvale Young is a specialist flood risk consultant and at the time of the original representation we wrote several letters to the Local Planning Authority and the Environment Agency (now NRW). At the time we felt that the quality of the hydraulic modelling and the FCA in general was poor and that there were a number of serious omissions and error in the development of the FCA. I would be happy to supply these documents if you do not have them to hand.

Andrew Bevan has now passed me a copy of a new FCA which includes the results of modelling associated with the footbridge. I have had a brief look at the information contained in the various documents which make up the FCA (Martin Wright Associates - MCW) but I can't pretend to have undertaken a detailed review. As you probably realise the reports are aimed at discharging a condition associated with the footbridge. However, when we last looked at this issue, I think that I am correct in saying that the Environment Agency had issued Anne with an apology stating that they had made errors in the assessment of the original FCA submitted by the developer and that the serious concerns raised by Edenvale Young into the FCA were valid. I am not entirely sure what the status of the planning application was following this admission bearing in mind that the EA changed their opinion at a very late stage in the process.

The MWA FCA submitted to the LPA recently compares the "existing" situation (i.e. with the footbridge and housing development) to the proposed situation (without the footbridge but with the housing development). It should be recognised that the former of these two scenarios is not the "existing" situation as the properties have not been built. The existing situation and hence the baseline for the FCA should be pre-development with the footbridge and this scenario should have been considered against the post development situation without the footbridge but with the housing.

1D-2D modelling of this nature was never presented during the original application. However, the modelling contained in the report appears to support the concerns we had at the time for a number of reasons. Firstly the outputs clearly show that the proposed plots 2 and 3 are inundated in the 1 in 100 year event and under these circumstances the flood risks to the properties would be deemed to be unacceptable in accordance with TAN 15. In addition, the two proposed plots adjacent to Llanthomas Lane are surrounded by flood water and access and egress to these properties during flooding must be compromised. These properties must be raised on platforms above the existing land to achieve this "dry" status.

More seriously the plots show flow contracting and accelerating between the above properties clearly changing the flow paths from the "existing" condition (no housing development but with the footbridge). In my opinion there is a very high probability that this contraction and acceleration of flows would have a detrimental impact downstream; notably on Ann's house. I am struggling to see how the development can proceed given this information even if there have been procedural errors in the past. It would be extremely unlikely that the properties would be insurable.

Again, I have not been able to review the information in detail and I think that given the sites history there should be a thorough review of the model. Accordingly we would ask for an extension in the time to evaluate the flood modelling. In particular we would like to have

a copy of the model developed by MCW so that we can ensure that the model is robust and meets the high standards required for an FCA.

Planning History

Planning permission P/2008/1607 was granted subject to the following conditions:

1. The development to which this permission relates shall be begun no later than the expiration of five years from the date of this permission.
2. Prior to their first use full details or samples of materials to be used externally on walls and roofs of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority.
3. Areas of hard surfacing within the development hereby permitted shall be paved in materials of a type and colour to be agreed in writing by the Local Planning Authority prior to their first use.
4. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
5. Prior to the occupation of a dwellinghouse erected pursuant to this permission provision shall be made for off highway vehicular parking and turning to serve that dwelling in accordance with the details shown in the approved plans.
6. Prior to the commencement of building operations on the dwellinghouses hereby permitted the Class III road (C74) serving the site shall be widened and a footpath provided in compliance with the details shown in the approved plans.
7. The access road and pavioir margins serving the development hereby permitted shall be finally surfaced and kerbed in accordance with the details shown in the approved plans prior to the occupation of any dwellinghouse erected pursuant to this permission.
8. The development hereby permitted shall not be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be implemented prior to the construction of any impermeable surfaces draining to the system unless otherwise agreed in writing by the Local Planning Authority.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other structures shall be erected within the land to the north of the development site which adjoins the Digheddi Brook (as shown hatched green on plan bearing the number P/2008/1607 (Plan 1) attached hereto). Nothing shall be stored in this area and ground levels within the area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
10. Before commencement of development a scheme of landscape maintenance in respect of the land referred to in 9 above shall be submitted to and approved in writing by the Local

Planning Authority. The schedule shall include details of the arrangements for its implementation.

11. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other structures shall be erected or ground levels altered on the land hatched in green as shown the plan bearing the number P2008/1607 (Plan 2) attached hereto (i.e. 5 metres of the top of the bank of the Digated Brook and the 'ephemeral channel').

12. Before commencement of development a method statement including details of the arrangements for its implementation for cutting boundary hedges and mowing grassed areas within the maintenance strip referred to in condition 11 above - such as to keep the said hedges below 1.2 metres in height and the area free of trees and other substantial shrubs - shall be submitted to and approved in writing by the Local Planning Authority. Subsequent to commencement of development, the area shall thereafter be maintained in accordance with the approved method statement.

13. Prior to the commencement of development on the site the footbridge across the Digated Brook (location shown by the abbreviation 'FB' on the plan bearing the number P2008 1607 (Plan 1) attached hereto) shall be removed to the written satisfaction of the Local Planning Authority.

Principal Planning Constraints

Flood Zone

Historic Landscapes Register - Outstanding

Principal Planning Policies

Planning Policy Wales (Edition 7, July 2014)

TAN 15 - Development and Flood Risk (2004)

UDP HP4 - Settlement Development Boundaries and Capacities

UDP HP5 – Residential Development

UDP DC13 - Surface Water Drainage

UDP DC14 – Flood Prevention Measures

UDP 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

Introduction

This is an application made under section 73 of the Town and Country Planning Act 1990. This is an application to continue with development without complying with conditions previously imposed, Welsh Government Circular 016/2014 describes the nature of such an application in paragraph 2.4, stating the following: "Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should

continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73. Section 73 will not apply if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun. Paragraph 5.21 details how section 73 can be used to renew planning permissions.”

Determination of an application made under section 73 is limited to consideration of the merits of the conditions that the application seeks to remove or vary. This limits the consideration of this application to the merits of condition 13 only, this is an important consideration given the concerns and objections expressed by third parties which relate to a wider

The merits of the application – does condition 13 still serve a useful planning purpose?

Conditions should only be imposed where they comply with “The six tests” which are outlined in section 3.0 of WGC 016/2014. Conditions must meet the following requirements: necessary; relevant to planning; relevant to the development; enforceable; precise; and reasonable.

The condition appears to have been imposed as the bridge was seen as contributing to flooding in the locality and a condition to require its removal would improve the flood situation at the site and this is reflected in the reason given for the imposition of the condition.

The case put forward by the applicant is that the condition is not necessary and serves no useful planning purpose. They also consider it to be imprecise in its wording as it does not, in their view, prevent development commencing.

The case that the condition is not necessary forms the main justification for this application. The applicant argues through a supporting flood modelling exercise and flood consequences assessment that the removal of the bridge will have no effect on the flooding situation at the site and that the condition serves no useful planning purpose. It is noted that third parties, including a professional hydrological consultant, have questioned the validity of the assessment and the strength of the conclusions in relation to the bridge. While noting these concerns it is considered that the local planning authority should be guided in these matters by the specialist advice available from Natural Resources Wales (NRW); they have commented on the application and stated that they have no objections to the removal of the condition. They have reviewed the model and concluded that: “the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere”.

In light of the NRW representation it is considered that no objection to the removal of the condition should be offered.

Lawful commencement of P/2008/1607

Any determination of this application at the 6 November 2014 Committee will follow the ending of the period of time available for the commencement of planning permission P/2008/1607. Section 73(4) states that:

“This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.”

Therefore while offering no objection to the removal of the condition, the position is that consent for this application would not be possible if planning permission P/2008/1607 has not been lawfully commenced.

This raises two questions:

- Were works undertaken at the site begun before the expiration of the planning permission?
- If so, are the works relied upon as constituting implementation lawful?

On the first point the applicant's agent has indicated that in his view development has in fact lawfully commenced at the site. There have been site clearance works undertaken with some excavations apparent on site. There has also been an indication from the agent that further works which unequivocally represent the beginning of development (e.g. material operations under section 55 of the Town and Country Planning Act 1990) will be undertaken prior to the lapsing of the planning permission on the 4 November and that these works will be documented. It has been requested that if this occurs the Authority is notified and the matter appropriately evidenced. It seems likely that works will be undertaken to implement planning permission prior to the expiration of the consent.

This leads onto the second point in relation to whether conditions would prevent a lawful commencement. There is no certificate of lawfulness, but it is considered that a judgement can be made on this in determining the application. A view needs to be taken on this by the local planning authority. A development may not be lawfully implemented where it breaches pre-commencement conditions, requiring actions prior to the commencement of development, Advice on this matter is given in WGC 016/2014, which states in paragraph 3.30:

“Where pre-commencement conditions have not been satisfied the implementation of planning permission may not be lawful. In order to make the development lawful, the conditions would have to be complied with or varied under section 73 of the 1990 Act. However, it has been held that this principle does not apply to all conditions but only those that go to the heart of the permission i.e. those that are fundamental to the development. Pre-commencement conditions should be carefully worded to be expressively prohibitive i.e. state that development must not commence until the condition has been complied with, since non-compliance with such conditions can mean the permission has not been lawfully implemented.”

An email of the 15 July 2014 from the local planning authority discharged conditions 10 and 12 on the planning permission. This email acknowledged the submission of information for condition 8, but left some matters outstanding. This condition relates to the submission of a surface water regulation system at the site. The applicant's agent has been seeking to address this condition and has been liaising directly with Powys County Council land drainage authority at the time of writing the report agreement between the parties had not been reached and the condition was not fully discharged.

The wording of condition 13, the subject of this application, is noted in particular it does not contain an express prohibition on the commencement of development (as advised should be

included in paragraph 3.30 of WGC 016/2014). Therefore non-compliance with this condition may represent a simple breach of condition, potentially rectified by the approval of this application. This is as opposed to a breach of a “condition precedent” affecting the lawfulness of the implementation of the planning permission.

Clearly the correct position on conditions 13 and potentially condition 8 if not discharged are a matter of vital importance to the decision to be made on this application, clarification of this point has been requested from Powys County Council legal services and this will be verbally reported to the Committee or within an update.

Recommendation

At the time of writing the report it is considered that recommendation is Conditional Consent subject to all conditions imposed on planning permission P/2008/1607 as they subsist and continue to be capable of enforcement. Due to the potential for further conditions to be discharged prior to the meeting, it is likely that the wording of conditions will need to be agreed following the meeting in consultation with the chair and vice chair.

It is the case that by the time that the matter is reported to Committee, the time limit condition imposed on P/2008/1607 will have passed on the 4 November 2014. If the conclusion is drawn that development is lawfully commenced, a matter which is uncertain then the recommendation will remain as above.

If the conclusion is drawn that development is not lawfully commenced, in all likelihood due to un-regularised breaches of conditions, then it is concluded that the application no longer forms a valid application and should be refused for the avoidance of doubt.

[Please refer to committee report for current recommendation]

Case Officer: Matthew Griffiths- Senior Planning Officer
Tel: 01874 612280 E-mail:matthew.griffiths@powys.gov.uk

This page is intentionally left blank

**Planning, Taxi Licensing and Rights of Way Committee
Update Report December 2014**

Application No:	P/2014/0910	Grid Ref:	321147 240185.76
Community Council:	Llanigon CC	Valid Date:	Officer: 05/09/2014 Matthew Griffiths
Applicant:	Mr John Price C/O Agent		
Location:	Land at Llanthomas Lane, Llanigon, Hay-on-Wye, Hereford, Powys HR3 5PU		
Proposal:	Removal of condition 13 of planning approval P/2008/1607 (in relation to removal of footbridge)		
Application Type:	Application for Removal or Variation of a Condition		

Following the preparation of the Committee Report the following correspondence has been submitted to the Local Planning Authority:

1. Email Chain from 17 December between third party planning consultant, planning officer and Natural Resources Wales.
2. Email 16 December containing record of meeting between the Professional Lead Development Management, planning consultant and neighbour to case officer and NRW liaison officer. (Photographs submitted at meeting included separately to this update)
3. Email 15 December confirming that the FCA / Hydrological modelling are finalised versions.
4. Email 15 December from Colin Edwards confirming that the essence of the legal advice is within the publicised Committee Report.
5. Email 15 December from third party hydrological consultant with attached representation on application (included separately to this update)

From: Matthew Griffiths (CSP - Development Control)
Sent: 17 December 2014 14:17
To: Andrew Bevan (andrew@abplanning.co.uk)
Cc: Gwilym Davies (CSP - Development Control); Davies, James (James.Davies@cyfoethnaturiolcymru.gov.uk)
Subject: RE: Llanigon - photographs showing key role of bridge in flood impacts - presented to you on Monday by Ann Connell

Andrew,

In general - I am running out of time I am afraid and any further correspondence may not be able to be included as an update. I've summarised as far as I can on concerns raised:

- The email that Gwilym has sent to NRW was attached to my last email and has therefore been sent to you – see the first line of the email below. Gwilym sent this the morning after your meeting – are you not able to open it or something?
- NRW have responded with the attached, which we will make Members aware of.
- In respect of the outcome of the Committee the application is on the agenda now and any further action will be determined by the Committee – given these circumstance it is a matter for you to consider if your consultant travels or not.
- In relation to photograph 21 – I'll probably seek to put this on the power point for the application as I think it shows visually your concerns more clearly than a report / words etc. It seems to me to show the river flowing over the bridge and over the ford. The applicants refer to the footbridge as a constriction on flow in the FCA and I don't think that anyone is arguing that it does not constrain flow? This is covered in 3.16 of the FCA which states the following:

“3.16 The hydraulic modelling has been undertaken to assess the ‘with’ and ‘without footbridge’ scenarios. The hydraulic modelling outputs have been produced for two sets of scenarios: one set with the footbridge remaining in place, and one with the footbridge removed. These outputs prove that there is a slight difference between the flood outlines. The hydraulic modelling shows that, if the footbridge is removed, there is a slight increase in flood risk on agricultural land to the north. This is likely to be as a result of increased velocities caused by the removal of a flow constriction. Ironically, the removal of the footbridge might result in flooding on a slightly larger area of third party land than if it were retained. With respect to on-site flooding, and the flood risk associated with all existing dwellings, the change is negligible if the footbridge is removed.”

In terms of my view - the flood depths in the area directly occupied by the bridge in the flood modelling vary when the flows are modelled with the footbridge in place or removed this is shown in the flood outputs for their modelling - this doesn't seem out of line with what is shown in the photograph and what in my view would logically happen if the bridge was removed. But understanding the significance of this change on flooding in the locality requires an appropriate modelling exercise and the drawing of appropriate conclusions from the modelling in an FCA. I don't think that the photograph could be seen as a substitute for this. In my view it comes down to the adequacy of the modelling and the interpretation of the outputs in the FCA this is

coupled to the assessment of these by NRW and the advice they offer us. NRW's current position is the basis of the recommendation at present – I've noted the comments attached from NRW and clearly we will need to consider how to proceed following them sending this.

Correspondence to this point will be reported as an update to the meeting, but this is being finalised now.

Hope that clarifies matters.

Regards,

Matthew Griffiths BSc (hons), MSc, MA, MRTPI
Uwch Swyddog Cynllunio / Senior Planning Officer
Cyngor Sir Powys / Powys County Council
T: 01874 612280 / F: 01874 612339

Neuadd Brycheiniog, Ffordd Cambrian, Aberhonddu, Powys LD3 7HR
Neuadd Brycheiniog, Cambrian Way, Brecon, Powys LD3 7HR

www.powys.gov.uk/planning

From: Andrew Bevan [mailto:andrew@abplanning.co.uk]
Sent: 17 December 2014 12:15
To: Matthew Griffiths (CSP - Development Control); Gwilym Davies (CSP - Development Control)
Cc: john.young@edenvaleyoun.com; 'James Anderson'; admin@abplanning.co.uk; 'Davies, James'
Subject: RE: Llanigon - photographs showing key role of bridge in flood impacts - presented to you on Monday by Ann Connell
Importance: High

Good morning Matthew,

I note Gwilym may not be available - in the circumstances and given the Committee is tomorrow please can you respond on all outstanding matters as soon as you are able as it would be unreasonable for John Young not to be updated as he has to travel from Bristol tomorrow to address the Committee.

You will see from many of the images (especially number 21) that the bridge is clearly a key influence on flow and therefore flooding and that an URGENT REALITY CHECK is required

Please can you confirm that you (as in the case of Gwilym on Monday) have observed the photograph No 21 that shows the bridge (the subject of Condition 13) causing a significant obstruction to food flows along the watercourse?

I have asked John Young to respond to the issue of the assessments status and that is awaited.

Please can you send me a copy of the email sent from Gwilym to NRW (as per his assurance to do so on Monday) and any response you have received from NRW as Gwilym stated that the matter should not proceed to be considered by Committee if the technical team at NRW had not reviewed the photographs and responded to the LPA formally on why the reality they illustrate does not support the 'contended' case presented by the applicants application.

I look forward to hearing from you as a matter of urgency.

Regards
Andrew

From: Matthew Griffiths (CSP - Development Control) [mailto:matthew.griffiths@powys.gov.uk]
Sent: 17 December 2014 11:25
To: andrew@abplanning.co.uk; Gwilym Davies (CSP - Development Control)
Subject: RE: Llanigon - photographs showing key role of bridge in flood impacts - presented to you on Monday by Ann Connell

Andrew,

Gwilym is largely unavailable today and is unlikely to be in a position to reply to your email. I am able to confirm that he has passed on the scanned images to me and NRW and a summary of your meeting as attached.

As a point of clarification – it is not clear to me why you and your consultant John Young are asserting that the Flood Consequences Assessment supporting the application is in draft. I have put this to the applicants agent who has confirmed that the FCA is finalised and is not in draft – could you please clarify why you hold this view? I would appreciate it if this went beyond an assertion that this is the

case as you have already expressed this opinion to us - could you provide some reasoning on this point?

Kind regards,

Matthew Griffiths BSc (hons), MSc, MA, MRTPI
Uwch Swyddog Cynllunio / Senior Planning Officer
Cyngor Sir Powys / Powys County Council
T: 01874 612280 / F: 01874 612339

Neuadd Brycheiniog, Ffordd Cambrian, Aberhonddu, Powys LD3 7HR
Neuadd Brycheiniog, Cambrian Way, Brecon, Powys LD3 7HR

www.powys.gov.uk/planning

From: Andrew Bevan [<mailto:andrew@abplanning.co.uk>]
Sent: 17 December 2014 10:35
To: Gwilym Davies (CSP - Development Control)
Cc: Matthew Griffiths (CSP - Development Control); 'James Anderson';
john.young@edenvaleyoun.com; admin@abplanning.co.uk
Subject: Llanigon - photographs showing key role of bridge in flood impacts - presented to you on Monday by Ann Connell
Importance: High

Good morning Gwilym,

Thank you for a very helpful meeting on Monday with Ann Connell and myself.

We clearly arrived at a point that is definitive in the current process and you scanned the photographs provided by Ann that show the footbridge causing a **significant** impact on flows along the watercourse and therefore in terms of flood consequences.

Please can you provide copies of the photographs you took scans of at our meeting.

You stated you were going to send copies of the photographs and of your now **fundamental concerns** to James Davies to seek **absolute clarification** regarding the issue of the bridge – especially as the photographs remove speculation and deliver a second reality check in relation to otherwise inaccurate flood projections.

You also noted that the assessments that the current application relies on are not fully concluded and resolved as identified by John Young and should therefore not be accepted as a sound basis for such a critical decision.

The position is now that as per John Young's email/letter this week clearly sets out that the foot bridge causes significant impacts on flooding **as set out by the applicants hydrologist** in their earlier hydrology assessment of the site (see quote in John Young's letter).

Please confirm that this matter will now **not** proceed to committee with a recommendation of approval for the removal of Condition 13 of the existing permission that has now expired and is subject of implementation prior to Pre-condition compliance and it is clear now that that condition and its subject matter goes to the heart of the previous decision and development.

The least that should now happen is that your members, officers and NRW need to be aware that photographs currently in your possession provide evidence that the performance/effect of the bridge in the flood activity at site causes the 'pre-condition 13' to have a significant role in the planning process and decision as issued as promoted by Morfa Drayton on behalf of the applicant.

Please respond by return providing a copy of the email you stated you were going to send to James on Monday.

Regards
Andrew

Mae'r e bost hwn ac unrhyw atodiad iddo yn gyfrinachol ac fe'i bwriedir ar gyfer y sawl a enwir arno yn unig. Gall gynnwys gwybodaeth freintiedig. Os yw wedi eich cyrraedd trwy gamgymeriad ni ellwch ei gopio, ei ddosbarthu na'i ddangos i unrhyw un arall a dylech gysylltu gyda Cyngor Sir Powys ar unwaith. Mae unrhyw gynnwys nad yw'n ymwneud gyda busnes swyddogol Cyngor Sir Powys yn bersonol i'r awdur ac nid yw'n awdurdodedig gan y Cyngor.

This e mail and any attachments are confidential and intended for the named recipient only. The content may contain privileged information. If it has reached you by mistake, you should not copy, distribute or show the content to anyone but should contact Powys County Council at once. Any content that is not pertinent to Powys County Council business is personal to the author, and is not necessarily the view of the Council.

From: Davies, James [mailto:James.Davies@cyfoethnaturiolcymru.gov.uk]
Sent: 17 December 2014 10:49
To: Matthew Griffiths (CSP - Development Control); Gwilym Davies (CSP - Development Control)
Subject: RE: Llanigon - photographs showing key role of bridge in flood impacts - presented to you on Monday by Ann Connell

Hello both

There is now a considerable amount of exchange from all parties involved in this application to digest. Clearly we want to provide you with accurate and clear advice in regards to our position on the different elements of the case. This will need discussing further internally and I will not be able to provide a substantive response to you in time for the committee meeting tomorrow.

I will contact you shortly with an update.

Regards

Jim Davies

Senior Development Planning Advisor – Uwch Ymgynghorydd Cynllunio Datblygu
Cyfoeth Naturiol Cymru / Natural Resources Wales

Ffôn/Tel: 03000 653033

Gwefan / Website:

www.cyfoethnaturiolcymru.gov.uk / www.naturalresourceswales.gov.uk

Ein pwrpas yw sicrhau fod adnoddau naturiol Cymru yn cael eu cynnal, gwella a'u defnyddio yn gynaliadwy, yn awr ac i'r dyfodol.

Our purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future.

From: Matthew Griffiths (CSP - Development Control) [mailto:matthew.griffiths@powys.gov.uk]
Sent: 17 December 2014 10:40
To: Davies, James
Subject: FW: Llanigon - photographs showing key role of bridge in flood impacts - presented to you on Monday by Ann Connell
Importance: High

James,

Further to previous correspondence on this site. I have received the email below regarding the proposal – could you confirm if there is any change in the position of NRW on this application?

Matthew Griffiths BSc (hons), MSc, MA, MRTPI
Uwch Swyddog Cynllunio / Senior Planning Officer
Cyngor Sir Powys / Powys County Council
T: 01874 612280 / F: 01874 612339

Neuadd Brycheiniog, Ffordd Cambrian, Aberhonddu, Powys LD3 7HR

Neuadd Brycheiniog, Cambrian Way, Brecon, Powys LD3 7HR

www.powys.gov.uk/planning

From: Andrew Bevan [<mailto:andrew@abplanning.co.uk>]

Sent: 17 December 2014 10:35

To: Gwilym Davies (CSP - Development Control)

Cc: Matthew Griffiths (CSP - Development Control); 'James Anderson'; john.young@edenvaleyoun.com; admin@abplanning.co.uk

Subject: Llanigon - photographs showing key role of bridge in flood impacts - presented to you on Monday by Ann Connell

Importance: High

Good morning Gwilym,

Thank you for a very helpful meeting on Monday with Ann Connell and myself.

We clearly arrived at a point that is definitive in the current process and you scanned the photographs provided by Ann that show the footbridge causing a **significant** impact on flows along the watercourse and therefore in terms of flood consequences.

Please can you provide copies of the photographs you took scans of at our meeting.

You stated you were going to send copies of the photographs and of your now **fundamental concerns** to James Davies to seek **absolute clarification** regarding the issue of the bridge – especially as the photographs remove speculation and deliver a second reality check in relation to otherwise inaccurate flood projections.

You also noted that the assessments that the current application relies on are not fully concluded and resolved as identified by John Young and should therefore not be accepted as a sound basis for such a critical decision.

The position is now that as per John Young's email/letter this week clearly sets out that the foot bridge causes significant impacts on flooding **as set out by the applicants hydrologist** in their earlier hydrology assessment of the site (see quote in John Young's letter).

Please confirm that this matter will now **not** proceed to committee with a recommendation of approval for the removal of Condition 13 of the existing permission that has now expired and is subject of implementation prior to Pre-condition compliance and it is clear now that that condition and its subject matter goes to the heart of the previous decision and development.

The least that should now happen is that your members, officers and NRW need to be aware that photographs currently in your possession provide evidence that the performance/effect of the bridge in the flood activity at site causes the 'pre-condition 13' to have a significant role in the planning process and decision as issued as promoted by Morfa Drayton on behalf of the applicant.

Please respond by return providing a copy of the email you stated you were going to send to James on Monday.

Regards
Andrew

Mae'r e bost hwn ac unrhyw atodiad iddo yn gyfrinachol ac fe'i bwriedir ar gyfer y sawl a enwir arno yn unig. Gall gynnwys gwybodaeth freintiedig. Os yw wedi eich cyrraedd trwy gamgymeriad ni ellwch ei gopio, ei ddosbarthu na'i ddangos i unrhyw un arall a dylech gysylltu gyda Cyngor Sir Powys ar unwaith. Mae unrhyw gynnwys nad yw'n ymwneud gyda busnes swyddogol Cyngor Sir Powys yn bersonol i'r awdur ac nid yw'n awdurdodedig gan y Cyngor.

This e mail and any attachments are confidential and intended for the named recipient only. The content may contain privileged information. If it has reached you by mistake, you should not copy, distribute or show the content to anyone but should contact Powys County Council at once. Any content that is not pertinent to Powys County Council business is personal to the author, and is not necessarily the view of the Council.

From: Gwilym Davies (CSP - Development Control)
Sent: 16 December 2014 05:41
To: Matthew Griffiths (CSP - Development Control); Davies, James
Subject: Llanthomas Lane, Llanigon
Importance: High

Good Morning Both,

I met with Mr Andrew Bevan and Mrs Connell regarding Llanthomas Lane, Llanigon. My record of our conversation is as follows:

Discharge of Condition:

- Mr Bevan believes that PCC rushed the discharge of conditions. He stated that he is likely to request all correspondence relating to the discharge of conditions.

Discharge of Condition 13:

- Mr Bevan stated that all the assessments submitted to date by the applicant for this application are incomplete as they are all in draft form. He refers to an email from Mr John Young to you dated 3rd November 2014, where he states this is outlined.
- Mrs Connell submitted photos that she states shows the bridge as an obstruction (attached). Mr Bevan stated that this supports the second paragraph (quote from Morfor Drayton FCA) on the second page of Mr John Youngs correspondence dated 15th December 2014, which I understand you both have received.
- Mr Bevan notes that as the bridge is an obstruction, condition 13 goes to the heart of the consent on flood risk grounds and therefore the consent has been lost as condition 13 was not discharged prior to the implementation date.

As requested by Mr Bevan and Mrs Connell, I stated that I would inform the case officer and NRW regarding the above comments.

I would be grateful if the above issues relating to the discharge of condition 13 could be address (if possible) prior to the Committee on Thursday as if they are not it is my opinion that a deferral is likely.

Thanks,

Gwilym

Gwilym Davies BSc (Hons), MSc MRTPI
Professional Lead - Development Management
Development Management
Powys County Council
Tel: 01597827344
Email: gwilym.davies@powys.gov.uk

From: Marcus Blayney [mailto:marcus@gjplanning.co.uk]
Sent: 15 December 2014 17:17
To: Matthew Griffiths (CSP - Development Control)
Cc: "Geraint John"
Subject: RE: Development in Llanthomas Lane in Llanigon

Hi Matthew,

Many thanks for this, just by way of a brief response. We would just like to confirm that the FCA reports submitted are indeed finalised copies and are not 'draft' as suggested within the third party representations.

Furthermore it is noted that comprehensive discussions have been held with the NRW over a number of years to address the issues with regards to the need or moreover lack of need, for the removal of the footbridge. It has been clearly demonstrated that there is no material difference relating to its removal or retention at the site, and this has been confirmed and agreed by NRW. Additionally, it is noted that its retention has obvious community and highway benefits.

I hope and trust that this is of assistance.

Kind regards
Marcus

From: Colin Edwards (CSP - Legal Services)
Sent: 15 December 2014 16:11
To: James Anderson
Cc: Matthew Griffiths (CSP - Development Control)
Subject: RE: Llanthomas lane, Llanigon

Dear James

The essence of the legal advice we received from London planning Counsel is set out in the committee report going to planning committee on 18/12/2014. If you have not had a copy please follow the links as follow:

go to PCC public site and follow links by clicking on “Council & Democracy”; “Council & Meetings”; “Council Committees and Meetings”; “Planning Taxi Licensing and Rights of Way Committee” 18/12/2014

Kind regards

Colin Edwards

From: John Young [<mailto:john.young@edenvaleyoun.com>]
Sent: 15 December 2014 11:50
To: Matthew Griffiths (CSP - Development Control)
Cc: andrew@abplanning.co.uk; james.anderson@jeffreysandpowell.co.uk; 'Davies, James'
Subject: RE: Development in Llanthomas Lane in Llanigon

Matthew,

Apologies, not lest for spelling you name incorrectly. I pushed send too quickly. Could you please ignore my previous email and use the letter attached to this email.

Kind regards

John Young

From: John Young [<mailto:john.young@edenvaleyoun.com>]
Sent: 15 December 2014 11:41
To: 'Matthew Griffiths (CSP - Development Control)'
Cc: 'andrew@abplanning.co.uk'; 'james.anderson@jeffreysandpowell.co.uk'; 'Davies, James'
Subject: RE: Development in Llanthomas Lane in Llanigon

Natthew,

Please find attached a copy of a letter sent to you in the post today.

Kind regards

John Young

From: John Young [<mailto:john.young@edenvaleyoun.com>]
Sent: 03 November 2014 16:18
To: 'Davies, James'; 'Matthew Griffiths (CSP - Development Control)'
Cc: 'andrew@abplanning.co.uk'; 'james.anderson@jeffreysandpowell.co.uk'
Subject: RE: Development in Llanthomas Lane in Llanigon

James,

Many thanks for your email. I notice from your email that you have liaised with the consultant and given feedback on the appropriateness of the modelling strategy. However, I do note that you have not reviewed a final version of the modelling report, FCA or the hydraulic model for the non-removal of the footbridge.

It is my experience that NRW would want to review the hydrological analysis and hydraulic model in detail before removing an objection to a condition. This would normally include the FEH proforma and a detailed evaluation of the hydraulic model including: boundary conditions; schematisation of structures; model roughness; etc. In this respect, am I correct in saying that:-

1. PCC has not issued NRW with the final versions of a modelling report or FCA specifically relating to the discharge of the condition.
2. PCC has not issued NRW with a final version a FEH proforma or the hydraulic model specifically relating to the discharge of the condition
3. NRW is not in possession of final versions of a modelling report of FCA specifically relating to the discharge of the condition

4. NRW has not undertaken a formal review of the hydrology and hydraulic model specifically relating to the discharge of the condition.

From a procedural point of view I think that these are very important issues and I would appreciate your confirmation of the situation.

Kind regards

John Young

From: Davies, James [<mailto:James.Davies@cyfoethnaturiolcymru.gov.uk>]
Sent: 03 November 2014 11:47
To: Matthew Griffiths (CSP - Development Control)
Cc: andrew@abplanning.co.uk; john.young@edenvaleyong.com
Subject: FW: Development in Llanthomas Lane in Llanigon

Matthew

Thank you for the email.

Looking at the comments from Edenvale Young there are some points to which I should clarify.

John Young suggests that the evidence (i.e. the modelled outputs submitted) should be compared with the housing built in the model (as submitted to the LPA) including both footbridge scenarios and also without the housing built in to the model (not submitted to the LPA) including both the footbridge scenarios. However, as you know, the application is for the removal of a condition on an extant permission – the housing is not what is under consideration here but whether the footbridge has an effect on the permitted housing.

In regard to the modelling used to inform the outputs, we have liaised with the consultant on the appropriateness of the model and hydrology used over several years. We have not reviewed any final FCA or modelling report since providing the consultants feedback on draft versions, but can advise the modelling and hydrology are appropriate to inform flood risk in the area. The model now bears comparison with recorded events in the area.

John is correct when he states that the modelling shows the consented site to be affected by flooding in the 1% (1 in 100 year) design event. John is also correct in that the buildings cause contraction and expansion of flows across the site. This is seen in the model and comparison grids have been produced that indicate the effect is within the locale of the development site. The model does not show any additional impact downstream (including his client's property).

I trust this provides some clarity on the situation associated with the determination of P/2014/0910.

Regards

Jim Davies

Senior Development Planning Advisor – Uwch Ymgynghorydd Cynllunio Datblygu
Cyfoeth Naturiol Cymru / Natural Resources Wales

Ffôn/Tel: 03000 653033

Gwefan / Website:

www.cyfoethnaturiolcymru.gov.uk / www.naturalresourceswales.gov.uk

Ein pwrpas yw sicrhau fod adnoddau naturiol Cymru yn cael eu cynnal, gwella a'u defnyddio yn gynaliadwy, yn awr ac i'r dyfodol.

Our purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future.

From: Matthew Griffiths (CSP - Development Control) [<mailto:matthew.griffiths@powys.gov.uk>]
Sent: 14 October 2014 10:56
To: Davies, James
Subject: FW: Development in Llanthomas Lane in Llanigon

Jim,

Please look at the below and provide any comment that NRW may have.

Just for your information, this matter is getting very pressing in my view as the original planning permission will lapse, potentially before we can make a decision on the current s73 planning application. I am referring this to our solicitor as we need to form a position on this to take matters forward. I will not be agreeing an extension until we have agreed a position on this.

Kind regards,

Matthew Griffiths BSc (hons), MSc, MA, MRTPI
Uwch Swyddog Cynllunio / Senior Planning Officer
Cyngor Sir Powys / Powys County Council
T: 01874 612280 / F: 01874 612339

Neuadd Brycheiniog, Ffordd Cambrian, Aberhonddu, Powys LD3 7HR
Neuadd Brycheiniog, Cambrian Way, Brecon, Powys LD3 7HR

www.powys.gov.uk/planning

From: John Young [<mailto:john.young@edenvaleyounng.com>]
Sent: 14 October 2014 10:51
To: Matthew Griffiths (CSP - Development Control)
Cc: andrew@abplanning.co.uk
Subject: Development in Llanthomas Lane in Llanigon

Dear Matthew,

Over the last few years Edenvale Young has represented Anne Connell relating to her opposition to the development of properties in Llanigon. Edenvale Young is a specialist flood risk consultant and at the time of the original representation we wrote several letters to the Local Planning Authority and the Environment Agency (now NRW). At the time we felt that the quality of the hydraulic modelling and the FCA in general was poor and that there were a

number of serious omissions and error in the development of the FCA. I would be happy to supply these documents if you do not have them to hand.

Andrew Bevan has now passed me a copy of a new FCA which includes the results of modelling associated with the footbridge. I have had a brief look at the information contained in the various documents which make up the FCA (Martin Wright Associates - MCW) but I can't pretend to have undertaken a detailed review. As you probably realise the reports are aimed at discharging a condition associated with the footbridge. However, when we last looked at this issue, I think that I am correct in saying that the Environment Agency had issued Anne with an apology stating that they had made errors in the assessment of the original FCA submitted by the developer and that the serious concerns raised by Edenvale Young into the FCA were valid. I am not entirely sure what the status of the planning application was following this admission bearing in mind that the EA changed their opinion at a very late stage in the process.

The MWA FCA submitted to the LPA recently compares the "existing" situation (i.e. with the footbridge and housing development) to the proposed situation (without the footbridge but with the housing development). It should be recognised that the former of these two scenarios is not the "existing" situation as the properties have not been built. The existing situation and hence the baseline for the FCA should be pre-development with the footbridge and this scenario should have been considered against the post development situation without the footbridge but with the housing.

1D-2D modelling of this nature was never presented during the original application. However, the modelling contained in the report appears to support the concerns we had at the time for a number of reasons. Firstly the outputs clearly show that the proposed plots 2 and 3 are inundated in the 1 in 100 year event and under these circumstances the flood risks to the properties would be deemed to be unacceptable in accordance with TAN 15. In addition, the two proposed plots adjacent to Llanthomas Lane are surrounded by flood water and access and egress to these properties during flooding must be compromised. These properties must be raised on platforms above the existing land to achieve this "dry" status.

More seriously the plots show flow contracting and accelerating between the above properties clearly changing the flow paths from the "existing" condition (no housing development but with the footbridge). In my opinion there is a very high probability that this contraction and acceleration of flows would have a detrimental impact downstream; notably on Ann's house. I am struggling to see how the development can proceed given this information even if there have been procedural errors in the past. It would be extremely unlikely that the properties would be insurable.

Again, I have not been able to review the information in detail and I think that given the sites history there should be a thorough review of the model. Accordingly we would ask for an extension in the time to evaluate the flood modelling. In particular we would like to have a copy of the model developed by MCW so that we can ensure that the model is robust and meets the high standards required for an FCA.

Kind regards

John Young

--

email john.young@edenvaleyoun.com
web www.edenvaleyoun.com

Address

Edenvale Young Associates Ltd
Royal Talbot House
2 Victoria Street
Bristol

Mob +44 7866 451394
DD +44 117 214 0531
Tel +44 117 214 0530

This email and any attachments are confidential, legally privileged and protected by copyright. If you are not the intended recipient, dissemination or copying of this email is prohibited. If you have received this email in error, please notify the sender by replying by email and then delete the email completely from your system. It is the responsibility of the recipient to conduct their own security measures and no responsibility is accepted by Edenvale Young, John Young Associates or any of its subsidiaries for loss or damage arising from the receipt or use of this email.

Mae'r e bost hwn ac unrhyw atodiad iddo yn gyfrinachol ac fe'i bwriedir ar gyfer y sawl a enwir arno yn unig. Gall gynnwys gwybodaeth freintiedig. Os yw wedi eich cyrraedd trwy gamgymeriad ni ellwch ei gopio, ei ddosbarthu na'i ddangos i unrhyw un arall a dylech gysylltu gyda Cyngor Sir Powys ar unwaith. Mae unrhyw gynnwys nad yw'n ymwneud gyda busnes swyddogol Cyngor Sir Powys yn bersonol i'r awdur ac nid yw'n awdurdodedig gan y Cyngor.

This e mail and any attachments are confidential and intended for the named recipient only. The content may contain privileged information. If it has reached you by mistake, you should not copy, distribute or show the content to anyone but should contact Powys County Council at once. Any content that is not pertinent to Powys County Council business is personal to the author, and is not necessarily the view of the Council.

Case Officer: Matthew Griffiths- Senior Planning Officer
Tel: 01874 612280 E-mail:matthew.griffiths@powys.gov.uk

15 December 2014

Matthew Griffiths

Senior Planning Officer
Powys County Council
Neuadd Brycheiniog
Cambrian Way
Brecon
Powys
LD3 7HR

Subject: Llanthomas Lane, Llanigon

Dear Matthew,

Further to the various exchanges of correspondence concerning the development on Llanthomas Lane in Llanigon, I note that you have considered the comments contained in my email of the 14 October 2014 associated with flooding risks to the development and third party impacts downstream including my client Anne Connell.

However, it is noted that my questions contained in my email of the 3 November to James Davies at NRW and copied to you not been answered. For your reference the text of the email is given at the end of this letter and at the time of writing it is not clear to me whether a formal and final Flood Consequence Assessment (FCA) was submitted to PCC in relation to discharging Condition 13. The Committee Report makes no reference to a site specific FCA and I can only assume that the Committee will be proceeding without an FCA which is a key planning document. The FCA is particularly important in this particular application as flooding is one of the key issues.

As you are aware I have previously reviewed the Draft FCA prepared by Martin Wright Associates and my comments emailed to you on the 14 October 2014 are also appended to this letter. I have now had a chance to consider the document in more detail. In particular the Draft FCA makes no reference to blockage of the footbridge. In my letter of the 19 December 2008 which related FCA submitted by Morfor Drayton for the previous application I highlighted a number of matters which were considered important.

Edenvale Young Associates
Consulting Engineers

St Nicolas House, 31-34 High Street, Bristol Bs1 2AW
T +44 (0) 117 214 0530
edenvaleyong.com

Section 3 of this letter refers to blockage of the footbridge and notes that Page 7 of the Morfor Drayton FCA stated that:

“The footbridge just upstream of the culvert inlet, however is a serious flood risk to the site as it is likely to cause objects to block the channel a form a damming effect that could lead to very high headwater levels that would result in flooding to the Phase 1 site”. It is also recommended that the footbridge is removed to mitigate this flood risk.

In the letter I concurred that blockage of the footbridge could be a significant flooding mechanism and pointed out that:

Edenvale Young has undertaken a large number of Flooding Pre-feasibility (250) and Project Appraisal Studies (40) for Powys County Council and Caerphilly Borough Council. Of the 27 first stage Project Appraisal for Powys County Council, 22 or (81%) of the sites have blockage as the primary or secondary flooding mechanism in conjunction with high rates of flow. These studies are all on ordinary watercourse and a large number of the sites include trash screens, culverts, and medium sized bridges which are vulnerable to blockage and cause flooding. On a nationwide basis WAG has calculated that approximately 60% of all flooding problems on ordinary watercourses in Wales relates to the blockage of culverts.

However, the Morfor Drayton FCA contained no assessment of this flooding mechanism which was recognised within the Morfor Drayton FCA to be serious.

It is understood that the removal of the footbridge was required to mitigate flooding to the site due to blockage and is the basis of Condition 13. Importantly the Draft FCA submitted by Martin Wright Associates does not consider blockage of the footbridge which was the original reason for the inclusion of Condition 13. Accordingly it is considered that the basis of the Draft FCA is incorrect and that the application for the removal of Condition 13 should be rejected.

The issue of blockage is significant as demonstrated by the flooding experienced to the Glasdir Estate in Denbighshire. On 27 November 2012 over 100 modern properties were affected by flooding on the Glasdir Estate in Ruthin. Following pressure from residents and local representatives, Denbighshire County Council appointed Dr Jean Venables (Crane Environmental & ex-president of the ICE), John Young (Edenvale Young) and Clive Onions (Clive Onions Ltd) to undertake the Independent Review of flooding.

Edenvale Young Associates
Consulting Engineers

St Nicolas House, 31-34 High Street, Bristol Bs1 2AW
T +44 (0) 117 214 0530
edenvaleyong.com

The conclusions of the study were complex and wide ranging and included the following key points:-

- The process of preparing the land at Glasdir for development evolved over many years. During that period the methods of hydraulic modelling developed and standards and guidance changed. Communication between the various parties associated with the development could have been clearer and assumptions made by those subsequently involved should / could have been challenged.
- The blockage of culverts adjacent to the estate played a significant part in causing the flood water to flow over the bund (which was also too low). Although blockage was mentioned in previous reports there is no evidence that work was done to assess its impact.

The Glasdir Estate in Ruthin was constructed by Taylor Wimpey Homes with property being sold “off-plan” in 2009 with assurances from the developer that the site was protected to a return period of 1 in 1000 years. However, within three years of development the site had been seriously flooded as a result of blockage as noted above. Flooding caused major distress to the residents and also left them without access to insurance. Following the review the Local Authority and Welsh Assembly Government provided funding for the improvement of the flood defences to the estate and culverts under the road. This should not have been the case if the problem of blockage had been recognised by all parties.

In the case of the development of Llanthomas Lane in Llanigon NRW has already admitted to an error in the evaluation of the previous planning application and the Draft FCA confirms that the development would be flooded in a 1 in 100 year event. Indeed it is understood that you have indicated to Andrew Bevan that if the development were brought forward today it would be refused. This contradicts the requirements of TAN 15.

Accordingly it is apparent that a number of mistakes have already been made with the assessment of planning applications for this development in the past. The omission of any consideration of blockage by either the developer, NRW and Local Planning Authority is considered serious and will compound these errors. Based on the precedent established by the Glasdir Estate in Denbighshire it is considered that Powys County Council could find themselves responsible for funding flood alleviation works to mitigate flooding to the new estate on Llanthomas Lane and third parties such as my client.

Edenvale Young Associates
Consulting Engineers

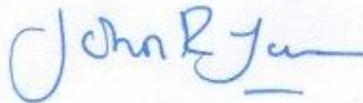
St Nicolas House, 31-34 High Street, Bristol Bs1 2AW
T +44 (0) 117 214 0530
edenvaleyouth.com

I respectfully submit to the planning committee that this application should be rejected for three reasons. These are:

- Procedural errors have been made and it is not clear whether a formal FCA has been submitted for the discharge of Condition 13
- Blockage has not been considered within the Draft FCA and condition 13 was based on the removal of the footbridge to mitigate the risk of flooding to the site and third parties
- As a result of errors in the original FCA and lack of scrutiny in the flood risk issues in the planning process natural justice has not been served in the consideration of this application.

If you have any questions or comments please do not hesitate to contact me.

Yours sincerely,



John Young
Director

Edenvale Young Associates
Consulting Engineers

St Nicolas House, 31-34 High Street, Bristol Bs1 2AW
T +44 (0) 117 214 0530
edenvaleyong.com

From: John Young [mailto:john.young@edenvaleyoun.com]
Sent: 03 November 2014 16:18
To: 'Davies, James'; 'Matthew Griffiths (CSP - Development Control)'
Cc: 'andrew@abplanning.co.uk'; 'james.anderson@jeffreysandpowell.co.uk'
Subject: RE: Development in Llanthomas Lane in Llanigon

James,

Many thanks for your email. I notice from your email that you have liaised with the consultant and given feedback on the appropriateness of the modelling strategy. However, I do note that you have not reviewed a final version of the modelling report, FCA or the hydraulic model for the non-removal of the footbridge.

It is my experience that NRW would want to review the hydrological analysis and hydraulic model in detail before removing an objection to a condition. This would normally include the FEH proforma and a detailed evaluation of the hydraulic model including: boundary conditions; schematisation of structures; model roughness; etc. In this respect, am I correct in saying that:-

1. PCC has not issued NRW with the final versions of a modelling report or FCA specifically relating to the discharge of the condition.
2. PCC has not issued NRW with a final version a FEH proforma or the hydraulic model specifically relating to the discharge of the condition
3. NRW is not in possession of final versions of a modelling report of FCA specifically relating to the discharge of the condition
4. NRW has not undertaken a formal review of the hydrology and hydraulic model specifically relating to the discharge of the condition.

From a procedural point of view I think that these are very important issues and I would appreciate your confirmation of the situation.

Kind regards

John Young

Edenvale Young Associates
Consulting Engineers

St Nicolas House, 31-34 High Street, Bristol Bs1 2AW
T +44 (0) 117 214 0530
edenvaleyoun.com

From: John Young [<mailto:john.young@edenvaleyoun.com>]
Sent: 14 October 2014 10:51
To: Matthew Griffiths (CSP - Development Control)
Cc: andrew@abplanning.co.uk
Subject: Development in Llanthomas Lane in Llanigon

Dear Matthew,

Over the last few years Edenvale Young has represented Anne Connell relating to her opposition to the development of properties in Llanigon. Edenvale Young is a specialist flood risk consultant and at the time of the original representation we wrote several letters to the Local Planning Authority and the Environment Agency (now NRW). At the time we felt that the quality of the hydraulic modelling and the FCA in general was poor and that there were a number of serious omissions and error in the development of the FCA. I would be happy to supply these documents if you do not have them to hand.

Andrew Bevan has now passed me a copy of a new FCA which includes the results of modelling associated with the footbridge. I have had a brief look at the information contained in the various documents which make up the FCA (Martin Wright Associates - MCW) but I can't pretend to have undertaken a detailed review. As you probably realise the reports are aimed at discharging a condition associated with the footbridge. However, when we last looked at this issue, I think that I am correct in saying that the Environment Agency had issued Anne with an apology stating that they had made errors in the assessment of the original FCA submitted by the developer and that the serious concerns raised by Edenvale Young into the FCA were valid. I am not entirely sure what the status of the planning application was following this admission bearing in mind that the EA changed their opinion at a very late stage in the process.

The MWA FCA submitted to the LPA recently compares the "existing" situation (i.e. with the footbridge and housing development) to the proposed situation (without the footbridge but with the housing development). It should be recognised that the former of these two scenarios is not the "existing" situation as the properties have not been built. The existing situation and hence the baseline for the FCA should be pre-development with the footbridge and this scenario should have been considered against the post development situation without the footbridge but with the housing.

1D-2D modelling of this nature was never presented during the original application. However, the modelling contained in the report appears to support the concerns we had at the time for a number of reasons. Firstly the outputs clearly show that the proposed plots 2 and 3 are inundated in the 1 in 100 year event and under these circumstances the flood risks to the properties would be deemed to be unacceptable in accordance with TAN 15. In addition, the two proposed plots adjacent to Llanthomas Lane are surrounded by flood water and access and egress to these properties during flooding must be compromised.

Edenvale Young Associates
Consulting Engineers

St Nicolas House, 31-34 High Street, Bristol Bs1 2AW
T +44 (0) 117 214 0530
edenvaleyoun.com

These properties must be raised on platforms above the existing land to achieve this "dry" status.

More seriously the plots show flow contracting and accelerating between the above properties clearly changing the flow paths from the "existing" condition (no housing development but with the footbridge). In my opinion there is a very high probability that this contraction and acceleration of flows would have a detrimental impact downstream; notably on Ann's house. I am struggling to see how the development can proceed given this information even if there have been procedural errors in the past. It would be extremely unlikely that the properties would be insurable.

Again, I have not been able to review the information in detail and I think that given the sites history there should be a thorough review of the model. Accordingly we would ask for an extension in the time to evaluate the flood modelling. In particular we would like to have a copy of the model developed by MCW so that we can ensure that the model is robust and meets the high standards required for an FCA.

Kind regards

John Young

Edenvale Young Associates
Consulting Engineers

St Nicolas House, 31-34 High Street, Bristol Bs1 2AW
T +44 (0) 117 214 0530
edenvaleyong.com



Footbridges

Llanbomas

Farm

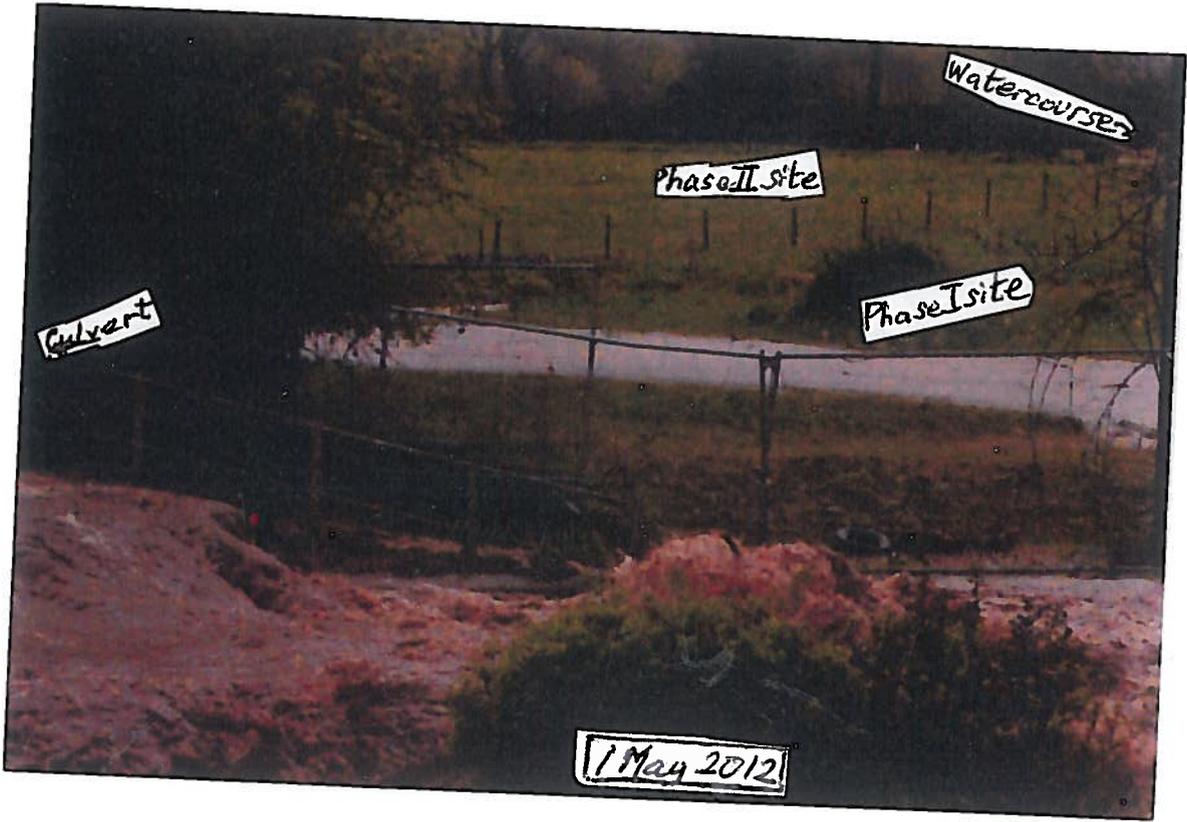
Phase 1 site

Brooklands

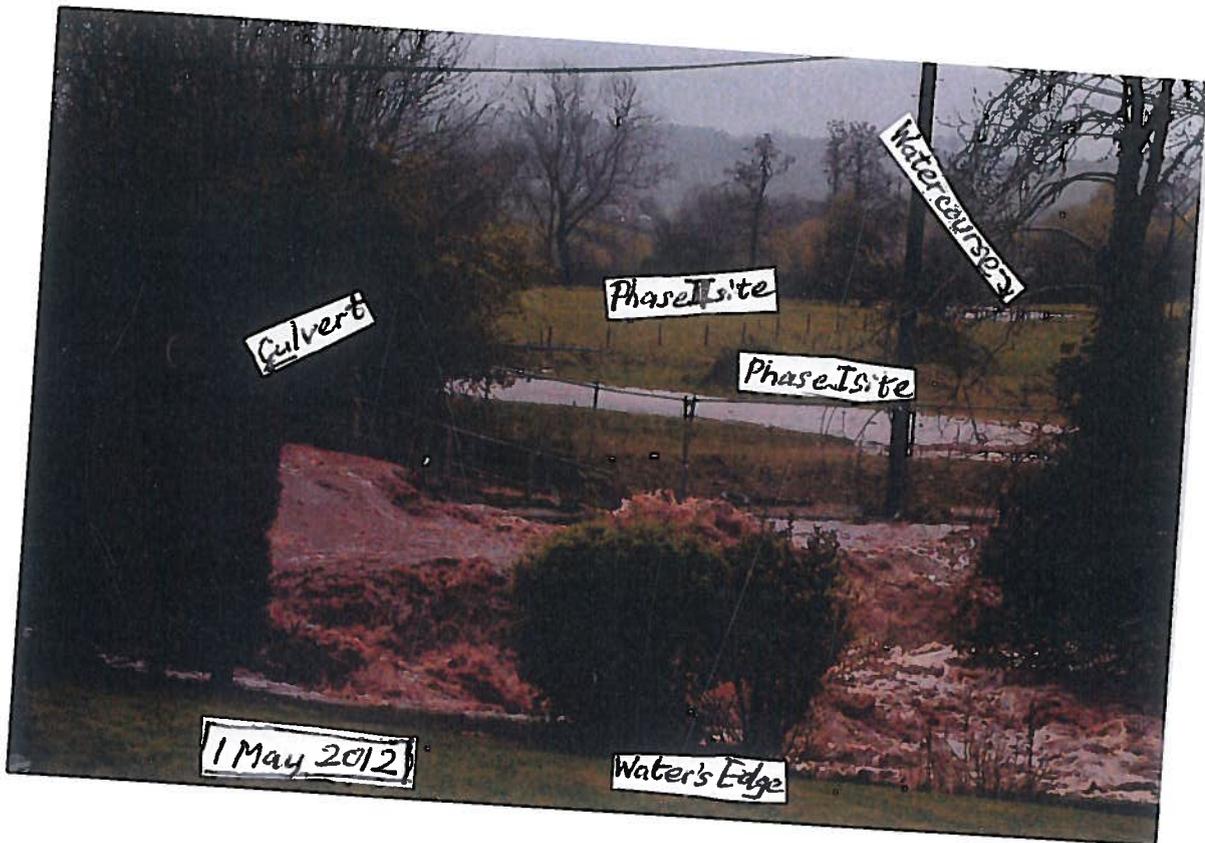
19 Golchi

1 May 2012

21



22



23



148



149



42



43



26



27

From: Andrew Bevan [<mailto:andrew@abplanning.co.uk>]
Sent: 17 December 2014 14:58
To: Matthew Griffiths (CSP - Development Control); Gwilym Davies (CSP - Development Control)
Cc: john.young@edenvaleyoung.com; 'James Anderson'
Subject: Llanigon
Importance: High

Dear Matthew

Thank you for clarifying in your email earlier, including confirmation from NRW that there is now insufficient clarity in terms of flooding outcome to allow the application to be properly considered tomorrow.

It would clearly be irresponsible for any LPA to proceed to the approval of a planning application in such circumstances.

In terms of your request for clarification of the unanswered queries we have raised with you and the NRW via John Young, in relation to the hydrology information submitted in support of the application, please see John Young's clear and comprehensive email below, prepared in response to your request for clarification.

Given we find ourselves again where some members will feel it is unreasonable to delay the determination of this application, I believe that it is imperative that the content of this email and the fact the approval of this application will allow the construction of houses that even the applicant accepts will flood, that the authorities solicitor and monitoring officer are required to have an input into the consideration of the application at committee tomorrow.

Please specifically draw this email to the attention of Ms. Sue Bolter.

Regards

Andrew

Andrew,

In relation to item a. below, I can confirm that:

- The Powys County Council Planning Portal does not include a formal Flood Consequence Assessment. Accordingly, it is assumed that an FCA has not been lodged with the Local Planning Authority as part of the discharge of Condition 13.
- We have only had the opportunity to review a Draft FCA prepared by Martin Wright Associates. As far as we are aware there is no final version of the FCA. Indeed James Davies of the NRW in his email to Matthew Griffiths on the 3 November 2014 (11:47am) stated that *"We have not reviewed any final FCA or modelling report since providing the consultants feedback on draft versions"*.
- Moreover, we have not received any response to my email of the 3 November 2014 which queries the status of the documents submitted to NRW (see attached email).

- The Committee Report makes no reference to a site specific FCA or gives any indication that one has been submitted to the LPA for the purposes of discharging condition 13.

I trust that this is of assistance but if you have any further questions please do not hesitate to contact me.

Kind regards

John

From: Geraint Hopkins (CSP - County Councillor)
Sent: 14 December 2014 19:52
To: Matthew Griffiths (CSP - Development Control)
Subject: RE: P/2014/0910 - 18/12/2014 Committee Notification

Dear Matthew,

Unfortunately I can't make this meeting of the Planning Committee.

In my view and the view of Llanigon CC, this condition (13), placed on the original approved planning consent P/2008/1607 was unnecessary. The removal of the footbridge was never going to improve the flow of the brook under storm conditions. The problem is not the footbridge, it is the size and capacity of the culverts taking the water under Llanthomas Lane itself. The culverts get blocked by debris which causes the storm water to cascade over the top of the road and down the lane. This problem needs a properly engineered solution which should have been addressed by Powys' Highways and Land Drainage departments before the planning consent was given.

Regards,
Geraint

Cllr.Geraint G Hopkins.
(Local member for Gwernnyfed and Llanigon Wards)

From: Marcus Blayney [<mailto:marcus@gjplanning.co.uk>]
Sent: 17 December 2014 16:18
To: Matthew Griffiths (CSP - Development Control)
Cc: geraint@gjplanning.co.uk
Subject: RE: Llanigon

Matthew,

Many thanks for forwarding this across. I understand the position in terms of NRW's feedback on this, but I would like to express our concerns and frustrations of what now appears to be deliberate delay tactics on behalf of the third party objector. The information provided at this stage provides no substantive evidence to question the results of the FCA, and the information provided is not new or certainly is not material to the determination of this S73 planning application.

As you have confirmed and concluded in your committee report, following detailed and comprehensive assessment, planning condition 13 does not serve a useful planning purpose and an objection to it is removal is not sustainable. The information provided by the 3rd party does not provide any evidence to quantify or contradict this advice. Furthermore given the Counsel advice that has been sought on the matter, it is clear that the condition is one that does not go to the heart of the grant of planning permission. As such both the flood risk technicalities of the case and position, and the lawfulness of the position, have been tested and scrutinised in considerable detail. In our view the position cannot and should not be tested further, and that continued submissions by objectors are simply a continued attempt to delay and frustrate the development.

Moreover and importantly it is clear that the objectors' position is inconsistent and contradictory – as they have made considerable representations previously to challenge both the Council and Natural Resources Wales over the imposition of the condition in the first place. They have repeatedly questioned the need for removal of the footbridge. All parties, the objectors, the applicant, the Council, the Environment Agency, and all third parties maintain that there is no need to remove the bridge, and moreover want to see the footbridge retained – as it plays no part in the flood risk position and yet provides a means of access within the village. Approval of this application would achieve this aim.

I would therefore request that this submission is taken into account and considered to ensure that the application is presented to members of planning committee tomorrow. It is our view and opinion that the information provided should not delay the reporting of the application and that there is already substantial definitive evidence that can be presented to members of planning committee to ensure that a robust decision can be made.

I hope and trust that this information is of assistance.

Many thanks
Marcus

Marcus Blayney
Associate
Geraint John Planning Ltd

Mob : 07534623606
Tel : 02920 660244
Fax : 02920 660243
Email: marcus@gjplanning.co.uk
Ad : Sophia House, 28 Cathedral Road, Cardiff. CF11 9LJ



www.geraintjohnplanning.co.uk

 Before printing, think about the environment

From: Matthew Griffiths (CSP - Development Control) [<mailto:matthew.griffiths@powys.gov.uk>]
Sent: 17 December 2014 15:29
To: Marcus Blayney (marcus@gjplanning.co.uk)
Subject: FW: Llanigon
Importance: High

Marcus

Further correspondence attached, the latest email relates to a follow up email from the third party planning consultant which requested my views on "photograph 21" which shows flows overtopping the footbridge. I provided the attached opinion that it is the modelling that is important to show the impact of this on flooding.

Matthew Griffiths BSc (hons), MSc, MA, MRTPI
Uwch Swyddog Cynllunio / Senior Planning Officer
Cyngor Sir Powys / Powys County Council
T: 01874 612280 / F: 01874 612339

Neuadd Brycheiniog, Ffordd Cambrian, Aberhonddu, Powys LD3 7HR
Neuadd Brycheiniog, Cambrian Way, Brecon, Powys LD3 7HR

www.powys.gov.uk/planning

From: Andrew Bevan [<mailto:andrew@abplanning.co.uk>]
Sent: 17 December 2014 14:58
To: Matthew Griffiths (CSP - Development Control); Gwilym Davies (CSP - Development Control)
Cc: john.young@edenvaley.com; 'James Anderson'
Subject: Llanigon
Importance: High

Dear Matthew

Thank you for clarifying in your email earlier, including confirmation from NRW that there is now insufficient clarity in terms of flooding outcome to allow the application to be properly considered tomorrow.

It would clearly be irresponsible for any LPA to proceed to the approval of a planning application in such circumstances.

In terms of your request for clarification of the unanswered queries we have raised with you and the NRW via John Young, in relation to the hydrology information submitted in support of the application, please see John Young's clear and comprehensive email below, prepared in response to your request for clarification.

Given we find ourselves again where some members will feel it is unreasonable to delay the determination of this application, I believe that it is imperative that the content of this email and the fact the approval of this application will allow the construction of houses that even the applicant

accepts will flood, that the authorities solicitor and monitoring officer are required to have an input into the consideration of the application at committee tomorrow.

Please specifically draw this email to the attention of Ms. Sue Bolter.

Regards

Andrew

Andrew,

In relation to item a. below, I can confirm that:

- The Powys County Council Planning Portal does not include a formal Flood Consequence Assessment. Accordingly, it is assumed that an FCA has not been lodged with the Local Planning Authority as part of the discharge of Condition 13.
- We have only had the opportunity to review a Draft FCA prepared by Martin Wright Associates. As far as we are aware there is no final version of the FCA. Indeed James Davies of the NRW in his email to Matthew Griffiths on the 3 November 2014 (11:47am) stated that *"We have not reviewed any final FCA or modelling report since providing the consultants feedback on draft versions"*.
- Moreover, we have not received any response to my email of the 3 November 2014 which queries the status of the documents submitted to NRW (see attached email).
- The Committee Report makes no reference to a site specific FCA or gives any indication that one has been submitted to the LPA for the purposes of discharging condition 13.

I trust that this is of assistance but if you have any further questions please do not hesitate to contact me.

Kind regards

John

Mae'r e bost hwn ac unrhyw atodiad iddo yn gyfrinachol ac fe'i bwriedir ar gyfer y sawl a enwir arno yn unig. Gall gynnwys gwybodaeth freintiedig. Os yw wedi eich cyrraedd trwy gamgymeriad ni ellwch ei gopio, ei ddosbarthu na'i ddangos i unrhyw un arall a dylech gysylltu gyda Cyngor Sir Powys ar unwaith. Mae unrhyw gynnwys nad yw'n ymwneud gyda busnes swyddogol Cyngor Sir Powys yn bersonol i'r awdur ac nid yw'n awdurdodedig gan y Cyngor.

This e mail and any attachments are confidential and intended for the named recipient only. The content may contain privileged information. If it has reached you by mistake, you should not copy, distribute or show the content to anyone but should contact Powys County Council at once. Any content that is not pertinent to Powys County Council business is personal to the author, and is not necessarily the view of the Council.

This page is intentionally left blank

**Planning, Taxi Licensing and Rights of Way Committee Report
Original Committee report November 2014**

Application No:	P/2014/0910	Grid Ref:	321147.53 240185.76
Community Council:	Llanigon CC	Valid Date:	Officer: 05/09/2014 Matthew Griffiths
Applicant:	Mr John Price C/O Agent		
Location:	Land at Llanthomas Lane, Llanigon, Hay-on-Wye, Hereford, Powys HR3 5PU		
Proposal:	Removal of condition 13 of planning approval P/2008/1607 (in relation to removal of footbridge)		
Application Type:	Application for Removal or Variation of a Condition		

Reason for report to Committee

The application is reported to Committee as the application relates to a condition which was imposed by the planning Committee.

Site Location and Description

The site of development is an area of agricultural land in the settlement of Llanigon adjoining Llanthomas Lane. The development of the land for Erection of 4 dwellings and private access road was granted full planning permission on the 4 November 2014 under planning permission P/2008/1607.

The site is adjoining the Digeiddi Brook and at the date that planning permission was issued was partially within Zone C2 of the Development Advice Maps that support Technical Advice Note 15 – Development and Flood Risk (2005).

Condition 13 requires that before commencement of development “the footbridge across the Digeiddi Brook ... shall be removed to the written satisfaction of the Local Planning Authority”. The footbridge forms part of the public highway and is under the control of Powys County Council as highways authority. The condition has not been complied with and no agreement has been reached with Powys to remove the bridge. The full wording of condition 13 is given below and the reason for the condition on the decision notice is as follows: “To minimise flood risks in compliance with policy DC13 of the Powys Unitary Development Plan.”

Consultee Response

Llanigon CC

No comments to date.

Powys Highways

Do not wish to comment on this application

Powys Building Control

No response to date

Wales & West Utilities

No response to date

NRW

Thank you for referring the above planning consultation which we received on 8 September 2014.

The application submitted includes information to demonstrate what the impact of the footbridge is on the flooding regime in this area. Condition 13 of P/2008/1607 was included to minimise flood risk. This information, including the six modelling outputs prepared by Martin Wright Associates (MWA\CH101\GIS\66 – 71) has established what the predicted effects would be on the flooding regime if the footbridge is retained and if the footbridge is removed. Our advice to you, having considered all information in the application and our understanding of flood risk at this site, is that there are only small differences between each scenario assessed. By this we mean that the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere. In extreme flood scenarios (0.1% annual probability event) the retention of the footbridge would provide some betterment to existing properties at Ash Grove.

In summary, we have no objection to the proposed removal of condition 13 attached to this consent and subsequently the retention of the footbridge at Llanthomas Lane.

Cllr Geraint Hopkins

I have been contacted by several residents of Llanigon who live near the land given planning approval ref P/2008/1607, asking me to call in application P/2014/0910 for determination by the Planning Committee. The reasons given:-

- a) Significant issues relating to flooding
- b) The level of community interest and concern
- c) The fact that the Planning Committee made the original decision

I would be obliged if you could action this request and acknowledge that it will be so done.

Welsh Historic Gardens

No response to date

Representations

Representations were received from six third parties. A third party has also commissioned a planning consultant and hydrologist to comment on the application. These included the following comments:

- The land is agricultural land and is an unsightly condition, being surrounded by heras fencing and excavations on site.
- The landowner has degraded the local environment.
- Notes errors in the supporting statements including in relation to passing places and the safety of the public highway.
- The bridge is used only in high flow events at other times the lane can simply be used.
- Request to see detail of dialogue with NRW specifically which shows that the flooding and drainage problems have been satisfactorily resolved.
- The comments of NRW are noted and these state that the retention of the footbridge would offer betterment to the existing properties...”, clearly because it allows safe passage of

pedestrians up to a certain degree of culvert overflow. It does not however actually state that there is “betterment brought about in flood risk terms...” because the footbridge, it is now admitted, does not affect flooding / flood risk as such so it cannot therefore be “better” than it is now with no action taken: i.e. there is no improvement at all on the current situation by retaining the footbridge.

- Question the discharge and compliance with conditions imposed on condition 8.
- Challenge the question for the last FCA, so it is hard to accept any further comments without the input of our hydraulic expert. The proposed dwellings within phase 1 may remain “flood free during all flood events..” as claimed, but question the impact on other parties such as Ty Golchi and Water’s Edge.
- The importance of the ephemeral channel does indeed seem to be more than a potential flood risk and has been exacerbated by the applicant’s works on site.
- Express concerns regarding the conveying of water over the strip of land next to Ty Golchi and the discharge. Water discharging the other side of the culvert will raise the level of water, which in May 2012 flowed up into Glen-yr-Afon – opposite the rear of Ty Golchi and Llanthomas Lane. The ford is an “Irish Ford” and designed to overflow in high flow levels. Building in this location is inappropriate and risky.
- Any betterment at the site relates to the properties proposed and not to neighbours. The compliance with TAN15 is questioned.
- The applicants excavations of the ephemeral channel in 2001 caused backing up the channel.
- The May 2012 flood is not the worst flood that anyone can remember it is one of the worst floods.
- It would be proposed to set the access road level to the site one metre lower than the dwellings within the intention of forming a flood flow route. Where will this discharge, presumably onto the lane – which would be flooded and towards Ty Golchi where previous flood events have already reached the car park area.
- Even if the flood event in May 2012 were 1 in 10 years is it acceptable to wait and be flooded every 10 years. Climate change and its effects are unpredictable.
- It is considered very unfair and inappropriate in the face of all the long history of evidence provided over time by a number of witnesses concerning flooding, water run off, nuisance and safety, if the local planning authority allows this building to take place. We need much more detailed information for analysis and consideration by our hydraulic expert. Surely it is a matter of simple common sense to understand that it cannot be appropriate to build in an area which is, after all, effectively a flood plain which should be allowed to function as such.
- Representations have also raised concern over any loss of the footbridge and although expressed as objections indicate that they consider that the footbridge plays no part in flooding and provides a valuable link over the ford in times of flooding and should not be removed.

A representation was received from a hydrological consultant employed by a third party. This representation states the following:

Over the last few years Edenvale Young has represented Anne Connell relating to her opposition to the development of properties in Llanigon. Edenvale Young is a specialist flood risk consultant and at the time of the original representation we wrote several letters to the Local Planning Authority and the Environment Agency (now NRW). At the time we felt that the quality of the hydraulic modelling and the FCA in general was poor and that

there were a number of serious omissions and error in the development of the FCA. I would be happy to supply these documents if you do not have them to hand.

Andrew Bevan has now passed me a copy of a new FCA which includes the results of modelling associated with the footbridge. I have had a brief look at the information contained in the various documents which make up the FCA (Martin Wright Associates - MCW) but I can't pretend to have undertaken a detailed review. As you probably realise the reports are aimed at discharging a condition associated with the footbridge. However, when we last looked at this issue, I think that I am correct in saying that the Environment Agency had issued Anne with an apology stating that they had made errors in the assessment of the original FCA submitted by the developer and that the serious concerns raised by Edenvale Young into the FCA were valid. I am not entirely sure what the status of the planning application was following this admission bearing in mind that the EA changed their opinion at a very late stage in the process.

The MWA FCA submitted to the LPA recently compares the "existing" situation (i.e. with the footbridge and housing development) to the proposed situation (without the footbridge but with the housing development). It should be recognised that the former of these two scenarios is not the "existing" situation as the properties have not been built. The existing situation and hence the baseline for the FCA should be pre-development with the footbridge and this scenario should have been considered against the post development situation without the footbridge but with the housing.

1D-2D modelling of this nature was never presented during the original application. However, the modelling contained in the report appears to support the concerns we had at the time for a number of reasons. Firstly the outputs clearly show that the proposed plots 2 and 3 are inundated in the 1 in 100 year event and under these circumstances the flood risks to the properties would be deemed to be unacceptable in accordance with TAN 15. In addition, the two proposed plots adjacent to Llanthomas Lane are surrounded by flood water and access and egress to these properties during flooding must be compromised. These properties must be raised on platforms above the existing land to achieve this "dry" status.

More seriously the plots show flow contracting and accelerating between the above properties clearly changing the flow paths from the "existing" condition (no housing development but with the footbridge). In my opinion there is a very high probability that this contraction and acceleration of flows would have a detrimental impact downstream; notably on Ann's house. I am struggling to see how the development can proceed given this information even if there have been procedural errors in the past. It would be extremely unlikely that the properties would be insurable.

Again, I have not been able to review the information in detail and I think that given the sites history there should be a thorough review of the model. Accordingly we would ask for an extension in the time to evaluate the flood modelling. In particular we would like to have a copy of the model developed by MCW so that we can ensure that the model is robust and meets the high standards required for an FCA.

Planning History

Planning permission P/2008/1607 was granted subject to the following conditions:

1. The development to which this permission relates shall be begun no later than the expiration of five years from the date of this permission.
2. Prior to their first use full details or samples of materials to be used externally on walls and roofs of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority.
3. Areas of hard surfacing within the development hereby permitted shall be paved in materials of a type and colour to be agreed in writing by the Local Planning Authority prior to their first use.
4. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
5. Prior to the occupation of a dwellinghouse erected pursuant to this permission provision shall be made for off highway vehicular parking and turning to serve that dwelling in accordance with the details shown in the approved plans.
6. Prior to the commencement of building operations on the dwellinghouses hereby permitted the Class III road (C74) serving the site shall be widened and a footpath provided in compliance with the details shown in the approved plans.
7. The access road and pavioir margins serving the development hereby permitted shall be finally surfaced and kerbed in accordance with the details shown in the approved plans prior to the occupation of any dwellinghouse erected pursuant to this permission.
8. The development hereby permitted shall not be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be implemented prior to the construction of any impermeable surfaces draining to the system unless otherwise agreed in writing by the Local Planning Authority.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other structures shall be erected within the land to the north of the development site which adjoins the Dgeddi Brook (as shown hatched green on plan bearing the number P/2008/1607 (Plan 1) attached hereto). Nothing shall be stored in this area and ground levels within the area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
10. Before commencement of development a scheme of landscape maintenance in respect of the land referred to in 9 above shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation.
11. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other structures shall be erected or ground levels

altered on the land hatched in green as shown the plan bearing the number P2008/1607 (Plan 2) attached hereto (i.e. 5 metres of the top of the bank of the Dgeddi Brook and the 'ephemeral channel').

12. Before commencement of development a method statement including details of the arrangements for its implementation for cutting boundary hedges and mowing grassed areas within the maintenance strip referred to in condition 11 above - such as to keep the said hedges below 1.2 metres in height and the area free of trees and other substantial shrubs - shall be submitted to and approved in writing by the Local Planning Authority. Subsequent to commencement of development, the area shall thereafter be maintained in accordance with the approved method statement.

13. Prior to the commencement of development on the site the footbridge across the Dgeddi Brook (location shown by the abbreviation 'FB' on the plan bearing the number P2008 1607 (Plan 1) attached hereto) shall be removed to the written satisfaction of the Local Planning Authority.

Principal Planning Constraints

Flood Zone

Historic Landscapes Register - Outstanding

Principal Planning Policies

Planning Policy Wales (Edition 7, July 2014)

TAN 15 - Development and Flood Risk (2004)

UDP HP4 - Settlement Development Boundaries and Capacities

UDP HP5 – Residential Development

UDP DC13 - Surface Water Drainage

UDP DC14 – Flood Prevention Measures

UDP 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

Introduction

This is an application made under section 73 of the Town and Country Planning Act 1990. This is an application to continue with development without complying with conditions previously imposed, Welsh Government Circular 016/2014 describes the nature of such an application in paragraph 2.4, stating the following: "Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73. Section 73 will not apply if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun. Paragraph 5.21 details how section 73 can be used to renew planning permissions."

Determination of an application made under section 73 is limited to consideration of the merits of the conditions that the application seeks to remove or vary. This limits the consideration of this application to the merits of condition 13 only, this is an important consideration given the concerns and objections expressed by third parties which relate to a wider

The merits of the application – does condition 13 still serve a useful planning purpose?

Conditions should only be imposed where they comply with “The six tests” which are outlined in section 3.0 of WGC 016/2014. Conditions must meet the following requirements: necessary; relevant to planning; relevant to the development; enforceable; precise; and reasonable.

The condition appears to have been imposed as the bridge was seen as contributing to flooding in the locality and a condition to require its removal would improve the flood situation at the site and this is reflected in the reason given for the imposition of the condition.

The case put forward by the applicant is that the condition is not necessary and serves no useful planning purpose. They also consider it to be imprecise in its wording as it does not, in their view, prevent development commencing.

The case that the condition is not necessary forms the main justification for this application. The applicant argues through a supporting flood modelling exercise and flood consequences assessment that the removal of the bridge will have no effect on the flooding situation at the site and that the condition serves no useful planning purpose. It is noted that third parties, including a professional hydrological consultant, have questioned the validity of the assessment and the strength of the conclusions in relation to the bridge. While noting these concerns it is considered that the local planning authority should be guided in these matters by the specialist advice available from Natural Resources Wales (NRW); they have commented on the application and stated that they have no objections to the removal of the condition. They have reviewed the model and concluded that: “the modelling has demonstrated that the footbridge as a structure does not have any significant impact on flood risk to the consented site or elsewhere”.

In light of the NRW representation it is considered that no objection to the removal of the condition should be offered.

Lawful commencement of P/2008/1607

Any determination of this application at the 6 November 2014 Committee will follow the ending of the period of time available for the commencement of planning permission P/2008/1607. Section 73(4) states that:

“This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.”

Therefore while offering no objection to the removal of the condition, the position is that consent for this application would not be possible if planning permission P/2008/1607 has not been lawfully commenced.

This raises two questions:

- Were works undertaken at the site begun before the expiration of the planning permission?
- If so, are the works relied upon as constituting implementation lawful?

On the first point the applicant's agent has indicated that in his view development has in fact lawfully commenced at the site. There have been site clearance works undertaken with some excavations apparent on site. There has also been an indication from the agent that further works which unequivocally represent the beginning of development (e.g. material operations under section 55 of the Town and Country Planning Act 1990) will be undertaken prior to the lapsing of the planning permission on the 4 November and that these works will be documented. It has been requested that if this occurs the Authority is notified and the matter appropriately evidenced. It seems likely that works will be undertaken to implement planning permission prior to the expiration of the consent.

This leads onto the second point in relation to whether conditions would prevent a lawful commencement. There is no certificate of lawfulness, but it is considered that a judgement can be made on this in determining the application. A view needs to be taken on this by the local planning authority. A development may not be lawfully implemented where it breaches pre-commencement conditions, requiring actions prior to the commencement of development, Advice on this matter is given in WGC 016/2014, which states in paragraph 3.30:

"Where pre-commencement conditions have not been satisfied the implementation of planning permission may not be lawful. In order to make the development lawful, the conditions would have to be complied with or varied under section 73 of the 1990 Act. However, it has been held that this principle does not apply to all conditions but only those that go to the heart of the permission i.e. those that are fundamental to the development. Pre-commencement conditions should be carefully worded to be expressively prohibitive i.e. state that development must not commence until the condition has been complied with, since non-compliance with such conditions can mean the permission has not been lawfully implemented."

An email of the 15 July 2014 from the local planning authority discharged conditions 10 and 12 on the planning permission. This email acknowledged the submission of information for condition 8, but left some matters outstanding. This condition relates to the submission of a surface water regulation system at the site. The applicant's agent has been seeking to address this condition and has been liaising directly with Powys County Council land drainage authority at the time of writing the report agreement between the parties had not been reached and the condition was not fully discharged.

The wording of condition 13, the subject of this application, is noted in particular it does not contain an express prohibition on the commencement of development (as advised should be included in paragraph 3.30 of WGC 016/2014). Therefore non-compliance with this condition may represent a breach of condition, potentially rectified by the approval of this application. This is as opposed to a breach of a "condition precedent" affecting the lawfulness of the implementation of the planning permission.

Clearly the correct position on conditions 13 and potentially condition 8 if not discharged are a matter of vital importance to the decision to be made on this application, clarification of this

point has been requested from Powys County Council Legal Services and this will be verbally reported to the Committee or within an update.

Recommendation

At the time of writing the report it is considered that recommendation is Conditional Consent subject to all conditions imposed on planning permission P/2008/1607 as they subsist and continue to be capable of enforcement. Due to the potential for further conditions to be discharged prior to the meeting, it is likely that the wording of conditions will be reported to Members via an update.

It is the case that by the time that the matter is reported to Committee, the time limit condition imposed on P/2008/1607 will have passed on the 4 November 2014. If the conclusion is drawn that development is lawfully commenced, a matter which is uncertain then the recommendation will remain as above.

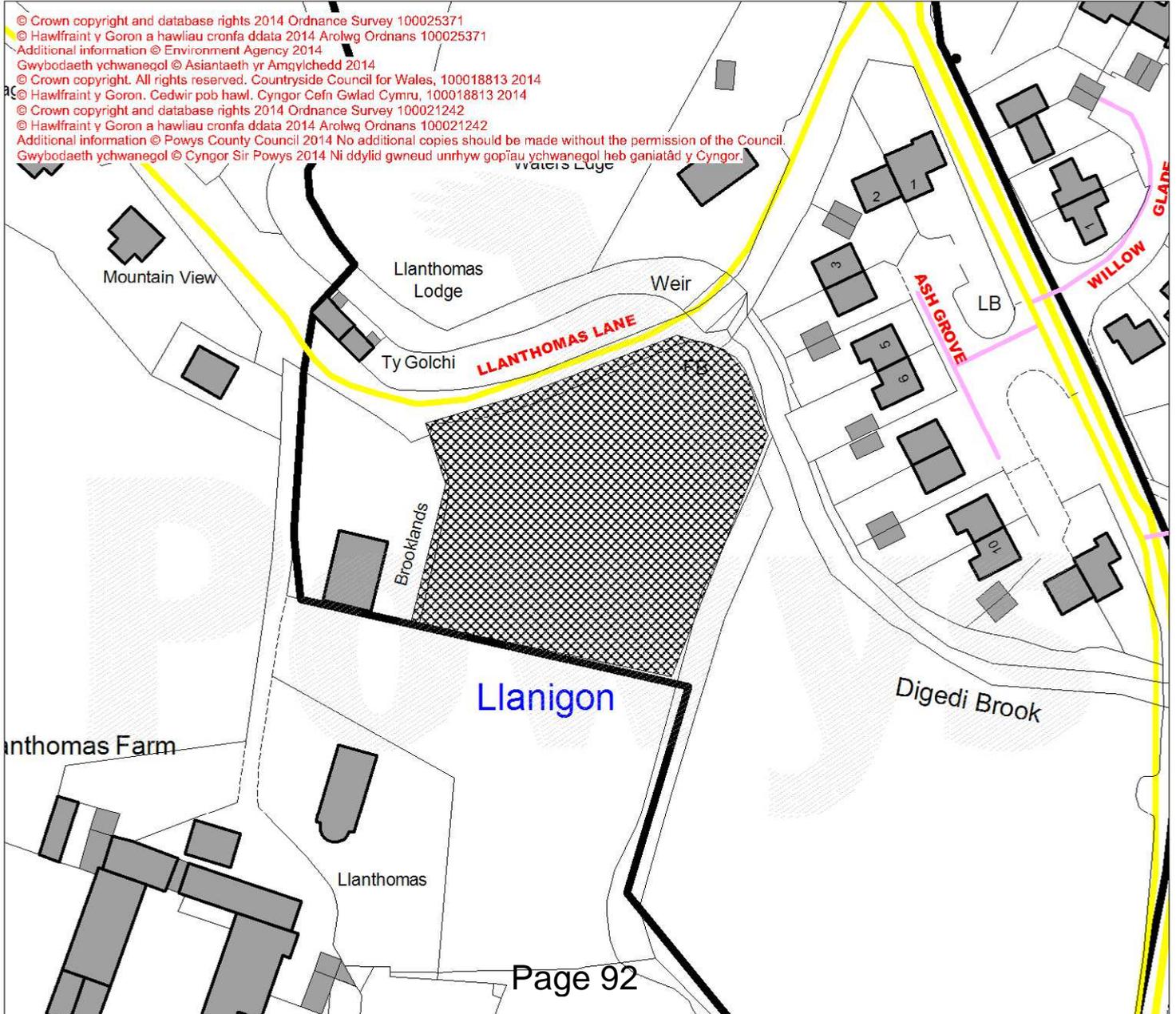
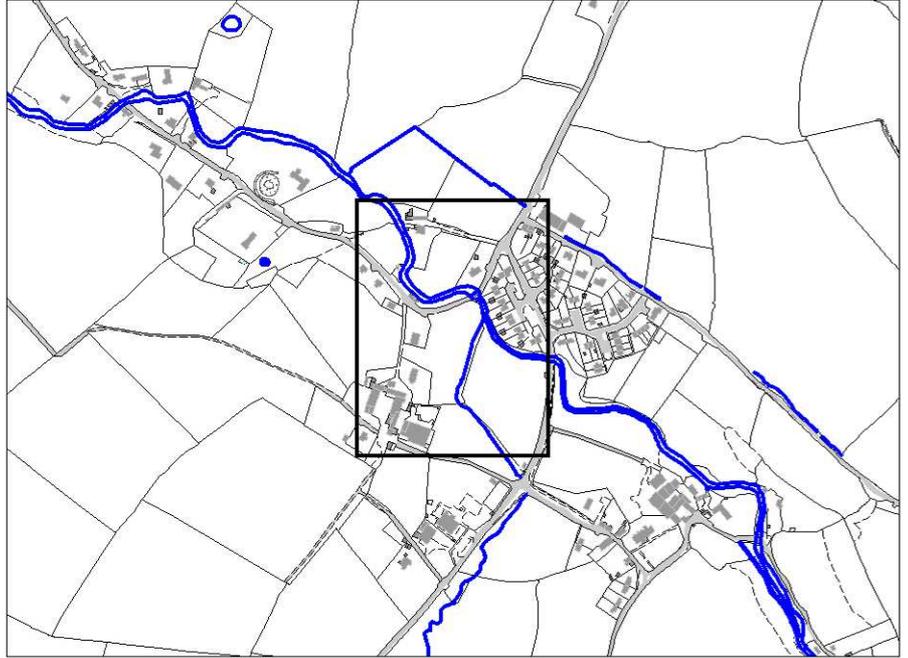
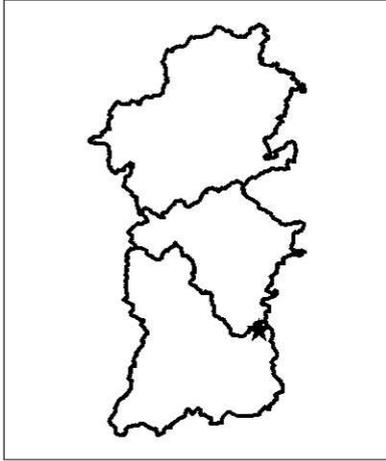
If the conclusion is drawn that development is not lawfully commenced, in all likelihood due to un-regularised breaches of conditions, then it is concluded that the application no longer forms a valid application and should be refused for the avoidance of doubt.

Case Officer: Matthew Griffiths- Senior Planning Officer
Tel: 01874 612280 E-mail:matthew.griffiths@powys.gov.uk

Sue Bolter
 Pennaeth Adfywio, Eiddo a Chomisiynu
 Head of Regeneration Property & Commissioning
 Polisi, Adfywio a'r Amgylchedd/
 Policy, Regeneration & Environment

Applicant: Mr John Price

Location: Land at Llanthomas Lane,
 Llanigon



4.3

Planning, Taxi Licensing and Rights of Way Committee Report

Application Number: 18/0553/FUL

Grid Ref: E: 294723
N: 247624

Community Council: Llangammarch

Valid Date: 23.08.2018

Applicant: Mr Pierre Misfud

Location: Lake Hotel, Llangammarch Wells, Powys, LD4 4BS

Proposal: Proposed managers dwelling for use in conjunction with the hotel (part retrospective).

Application Type: Full Application

The reason for Committee determination

The Local Member for Llanwrtyd Wells & District has requested that the application is determined by Members of the Planning, Taxi Licensing and Rights of Way Committee.

Consultee Responses

Consultee	Received
-----------	----------

<u>Community Council</u>	8th Oct 2018
--------------------------	--------------

This property has been built in an unapproved position and the layout plan has been changed. The banking and hedgerow have been removed without permission and has not been repaired and will take some to recover if at all.

There seems to have been little or no control from Planning, Building Control and Highways departments on this application.

I know Councillor Tim van Rees has asked for this planning proposal to go to full committee and I support this request.

There appears to have been little contact or correspondence with LCC or local residents on the concerns raised.

PCC-Building Control

No comments received at the time of writing this report.

Wales & West Utilities - Plant Protection
Team

18th Sep 2018

According to our mains records Wales & West Utilities has no apparatus in the area of your enquiry. However Gas pipes owned by other GT's and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.

Safe digging practices, in accordance with HS (G)47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus.

Please note that the plans are only valid for 28 days from the date of issue and updated plans must be requested before any work commences on site if this period has expired.

Any information you provide as part of this application process for our services will only be used in accordance with our privacy notice statement which can be found on our website www.wwutilities.co.uk. Alternatively a paper copy can be provided to you on your request by contacting our Data protection Officer at DataProtection@wwutilities.co.uk

Ward Councillor

25th Sep 2018

I wish to call in this application before the planning committee but I think sofar both the retrospective and new application are concerned I am credibly informed that the building which has now been largely erected is not only incorrectly built and is not in accordance with the original plans, it is now close to the road impinging on the position of already erected properties and a wholly unauthorised entrance has been created off the Llangammarch to Maesymy Road.

From a highway perspective, this application is effectively a variation of the previously consented scheme P/2014/0953. Accordingly, the Highway Authority does not raise any objection, but would seek assurances that access to the site is via the existing hotel entrance only, as stated within the application.

Welsh Water

19th Sep 2018

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

We can confirm we have no objections to the proposed development.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

If you have any queries please contact the undersigned on 0800 917 2652 or via email at developer.services@dwrwymru.com

Please quote our reference number in all communications and correspondence.

Representations

The application was advertised through the erection of a site notice, a total of 2 objections have been received in respect of the proposed development and are summarised below;

- Dwelling will become a dominant feature of the rural landscape.
- High roofline dominates the immediate landscape.
- Section of hedgerow removed creating a dangerous new access.

Planning History

P/2014/0953 Full: Erection of a manager's dwelling for use in connection with the hotel – Conditional Consent.

P/2010/0155 Full: Erection of an orangery – Conditional Consent.

B/0002/0092: Additional hotel accommodation and associated car parking for 20 cars – Approved.

B/0094/7079: Change of use of outbuildings into managers accommodation – Approved.

B/0093/6795: Replacement of existing outbuildings – Approved.

B/0090/5914: Single Storey Lodge – Approved.

Principal Planning Policies

Policy	Policy Description	Year	Local Plan
PPW	Planning Policy Wales (Edition 9, November 2016)		National Policy
TAN1	Joint Housing Land Availability Studies		National Policy
TAN2	Planning and Affordable Housing		National Policy
TAN4	Retail and Commercial Development		National Policy
TAN5	Nature Conservation and Planning		National Policy
TAN6	Planning for Sustainable Rural Community		National Policy
TAN12	Design		National Policy
TAN18	Transport		National Policy
TAN23	Economic Development		National Policy
SP1	Housing Growth		Local Development Plan 2011-2026
SP2	Employment Growth		Local Development Plan 2011-2026
SP3	Affordable Housing Target		Local Development Plan 2011-2026

SP4	Retail Growth	Local Development Plan 2011-2026
SP5	Settlement Hierarchy	Local Development Plan 2011-2026
SP6	Distribution of Growth across the Settlement Hierarchy	Local Development Plan 2011-2026
SP7	Safeguarding of Strategic Resources and Assets	Local Development Plan 2011-2026
DM2	The Natural Environment	Local Development Plan 2011-2026
DM4	Landscape	Local Development Plan 2011-2026
DM10	Contaminated and Unstable Land	Local Development Plan 2011-2026
DM13	Design and Resources	Local Development Plan 2011-2026
H1	Housing Development Proposals	Local Development Plan 2011-2026
E2	Employment Proposals on Non-Allocated Employment Sites	Local Development Plan 2011-2026

Other Legislative Considerations

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

Officer Appraisal

Site Location and Description

The proposed development is not located within a settlement development boundary and therefore for the purposes of this application is considered as development within the open countryside as defined by the Powys Local Development Plan (2018). To the north and east of the site lies the golf course in connection with the Lake Hotel, to the west lies the Lake Hotel and to the south lies the County Class III Highway (C0028).

This retrospective application seeks consent in full for the erection of a managers dwelling for use in conjunction with the hotel. The dwelling will measure approximately 16.8 metres in length by 11.3 metres in width, with a height to the eaves of approximately 2.8 metres and a height to the ridge of approximately 7.6 metres. The dwelling is to be finished using render walls under a slate roof, with timber uPVC windows / doors.

Principle of Development

Policy SP6 of the Powys Local Development Plan states that residential development proposals in the open countryside will only be acceptable where they comply with PPW and Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010). TAN 6 states that one of the few circumstances where residential development in the open countryside may be justified is when accommodation is required to enable rural enterprise workers to live at, or close to, their place of work. This includes tourism and leisure enterprises such as the Lake Hotel. The proposal must satisfy both a functional test, to prove that the enterprise requires a worker to be readily available at most times, and a financial test, to establish the enterprise is economically viable. The Council must also be satisfied that there is no other existing building suitable for conversion on the enterprise or a dwelling within the locality that could meet the identified functional need. It has been noted that the principle of development has previously been established for a managers dwelling under ref. P/2014/0953 with this retrospective applications seeking to amend the location of the dwelling.

The functional need for the additional managers dwelling is made within the application. The accommodation is required to ensure 24hr availability of a senior staff member in the event of an emergency within the existing hotel grounds. The running of a hotel at this scale and popularity would require more than one manager to be permanently resident on site. The financial test has previously been established under ref. P/2014/0953 and through supporting records within the current application. It is considered given the financial records of the business, and the expected growth of the enterprise over the next 5 years where the Lake Hotel is expected to employ a further 20-25 members of staff, the business could support the construction of a new managers dwelling and salary. With regard to the other dwelling test it is considered there are no existing buildings within the grounds of the Lake Hotel that could reasonably accommodate the proposed development.

In light of the above, it is considered that the principle of development for a managers dwelling at this location fundamentally complies with relevant planning policy.

Appearance, Layout and Style

The Powys Local Development Plan policy H3 and DM13, TAN 2 and Planning Policy Wales (PPW) all refer to good design and how development proposals should be of a good design and have consideration to its surroundings. PPW refers to good design as having a relationship between all elements of the natural and built environment. Policy H3 states that housing development proposals must be of an appropriate scale and shall provide a suitable mix of housing types to meet the range of identified local housing needs and is supported by Policy DM13 of the Powys Local development Plan which states that proposals must demonstrate a good quality design and shall have regard to the qualities and amenity of the surrounding area.

In this instance the proposed development seeks consent for a detached rural workers dwelling which will measure approximately 16.8 metres in length by 11.3 metres in width, with a height to the eaves of approximately 2.8 metres and a height to the ridge of approximately 7.6 metres. The proposal is of the same scale and height to the dwelling that was previously approved under application ref. P/2014/0953, therefore the only change has been in the location of the dwelling as oppose to any increase in scale. The dwelling is located approximately 6 metres from the (C0028) Highway and is 45 metres from the nearest neighbouring properties. Therefore in response to concerns raised regarding the impact of the dwelling on the landscape, it is not considered that the relocation of the dwelling has made the scale unacceptable and is considered to be suitable at this location, and will not cause a detrimental impact upon the character or appearance of the surrounding area. The dwelling uses a design and materials that are in keeping with the rural nature of the area and it is considered that the dwelling has been sensitively designed to complement the character of the surrounding area.

A visual and sensory evaluation of the site using LANDMAP classifies the area of the application site as being of moderate value. LANDMAP describes the area as being gentle undulating pastoral landscape cut through by the Rivers of Irfon with areas of wetland and woodland being prominent. Given that the classification of the land is given as moderate and the application site is located within the grounds of an existing tourism asset it is not considered the proposed development will cause an unacceptable detrimental impact upon the character and appearance of the Powys landscape.

In light of the above it is therefore considered that the proposed development fundamentally complies with policy DM13 of the Powys Local Development Plan (2018).

Highways

LDP Policy DM13 part 10 states that development proposals should meet all highway access requirements (for transport users) and parking standards.

Powys County Council's Highway Authority has been consulted on the proposed development. They have stated that, from a highway perspective, given the application is effectively a variation of the previously consented scheme P/2014/0953 they do not raise any objection to the application, provided that access to the site is via the existing hotel entrance only.

It is noted that a new access has been created to the south of the application site on to the County Class III Highway (C0028) without consent. Following discussion with the Highway department it has been requested that the hedge and bank be reinstated to match the adjacent profiles, therefore a condition will be attached to the granting of consent requesting that the hedge and bank be reinstated.

In light of the above and subject to the attachment of an appropriately worded condition it is considered that the proposed development would not have a detrimental impact upon highway safety. The proposed development therefore complies with policy DM13 of the Powys LDP.

Amenities enjoyed by occupiers of neighbouring properties

In considering the amenities enjoyed by the occupiers of neighbouring properties consideration has been given to the Powys Residential Design Guide (October 2004) & LDP: DM13 (Part 11).

The nearest neighbouring residential property to the proposed development is approximately 45 metres to the south east, with intervening trees, hedgerow and highway. Given the fact there are no neighbouring properties present within the surrounding area of the site it is not considered that the erection of a dwelling at this location will cause any unacceptable impact on the amenities of any neighbouring properties in terms of loss of daylight and loss of privacy.

In light of the above, it is considered that the proposed development fundamentally complies with relevant planning policy.

RECOMMENDATION – CONDITIONAL CONSENT

Having carefully considered the proposed development, officers consider that the proposal fundamentally complies with relevant planning policy. The recommendation is therefore conditional approval subject to the conditions below. However given that the dwelling has been relocated to an extent where the previous consent ref. (P/2014/0953) could be implemented, a Section 106 legal agreement will be attached to any consent granted ensuring that only the development proposed under this application (18/0553/FUL) can be implemented.

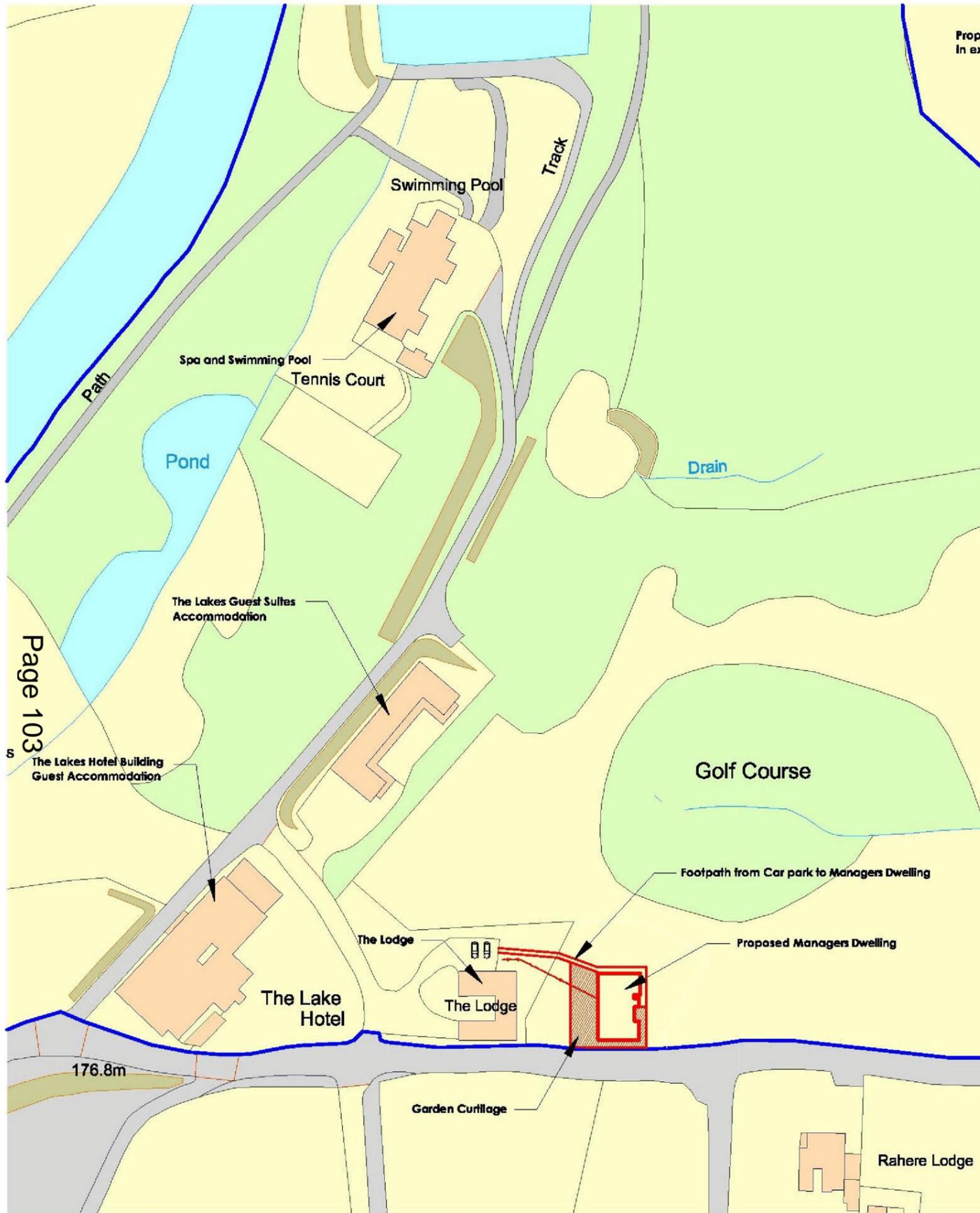
Conditions

1. This permission being retrospective as prescribed by Section 73(a) of the Town and Country Planning Act 1990 (as amended) shall be deemed to take effect from XXX.
2. The development shall be carried out strictly in accordance with the amended plan stamped as received on 01/10/2018 (drawing no: 1: 2464/A) and amended plan stamped as received on 11/10/2018 (drawing no: 0: 2464/A).
3. The occupancy of the dwelling shall be restricted to:
 - a) a person solely or mainly working, or last working on a rural enterprise in the locality, or a widow, widower or surviving civil partner of such a person, and to any resident dependants; or if it can be demonstrated that there are no such eligible occupiers,
 - b) a person or persons who would be eligible for consideration for affordable housing under the local authority's housing policies, or a widow, widower or surviving civil partner of such a person, and to any resident dependants.
4. Within 28 days of the date of this permission the new access which has been created on to the County Class III Highway (C0028) shall be stopped up and shall no longer be used for vehicular movements.
5. Within 28 days of the date of this permission a scheme for the permanent stopping up of the access as referred to in Condition 4 above shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall also include an implementation scheme and shall thereafter remain as approved in perpetuity.
6. Within 28 days of the date of this permission a detailed landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The submitted landscaping scheme shall include a scaled drawing and a written specification clearly describing the species, sizes, densities and planting numbers proposed as well as aftercare measures. Drawings must include accurate details of any existing trees and hedgerows to be retained with their location, species, size and condition.
7. The landscaping scheme as approved in Condition 6 shall be carried out in accordance with the approved details during the first planting season immediately following completion / occupation of the dwelling (whichever is the sooner). The completed scheme shall thereafter be managed and maintained in accordance with the approved scheme and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

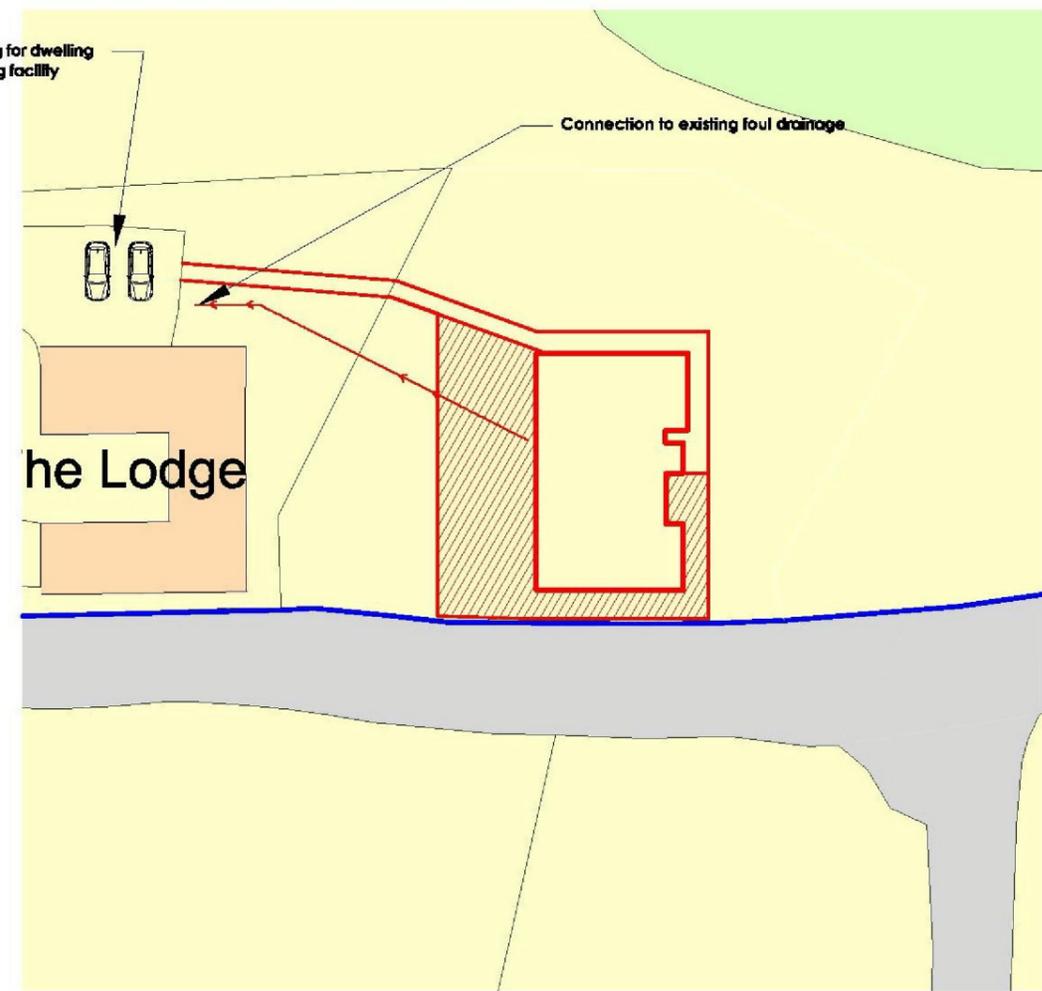
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013, (or any Order revoking and re-enacting that Order) no development under Schedule 2, Part 1, Classes A to E other than that hereby permitted shall be carried out without the written permission of the Local Planning Authority.

Reasons

1. Required to be imposed by section 91 of the Town and Country Planning Act 1990.
2. To ensure adherence to the plans approved by the Local Planning Authority in the interests of clarity and a satisfactory development.
3. The dwelling is proposed for a site which would not normally be permitted other than for the running of the defined rural enterprise in accordance with the requirements of Technical Advice Note (TAN) 6 and Planning Policy Wales (Edition 9, November 2016).
4. In the interests of highway safety and in accordance with the provisions of Powys LDP Policy DM13 (Part 10).
5. In the interests of highway safety and in accordance with the provisions of Powys LDP Policy DM13 (Part 10).
6. To comply with Powys County Council's LDP Policy DM4 in relation to ecological qualities of the landscape and meet the requirements of Planning Policy Wales (Edition 9, November 2016), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
7. To comply with Powys County Council's LDP Policy DM4 in relation to ecological qualities of the landscape and meet the requirements of Planning Policy Wales (Edition 9, November 2016), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
8. In order to control further development this has the potential to have adverse effects on privacy and/or amenity in contradiction to policy DM13 of the Powys Local Development Plan and Technical Advice Note 6.



Location Plan
scale 1:1250



Block Plan
scale 1:500

CLIENT
Misfud Mr P Mrs J
ADDRESS
Llangammarch Wells Powys LD4 4BS

DRAWING
Location and Block Plan

DATE August 2014 SCALE 1:500/1250
DRAWING # 0 JOB # 2464

THIS LINE PRINTED ON A3 PAPER
REPRESENTS 1000mm AT:
1:1250 1:100
1:200 1:50

NOTES



ARCHITECTURAL
SERVICES

RICHARD ARCHER Est 1987



EXTENSIONS CONVERSIONS NEW BUILDS
PLANNING & BUILDING REGULATION APPLICATIONS

SIMON ARCHER
7 Fernworthy Park, Coppelstone
Creddon EX17 5LX

M 07966 347 957
E simon@architectural-services.org

All dimensions and angles where stated are approximate.

This drawing is subject to copyright & must not be copied or reproduced without permission from Architectural Services (known herein as A.S.)
These drawings have been prepared for planning or building regulation purposes only. These are not working drawings. A.S. assumes the client has already made full searches to the ground under the building plot plus a further 4 metres around the plot, and that the plot is free from all utility company gas, sewerage, drains, pipes, electrical power cables, potable water etc, unless emailed in writing to A.S. prior to the drawings having been commenced. Anything below ground is not the responsibility of A.S. This drawing does not include for such costs & items as: Structural Engineers calculations, electrical, heating or plumbing installations, Tiling, Decorations etc. All dimensions must be checked by the contractor before commencement of construction. No responsibility or liability for non-compliance or lack of information will be accepted by A.S. or for changes made by the client or contractor either prior to or during construction.

This page is intentionally left blank

You must not build over any of our plant or enclose our apparatus.

PCC-(M) Highways

21st Sep 2018

For the previous application P2018/0154, on the adjoining site, there was a commitment to introduce no parking restrictions along Station Road to prevent indiscriminate on-highway parking. Unfortunately, to date, the Traffic Regulation Order has yet to be advertised so a suitably worded condition should be attached to any decision notice that may be issued.

1. Within one month from the date of the decision notice a scheme for the prohibition of parking along Station Road shall be submitted and approved in writing by the local planning authority and shall thereafter be implemented in accordance with the approved drawings.
2. The proposed development shall be constructed in complete accordance with the details on drawing numbers PH2 PL02 Rev. A and PH2 PL04 Rev. A.
3. Prior to the first beneficial use of the development all on site infrastructure shall be fully completed to the written satisfaction of the local planning authority.

Welsh Water

4th Oct 2018

Dwr Cymru has no objection to the proposed development on the basis that surface water is discharged to a private water system,

PCC-Environmental Health

1st Oct 2018

Environmental Protection would seek to have the following included should permission be granted.

1. Demolition or construction works shall not take place outside the hours of 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays and at no time on Sundays or Public Holidays.

Reason:

To protect the local amenity from the effects of noise.

2. No development shall commence, including any works of demolition, until a Demolition Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the demolition period. The statement shall provide for:

A) measures to control the emission of dust and dirt during demolition and construction;

and

B) a scheme for recycling/disposing of waste resulting from demolition and construction works. No burning of waste to be undertaken on site.

Reason:

To protection the local amenity from the effects dust/dirt and smoke

PCC-Contaminated Land Officer

3rd Oct 2018

The following report has been submitted in support of planning application 18/0577/FUL:

Arcadis 'Previous Market Site, Llandrindod Wells: Phase 1 Geo-Environmental Desk Study' (ref: 0001-10010344-32-SER-R-01) March 2018.

Based on the information submitted in the above referenced report, the following advice is provided for the consideration of Development Control.

Advice

1. The appendices, listed on the contents page of the report (ref: 0001-10010344-32-SER-R-01), are missing from the submitted document. The missing information should be submitted.
2. Under section 6 'Preliminary Conceptual Site Model', of the report (ref: 0001-10010344-32-SER-R-01), controlled waters have been identified as potential receptors of the identified contaminant sources. Therefore, it is recommended that the above referenced report (ref: 0001-10010344-32-SER-R-01) is submitted to Natural Resources Wales for advice in respect of the investigation and assessment of the land contamination risks to controlled waters.
3. Under section 8.2 'Recommendations', of the report (ref: 0001-10010344-32-SER-R-01), it is stated: "The risk levels assessed in this report are heavily dependent of the actual presence (or absence) and nature of contaminants in the soil and groundwater beneath the site. No chemical information on soil or groundwater quality currently exists, but potential sources of contamination have been identified on site and in the immediate vicinity. It is, therefore, recommended that an intrusive investigation of the site is carried out to better characterise the potential risk levels and establish a land quality baseline for the site which can be used in the planning application process."

Prior to undertaking the proposed intrusive investigation, a detailed scope of works, which has been prepared by an experienced and qualified environmental consultant, should be submitted for review and approval.

Furthermore, intrusive site investigations should be designed, justified and completed in accordance with current guidance and best practice such as BS10175:2011 'Investigations of Potentially Contaminated Sites - Code of Practice'.

Summary

Based on the available information, it is recommended that the following conditions and note, to the applicant, are attached to any permission granted for planning application 18/0577/FUL:

Condition 1. Site Characterisation

No development shall take place until a site investigation of the nature and extent of contamination has been carried out, by a suitably qualified competent person, in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. A written report of the findings of the site investigation shall be made available to the local planning authority before any development begins.

The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of the local planning authority.

Condition 2. Submission of Remediation Scheme

No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 and The Contaminated Land (Wales) Regulations 2006, as amended by The Contaminated Land (Wales) (Amendment) Regulations 2012, in relation to the intended use of the land after remediation. The detailed remediation scheme should not be submitted until written approval for Condition 1 has been received from the local planning authority.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

Condition 3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority. The verification report contents must be agreed with the local planning authority before commencement of the remediation scheme.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

Condition 4. Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of duration to be agreed in writing with the local planning authority and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority.

Within six months following the completion of the measures identified in that scheme and the achievement of the remediation objectives, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason (common to all): To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors [in

accordance with policy ____ of the adopted Local Plan (date)].

Note to Applicant

Potential Contamination

The Council's guidance leaflet on the development of sites with potential land contamination is attached. Further advice on compliance with this condition may be obtained by contacting the Environmental Health Service on 0870 1923757.

PCC-Ecologist

21st Sep 2018

I have reviewed the proposed plans submitted with the application as well as local records of protected and priority species and designated sites within 500m of the proposed development.

The data search identified 466 records of protected and priority species within 500m of the proposed development, no records were identified for the site itself. Species recorded within 500m of the proposed development include hare, otter, badger, bat species - Daubenton's, whiskered, myotis spp., noctule, pipistrelle spp. and brown long-eared bat, reptiles - slow worm and common lizard, common frog, bluebell, protected and priority moth and butterfly species and a number of W&CA Schedule 1 and Environment (Wales) Act 2016 Section 7 bird species.

No Statutory or non-statutory designated sites are present within 500m of the proposed development.

The proposed development concerns an area of hardstanding part of which was used as the former car sales garage forecourt and the remainder is currently used as a private car park - this habitat is considered to be of negligible value to biodiversity and a former car sales building which is proposed to be demolished. Given the proposed development concerns the demolition of a building consideration has been given to the potential for the building to support roosting bats and the proposed development to result in negative impacts to biodiversity.

In order to inform the application an Ecology Survey Report produced by Just Mammals Consultancy LLP dated August 2018 has been submitted. I have reviewed the submitted report and consider that the survey effort employed to assess the impact of the proposed demolition and associated development to biodiversity has been undertaken in accordance with current survey guidelines.

A daytime inspection of the interior and exterior of the building and 3 activity surveys (two dusk emergence and one dawn re-entry surveys) were undertaken between June and August 2018. No evidence was found for the presence of bats and no bats were observed

emerging from or re-entering the building during the surveys. The report notes that the location was extremely quiet with almost no bat foraging and commuting activity noted around the site. No active signs of breeding birds were found during the survey but historic evidence of bird nesting was identified with two old nests being found on the north side of the building.

Recommendations with regards to demolition of the building have been made within section 9 of the report, it has been identified that due to historic evidence of nesting birds being identified within the building and given the protection afforded to nesting birds demolition of the building should be timed to avoid the breeding bird season.

Having reviewed the nature of the proposed development, the existing habitats present and affected by the proposed development and the results and recommendations of the ecology survey it is considered that the proposed development would not result in the loss of or negative impacts to biodiversity. Therefore should you be minded to approve the application I recommend inclusion of the following condition:

The development shall be carried out strictly in accordance with the recommendations identified in Section 9 of the Ecology Survey Report produced by Just Mammals Consultancy LLP dated August 2018. The identified measures shall be adhered to and implemented in full and maintained thereafter.

Reason: To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 9, November 2016), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.

In addition I recommend inclusion of the following informatives:

Birds - 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.

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 or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.

Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017

It is an offence for any person to:

- Intentionally kill, injure or take any bats.
- Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.

Under the Habitats Regulations it is an offence to:

- Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017 that works to trees or structures where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0845 1300 228 or email enquiries@bats.org.uk

WG - Highways Directorate

26th Sep 2018

I refer to your consultation of 19 September 2018 regarding the above planning application and advise that the Welsh Government as highway authority for the A483 trunk road does not issue a direction in respect of this application.

Representations

The application was advertised through the erection of a site notice. No representations or objections have been received.

Planning History

App Ref	Description	Decision	Date
P/2018/0154	Construction of new car park access to include installation of automated barrier system	Approve	11/06/2018

Principal Planning Constraints

None as per GIS

Principal Planning Policies

Policy	Policy Description	Year	Local Plan
PPW	Planning Policy Wales (Edition 9, November 2016)		National Policy
TAN5	Nature Conservation and	Planning	National Policy
TAN12	Design		National Policy
TAN18	Transport		National Policy
SP7	Safeguarding of Strategic Resources and Assets		Local Development Plan 2011-2026
T1	Travel, Traffic and Transport Infrastructure		Local Development Plan 2011-2026
DM2	The Natural Environment		Local Development Plan 2011-2026
DM13	Design and Resources		Local Development Plan 2011-2026
C1	Community Facilities and		Local Development

Other Legislative Considerations

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

Officer Appraisal

Site Location and Description

The application site is located within the settlement of Llandrindod Wells as defined by the Powys Local Development Plan (2018). The application site comprises a car park and car sales business (now closed) and associated structure. The site is bound by the adjoining highway (Station Crescent) to the west, the train station and associated infrastructure to the south, the railway line to the west and commercial buildings to the north.

The application seeks full planning permission for the demolition of the existing car sales building and the construction of a bus interchange with shelters and cycle rack and the change of use of the northern section of the site to private car parking. The proposed development would provide four off street bus stops with three bus shelters and a cycle shelter for 20 bicycles. The private parking would provide 69 parking spaces and utilise an existing access.

The southern section of the site is currently being used as a private car park with the northern section of the site a now vacant car sales business.

Principle of Development

Policy T1 - Travel, Traffic and Transport Infrastructure requires that transport infrastructure and development proposals should incorporate the following principal requirements;

1. Safe and efficient flow of traffic for all transport users, including more vulnerable users, and especially those making 'Active Travel' journeys by walking or cycling;
2. Manage any impacts to the network and the local environment to acceptable levels and mitigate any adverse impacts; and

Minimise demand for travel by private transport and encourage, promote and improve sustainable form of travel including Active Travel opportunities in all areas.

The policy will also support transport infrastructure improvements where they promote sustainable growth, maximise the efficiency and safety of the transport systems, improve public and private transport integration and encourage passenger and freight rail operations.

It is considered that the moving of the private car park to the north of the site and the creation of a transport interchange is in accordance with Policy T1 as it promotes the use of public transport providing an improved rail and bus connection and provides secure storage for bicycles therefore promoting the use of the public transport network.

Highway Safety

Policies T1 and DM13 require that a safe access including parking and visibility is required as part of development proposals.

The applications seeks planning permission for the development of a bus interchange and associated bus shelters and cycle racks and the change of use of the northern sections of the site to private parking.

The southern section of the site benefits from planning permission granted in June 2018 for the change of use to a private car park. It is proposed to move this car parking area to the north of the site and provide a transport interchange at the southern end of the site.

Following consultation with both Powys Highways and Welsh Government Transport no objection has been received to the proposed development. Powys Highways have requested a number of conditions requiring development to be complete in accordance with the approved drawing and also a scheme for the prohibition of parking along the highway.

In light of the above, and the improved transport facility provided as part of the proposal, it is considered that the proposed development fundamentally complies with policies T1 and DM13 of the Powys Local Development Plan, Technical Advice Note 18 and Planning Policy Wales.

The Natural Environment

Policy DM2 of the Local Development Plan require development proposals to demonstrate how they protect, positively manage and enhance biodiversity and Geodiversity. The policy states that development proposals that would unacceptably adversely affect a natural environment asset will not be permitted.

The application was accompanied by an Ecology Survey Report produced by Just Mammals Consultancy LLP and is dated August 2018.

As the application proposed the demolition of a building both Powys Ecology and Natural Resources Wales were consulted on the application with regards the potential impact on any protected species. To date no response has been received from NRW however Powys Ecology have responded.

In their response, Ecology state that, having reviewed the information and the proposed development, it is considered that the proposed development would not result in the loss of or negative impacts to biodiversity. Ecology have requested that a condition requiring development to be undertaken in line with the recommendation of the submitted ecology report to be attached to any grant of consent.

As such, in light of the above it is considered that the application fundamentally complies with policies SP7 and DM2 of the Powys Local Development Plan, Technical Advice Note 5 and Planning Policy Wales.

RECOMMENDATION

In light of the above it is considered that the proposed development fundamentally complies with the relevant policies and is recommended for approval subject to the condition outline below.

Conditions

1. The development shall begin not later than five years from the date of this decision.
2. The development shall be carried out in accordance with the following approved plans and documents (Location Plan, PH2_PL_01, PH2_PL_02 Revision A, PH2_PL_02.1 Revision A, PH2_PL_03 Revision A, PH2_PL_04 Revision A, Ecological Survey Report (Just Mammals Consultancy LLP dated August 2018), Phase 1 Geo-Environmental Desk Study)
3. Prior to the commencement of development a scheme for the prohibition of parking along Station Road shall be submitted and approved in writing by the local planning authority. The development thereafter be implemented in full accordance with the approved scheme.
4. The proposed development shall be constructed in complete accordance with the details on drawing numbers PH2 PL02 Rev. A and PH2 PL04 Rev. A.
5. Prior to the first beneficial use of the development all on site infrastructure shall be fully completed to the written satisfaction of the local planning authority.

6. Demolition or construction works shall not take place outside the hours of 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays and at no time on Sundays or Public Holidays.

7. No development shall commence, including any works of demolition, until a Demolition Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the demolition period. The statement shall provide for:

A) measures to control the emission of dust and dirt during demolition and construction; and

B) a scheme for recycling/disposing of waste resulting from demolition and construction works. No burning of waste to be undertaken on site.

8. No development shall take place until a site investigation of the nature and extent of contamination has been carried out, by a suitably qualified competent person, in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. A written report of the findings of the site investigation shall be made available to the local planning authority before any development begins.

The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of the local planning authority.

9. No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 and The Contaminated Land (Wales) Regulations 2006, as amended by The Contaminated Land (Wales) (Amendment) Regulations 2012, in relation to the intended use of the land after remediation. The detailed remediation scheme should not be submitted until written approval for Condition 1 has been received from the local planning authority.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WLGA

document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

10. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority. The verification report contents must be agreed with the local planning authority before commencement of the remediation scheme.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

11. A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of duration to be agreed in writing with the local planning authority and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority.

Within six months following the completion of the measures identified in that scheme and the achievement of the remediation objectives, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

12. The development shall be carried out strictly in accordance with the recommendations identified in Section 9 of the Ecology Survey Report produced by Just

Mammals Consultancy LLP dated August 2018. The identified measures shall be adhered to and implemented in full and maintained thereafter.

Reasons

1. Required to be imposed by Section 91 of the Town and Country Planning Act 1990.
2. To ensure adherence to the plans stamped as approved in the interests of clarity and a satisfactory development.
3. In the interest of highway safety and free flow of traffic in accordance with policy T1 and DM13 of the Powys Local Development Plan and TAN18 and Planning Policy Wales.
4. In the interest of highway safety and free flow of traffic in accordance with policy T1 and DM13 of the Powys Local Development Plan and TAN18 and Planning Policy Wales.
5. In the interest of highway safety and free flow of traffic in accordance with policy T1 and DM13 of the Powys Local Development Plan and TAN18 and Planning Policy Wales.
6. To ensure that the amenities of local residents are safeguarded in accordance with policy DM13 of the Powys Local Development Plan 2018.
7. To ensure that the amenities of local residents are safeguarded in accordance with policy DM13 of the Powys Local Development Plan 2018.
8. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Powys County Council Local Development Plan 2018.
9. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Powys County Council Local Development Plan 2018.
10. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely

without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Powys County Council Local Development Plan 2018.

11. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Powys County Council Local Development Plan 2018.

12. To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 9, November 2016), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.

Informative

Birds - 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.

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 or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.

Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017

It is an offence for any person to:

- Intentionally kill, injure or take any bats.

- Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.

Under the Habitats Regulations it is an offence to:

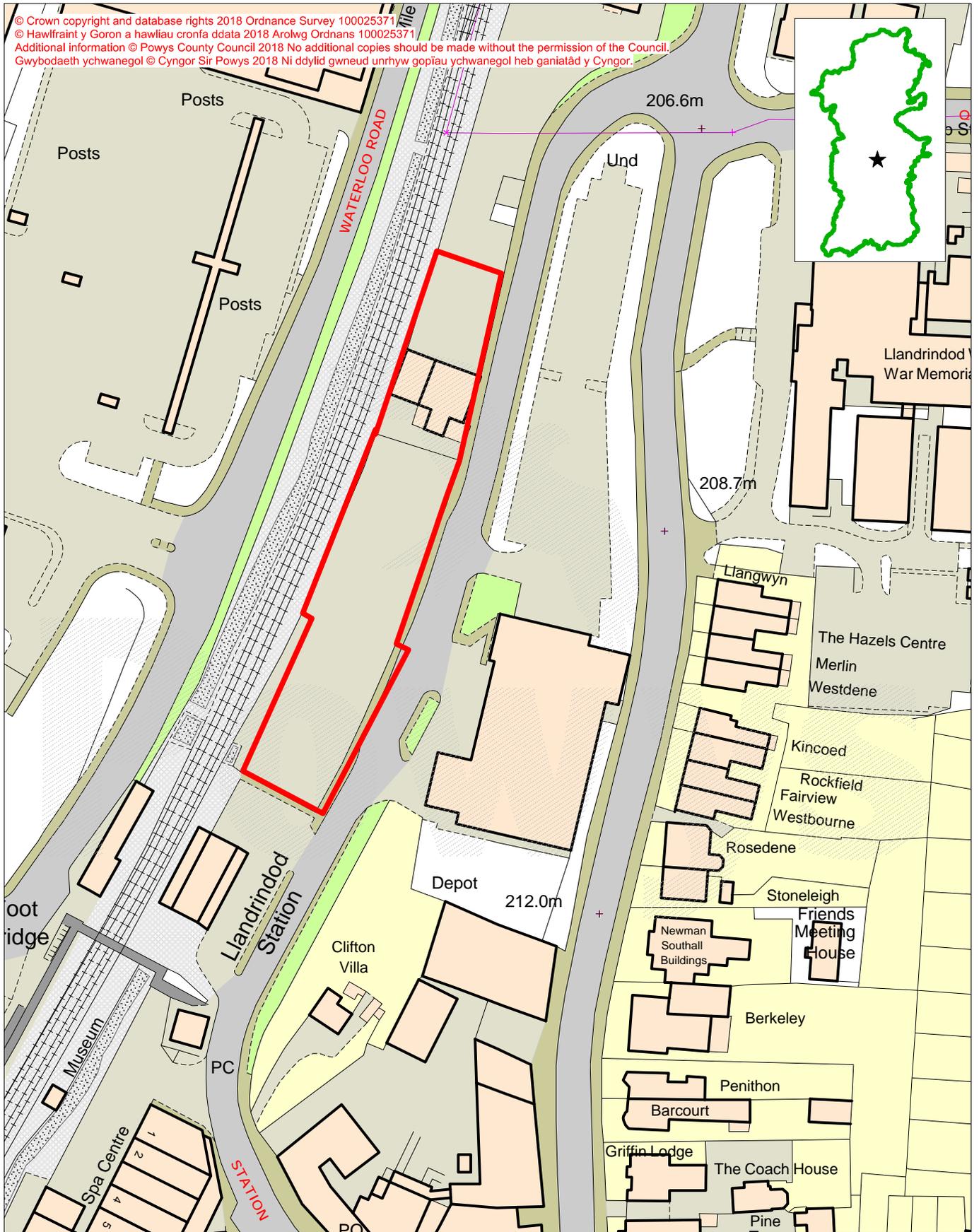
- Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017 that works to trees or structures where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0845 1300 228 or email enquiries@bats.org.uk

Case Officer: Tamsin Law, Principal Planning Officer
Tel: 01597 827230 E-mail: tamsin.law@powys.gov.uk

This page is intentionally left blank

© Crown copyright and database rights 2018 Ordnance Survey 100025371
© Hawlfraint y Goron a hawliau cronfa ddata 2018 Arolwg Ordnans 100025371
Additional information © Powys County Council 2018 No additional copies should be made without the permission of the Council.
Gwybodaeth ychwanegol © Cyngor Sir Powys 2018 Ni ddylid gwneud unrhyw gopïau ychwanegol heb ganiatâd y Cyngor.



This page is intentionally left blank

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 06/09/18

gan Janine Townsley LLB (Hons)
Cyfreithiwr (Nad yw'n ymarfer)

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04.10.2018

Appeal Decision

Site visit made on 06/09/18

by Janine Townsley LLB (Hons) Solicitor
(Non-practising)

an Inspector appointed by the Welsh Ministers

Date: 04.10.2018

Appeal Ref: APP/T6850/A/18/3203461

Site address: Land between Afon Carno and A470

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Amber Davidson against the decision of Powys County Council.
- The application Ref P/2017/0044, dated 27 February 2017, was refused by notice dated 6 December 2017.
- The development proposed is change of use from agricultural land to site for one glamping pod and associated structures, to include improvements to vehicular access.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The development to which the appeal relates is a change of use of the land from agricultural land to use for the siting of a mobile holiday unit. I observed that the change of use has already occurred and I note from the evidence that the holiday unit has already been let to a number of guests. As such, the appeal before me seeks retrospective consent and I have considered the appeal under section 73A of the Town and Country Planning Act 1990 as amended.
3. Subsequent to the Council's determination of the application, a new development plan for the area has been adopted. The decision notice refers to policy SP14 of the Unitary Development Plan which has since expired. The Council has confirmed that the appropriate development plan policy against which this development should be assessed is policy DM5 of the Powys Local Development Plan (2018) (LDP). I am satisfied that the parties have had sight of this policy and I have determined the appeal accordingly.
4. I have used the Council's description of development as taken from the decision notice as it more accurately describes the development that has been carried out albeit I have not included reference to the retrospective nature of the development. Neither party has been prejudiced by my use of the Council's description of development.

Main Issue

5. This is whether appeal site can offer safe conditions for the occupiers of the holiday accommodation due to the risk of flooding.

Reasons

6. The appeal site comprises a parcel of land which was formerly in agricultural use. The site is occupied by a timber constructed unit of holiday accommodation which is on wheels. There are secondary structures on site which appear to provide storage/sitting out areas which were considered by the Council in their determination of the application. Accordingly these structures have also been considered as part of my determination of the appeal.
7. Planning Policy Wales, Edition 9 (PPW), Chapter 13 aims to minimise and manage environmental risks and pollution and contains relevant policies on flood risk. Paragraph 13.2.3 expresses the basic principle of the policy which is that "the Welsh Government's objectives for sustainable development requires actions through the planning system to move away from flood defence and the mitigation of the consequences of new development in areas of flood hazard towards a more positive avoidance of development in areas defined as being of flood hazard."
8. The site falls within Zone C2 as defined on the Development Advice Maps that accompany the Welsh Government's Technical Advice Note 15 "Development and Flood Risk" (TAN 15). Flood Zone C2 is defined as areas of the floodplain without significant flood defence infrastructure and Paragraph 6.2 of TAN 15 identifies that new development should be directed away from Zone C and that highly vulnerable development (which includes all residential premises) and Emergency Services in Zone C2 should not be permitted. As such, the development is contrary to the principles of this national policy.
9. Natural Resources Wales (NRW) has confirmed that flood map information confirms the site to be within 1% (1 in 100 year) and the 0.1% annual probability fluvial flood outlines of the River Carno and its tributary. NRW have stated that they do not object to the proposal, however, this is based upon a subjective view of the flood statement submitted by the appellant and a site visit.
10. The appellant contends that only one unit is proposed, but this would be a valuable source of income which generates additional income for local shops and the pub. A statement has been produced detailing the arrangements for any occupants of the cabin in the event of a flood. The appellant states that NRW has no information of flooding at this location. It is also suggested that part of the site lies outside the flood zone, there is no historic record of flooding to the site and the unit is on a bank at a higher level than the opposite field which "bears the brunt" of any flooding.
11. The appellant has produced a flood statement which states that the floor level of the accommodation is 450mm above ground level and the ground level is 3 metres above the watercourse. It is asserted that the land opposite will disperse any flood water. In the event of a flood warning being issued for Afon Carno, the site owners will travel to the site and move the unit to higher ground. Any guests will be transported to the site owner's home. The evacuation route is not detailed.
12. At my site visit I observed that the holiday accommodation is skirted on two sides by the watercourse at a distance of approximately 5 metres, this degree of proximity has not been addressed in any of the evidence and I cannot be certain how quickly the site and evacuation route would be affected during a flood event.

13. I am not satisfied that the considerations expressed by the appellant or the lack of any objection from NRW are sufficient to outweigh the fundamental objection to the principle of siting highly vulnerable development in the C2 flood zone.
14. Overall, therefore, I am not persuaded that the proposal fully addresses the flood risk implications of the development which is contrary to national policy and guidance as set out in PPW and TAN 15. The proposal is also contrary to Policy DM5 of the LDP which states that development proposals must be located away from tidal or fluvial flood plains unless it can be demonstrated that the site is justified in line with national guidance and an appropriate detailed technical assessment has been undertaken to ensure that the development is designed to reduce /avoid the threat and alleviate the consequences of flooding over its lifetime.
15. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

Conclusion

16. For the aforementioned reason, and taking into account all matters raised, I conclude the appeal should be dismissed.

Janine Townsley

Inspector

This page is intentionally left blank



Delegated List

[← Go Back](#)**90 Applications**

Decision	Decision Description	Date Application Valid	Application No	Application Type	Date Decision Issued	Proposal	Location
APP	Approve	02/03/2017	P/2017/0218	Removal or Variation of Condition	12/10/2018	Section 73 application to vary condition 2 attached to planning permission P/2015/1083 to allow change in size of poultry unit	Ystym Colwyn Meifod Powys SY22 6XT
APP	Approve	08/06/2017	P/2017/0643	Householder	18/10/2018	Householder: Erection of an extension to existing dwelling.	Hendom Llowes Hereford Powys HR3 5JX
APP	Approve	13/06/2017	DIS/2017/0123	Discharge of condition	02/10/2018	Discharge of conditions no. 3 & 12 of P/2016/1190	Slip Inn Castle Hill Lane Burgedin Guilsfield Powys SY22 6QP
APP	Approve	30/11/2017	P/2017/1365	Full application	04/10/2018	CoU: Retrospective planning application for the conversion of an existing building to form a 1 bed self contained unit	Upper Mun Lyn Forden Welshpool Powys SY21 8NN
APP	Approve	07/12/2017	P/2017/1332	Full application	09/10/2018	Full: Retrospective application for part built machinery shed	Upper Trederwen Lane Trederwen Lane Arddleen Llanymynech Powys SY22 6RZ
APP	Approve	12/12/2017	P/2017/1449	Full application	17/10/2018	Full: Demolition of chimneys and re-slating	2 High Street Knighton Powys LD7 1AT
APP	Approve	12/01/2018	P/2018/0019	Full application	01/10/2018	Full: Change of use of building to dwelling (C3) and all associated works	Old School Hall Meifod Powys SY22 6BY
APP	Approve	12/01/2018	P/2018/0020	Listed Building Consent	01/10/2018	LBC: Internal alterations to include the installation of a staircase and first floor; changes to windows, and all associated works	Old School Hall Meifod Powys SY22 6BY
APP	Approve	15/01/2018	P/2018/0067	Full application	09/10/2018	FULL: Demolition of existing building/unit and construction of household waste recycling centre and associated infrastructure	Dyffryn Industrial Estate Pool Road Newtown Powys SY16 3AJ
APP	Approve	18/01/2018	P/2018/0092	Full application	03/10/2018	Full: Demolition of existing farmhouse and erection of replacement dwelling including alterations to access drive and services	Coed Trefe Tregynon Newtown Powys SY16 3PE
APP	Approve	23/01/2018	P/2018/0107	Full application	11/10/2018	Full: Proposed extension of a commercial building and materials operations involving construction of a concrete base and siting of kiln and relocation of office building	Land Adj To Old Coal Yard Llanrhaeadr Ym Mochnant Oswestry SY10 0AG
APP	Approve	05/02/2018	P/2018/0170	Reserved Matters	10/10/2018	Reserved matters application for access, appearance, landscaping, layout & scale in connection with proposed dwellinghouse	Land At Rock House Llanllwchaearn Newtown Powys SY16 3BH

Page 129

9



Delegated List

[← Go Back](#)

90 Applications

APP	Approve	21/02/2018	P/2018/0235	Householder	03/10/2018	Householder: Demolition of utility and erection of an extension	7 Glan Yr Afon Berriew Welshpool Powys SY21 8PN
APP	Approve	22/02/2018	P/2018/0244	Full application	03/10/2018	Full: Demolition of existing dwelling and construction of two detached dwellings and all associated works	Orchard End Norton Presteigne LD8 2EH
APP	Approve	28/02/2018	DIS/2018/0037	Discharge of condition	11/10/2018	Discharge of conditions 5, 6, 7, 8, 9 and 10 of planning permission P/2014/0646	The Old Sawmills Off Chapel Street Llanidloes Powys SY18 6AD
APP	Approve	07/03/2018	P/2018/0206	Full application	01/10/2018	Full: Change of use of shop to form part of the residential dwelling	Gwalia House High Street Llanfyllin Powys SY22 5BX
APP	Approve	08/03/2018	P/2018/0262	Full application	04/10/2018	Full: Change of use of agricultural land to domestic curtilage, erection of an extension, alterations to fenestrations, ground works and all associated works	Whitehall Farm Llandyssil Montgomery Powys SY15 6LU
APP	Approve	08/03/2018	P/2018/0263	Listed Building Consent	04/10/2018	LBC: Erection of an extension, internal alterations, alterations to fenestrations and all associated works	Whitehall Farm Llandyssil Montgomery Powys SY15 6LU
APP	Approve	16/03/2018	P/2018/0207	Listed Building Consent	01/10/2018	LBC: Internal renovation works to include re-wiring, installation of bathroom, partial demolition of outbuilding, removal of stud walls and installation of velux rooflights	Gwalia House High Street Llanfyllin Powys SY22 5BX
APP	Approve	20/03/2018	P/2018/0252	Full application	11/10/2018	Full: Renovation of abandoned dwelling in include the installation of velux rooflights and associated works	The Mill Rhosgoch Builth Wells Powys LD2 3JY
APP	Approve	21/03/2018	P/2018/0254	Listed Building Consent	11/10/2018	LBC: Renovation of abandoned dwelling, to include the demolition of an extension, installation of velus windows and internal changes to layout	The Mill Rhosgoch Builth Wells Powys LD2 3JY
APP	Approve	21/03/2018	P/2018/0322	Full application	12/10/2018	FULL: Erection of an extension to existing intensive poultry unit and all associated works	Ystym Colwyn Meifod Powys SY22 6XT
APP	Approve	11/04/2018	VAR/2018/0020	Discharge/Modification of S106	04/10/2018	Application to remove clause 1 and 2a of the Section 106 legal agreement attached to M/2005/0758	Waen Meadows Llansantffraid-Ym-Mechain Powys SY22 6SX
APP	Approve	19/04/2018	P/2018/0412	Householder	03/10/2018	Householder: Erection of lean to extension & formation of dormers	Wisteria Cottage, Plas Cefn Heldre Lane Buttington Welshpool Powys SY21 8SX

Page 130



Delegated List

[← Go Back](#)

90 Applications

APP	Approve	27/04/2018	P/2018/0242	Full application	16/10/2018	Full: Creation of a second floor, and two storey side extension	Parc Glyncwnwal Glyncynwal Road Upper CWMTWRCH Swansea SA9 2XQ
APP	Approve	27/04/2018	P/2018/0448	Full application	10/10/2018	Full: Erection of a storage building	Pantderw Llandinam Powys SY17 5BQ
APP	Approve	02/05/2018	P/2018/0466	Full application	18/10/2018	Full: Erection of an egg laying unit, creation of vehicular access and all associated works	Tyn Yr Wtra Llanwyddelan Newtown Powys SY16 3BT
APP	Approve	10/05/2018	P/2018/0515	Full application	11/10/2018	Full - Erection of a replacement dwelling, detached garage and associated works	Wern Meifod Powys SY22 6XZ
APP	Approve	24/05/2018	P/2018/0569	Full application	15/10/2018	Full: Reinstatement of an abandoned dwelling to include repairs, alterations and extensions, creation of new access, demolition of adjoining shed and all associated works	Cross Ways Mutton Dingle New Radnor Presteigne Powys LD8 2TL
APP	Approve	24/05/2018	P/2018/0570	Listed Building Consent	01/10/2018	LBC: Reinstatement of an abandoned dwelling to include repairs, alterations and extensions, demolition of adjoining shed and all associated works	Cross Ways Mutton Dingle New Radnor Presteigne Powys LD8 2TL
APP	Approve	04/06/2018	P/2018/0559	Removal or Variation of Condition	10/10/2018	Section 73 application to remove conditions 19, 20 and 21 of planning permission 2013/0791 relating to BREEAM requirements	Hope Church Dolfor Road Newtown Powys SY16 1JD
APP	Approve	06/06/2018	18/0079/FUL	Full Application	01/10/2018	Demolition of existing dwelling and erection of new dwelling	Sunny View Clyro Hereford Powys HR3 5JU
APP	Approve	11/06/2018	P/2018/0579	Removal or Variation of Condition	15/10/2018	Section 73 application to vary condition 2 of planning consent P/2016/1130 in relation to raising the roof height, addition of windows and external alterations	Waen Llyfnant Newtown Powys SY16 4JY
APP	Approve	12/06/2018	P/2018/0522	Full application	11/10/2018	Full: Change of use of farm buildings to a wedding venue (D1/D2). Construction of extension to buildings, storage shed, bat building, outdoor ceremony shelter, toilet block, car park & hardstanding, improvements to vehicular access and all associated works	Barns Known As Pen Y Bryn Llangedwyn Powys SY10 9LB
APP	Approve	18/06/2018	18/0075/FUL	Full Application	01/10/2018	Full: Siting of a shepherds hut	Land North East Of Llandeilo Graban Llandeilo Graban Builth Wells Powys LD2 3YX
APP	Approve	18/06/2018	18/0076/FUL	Full Application	04/10/2018	Full: Erection of an annex	Elancot Howey Llandrindod Wells Powys LD1 5PP

Page 131



Delegated List

[← Go Back](#)

90 Applications

APP	Approve	02/07/2018	18/0104/FUL	Full Application	16/10/2018	Full: Demolition of existing building and construction of a rural enterprise dwelling	Riverbend Caravan Park Llangadfan Welshpool Powys SY21 0PP
APP	Approve	10/07/2018	18/0256/HH	Householder	08/10/2018	Erection of an extension to the front of the existing dwelling to provide garage space	Riverside Old Mill Llansantffraid-ym-mechain Powys SY22 6SU
APP	Approve	11/07/2018	18/0043/FUL	Full Application	04/10/2018	Full: Change of use of agricultural land to residential curtilage, demolition of out buildings and erection of an extension to the dwelling	Rock House Trelystan Leighton SY21 8HZ
APP	Approve	11/07/2018	18/0062/HH	Householder	15/10/2018	Demolition of the existing side porch / utility room, construction of a new conservatory to the west elevation, a single storey extension to the north & a new porch to the south (Revised scheme to P/2017/1204)	Llwynbongam C1339 From Junction With U1501 East Of Bailey Einon To Junction With Cefnlllys Lane By Lletyheulog Cefnlllys Llandrindod Wells LD1 5PD
APP	Approve	17/07/2018	18/0243/FUL	Full Application	16/10/2018	Proposed internal alterations and part conversion of a commercial premise into four flats and internal redesign of existing shop unit.	3 Broad Street Knighton LD7 1BL
APP	Approve	17/07/2018	18/0336/DECC	DECC overhead line	09/10/2018	Application under Section 37 of the Electricity Act 1989 to install a 11kV overhead line (retrospective)	Pen Bryn Welshpool Powys SY21 0HU
APP	Approve	19/07/2018	18/0314/DIS	Discharge of Condition	04/10/2018	Application to discharge condition no's 3 & 4 attached to planning permission P/2015/0200 (materials)	Plot Adjoining Kingston House Clifton Street Welshpool Powys SY21 7LX
APP	Approve	24/07/2018	18/0287/REM	Removal or Variation of Condition	05/10/2018	Removal of conditions 9, 10 & 11 of permission P/2012/0794 relating to the code for sustainable homes and variation of condition 2 to amend the approved plans	Plot East Of Brookside Beguildy Knighton LD7 1YF
APP	Approve	24/07/2018	18/0379/HH	Householder	02/10/2018	Erection of a two storey side extension and a single storey rear extension to the existing dwelling	23 Orchard Croft Llandrinio Llanymynech Powys SY22 6US
APP	Approve	25/07/2018	18/0385/DIS	Discharge of Condition	02/10/2018	Discharge of conditions 19 & 25 of planning permission P/2018/0337	Land At Salop Road Welshpool Powys SY21 7EP
APP	Approve	30/07/2018	18/0323/FUL	Full Application	04/10/2018	Full: Installation of a cycle / footpath, extension to car park and alterations of to access	Access Road & Car Park Between Knighton Football Ground & Cricket Club Knighton Powys LD7 1HP

Page 132



Delegated List

[← Go Back](#)

90 Applications

APP	Approve	30/07/2018	18/0398/VAR	Discharge/Modification of S106	02/10/2018	Application to discharge planning obligation attached to planning permission M2006/0521	Land At Grandstand Trefeglwys Caersws Powys SY17 5PU
APP	Approve	30/07/2018	18/0432/VAR	Discharge/Modification of S106	02/10/2018	Application to discharge planning obligation attached to planning permission M/2007/0995	Grandstand Trefeglwys Caersws Powys SY17 5PU
APP	Approve	31/07/2018	18/0311/FUL	Full Application	05/10/2018	Proposed agricultural building and creation of new access	Lleast Llanddewi Llandrindod Wells Powys LD1 6SD
APP	Approve	31/07/2018	18/0318/FUL	Full Application	03/10/2018	The proposed installation of a 25m telecommunications mast accommodating three no. antennas, two no. microwaves dishes, pole mounted satellite dish, ancillary equipment cabinets, generator and cabling, within a fenced compound at land at Farm, Upper Chapel, Brecon LD3 9RG NGR: 300824 239071.	Pontmaendu Farm Upper Chapel Brecon Powys LD3 9RG
APP	Approve	02/08/2018	18/0338/DIS	Discharge of Condition	15/10/2018	Discharge of condition 17 of planning consent P/2017/0863	Tyncelyn Oakley Park Llanidloes Powys SY18 6LP
APP	Approve	02/08/2018	18/0341/DIS	Discharge of Condition	18/10/2018	Discharge of conditions 5, 7, 17, 18, 19, 21 & 22 of planning permission P/2017/1348	Welshpool Social Club Bronybuckley Welshpool SY21 7NJ
APP	Approve	02/08/2018	18/0344/FUL	Full Application	01/10/2018	Full: Erection of an agricultural building	Walton Farm Walton Presteigne Powys LD8 2PH
APP	Approve	02/08/2018	18/0346/NMA	Non-Material Amendment	16/10/2018	Application for non-material amendment to planning permission P/2017/1348 in respect of alterations to the approved plans	Welshpool Social Club Bronybuckley Welshpool SY21 7NJ
APP	Approve	02/08/2018	18/0415/DECC	DECC overhead line	08/10/2018	DECC application made under Section 37 of the Electricity Act 1989 to install an underground supply which will be taken from an existing overhead service line therefore supplying more than one property	Castellmoch Fach Pedair-ffordd Oswestry Powys SY10 0AJ
APP	Approve	03/08/2018	18/0427/HH	Householder	02/10/2018	Demolition of the existing conservatory and erection of a two storey extension and associated works	Church House Newbridge-on-ye Llandrindod Wells Powys LD1 6HT

Page 133



Delegated List

[← Go Back](#)**90 Applications**

APP	Approve	07/08/2018	18/0421/DECC	DECC overhead line	08/10/2018	DECC application made under Section 37 of the Electricity Act 1989 to install an underground supply taken from an existing overhead service line therefor supplying more than one property	Land At Gors Cottage Moelfre Oswestry Powys SY10 7QS
APP	Approve	08/08/2018	18/0363/DIS	Discharge of Condition	02/10/2018	Discharge of condition 12 of planning approval P/2017/1348 in relation to drainage	Welshpool Social Club Bronybuckley Welshpool SY21 7NJ
APP	Approve	09/08/2018	18/0140/FUL	Full Application	08/10/2018	Full: Change of use of ground floor from A1 shop to A2 offices	18 Berriew Street Welshpool SY21 7SQ
APP	Approve	10/08/2018	18/0440/DIS	Discharge of Condition	15/10/2018	Discharge of conditions 8, 9 and 22 of planning permission P/2017/0723 in relation to lighting, landscaping and passing bays	Cefn Hir Mochdre Newtown Powys SY16 4JZ
APP	Approve	13/08/2018	18/0441/HH	Householder	04/10/2018	Hous: Erection of an extension	Camlad View Old Churchstoke Montgomery Powys SY15 6DH
APP	Approve	13/08/2018	18/0482/RES	Reserved Matters	10/10/2018	Application for approval of reserved matters following outline approval P/2016/1174 for erection of dwelling, creation of new access and installation of a package treatment plant	Plot Adjacent To East Of Penycoedcae Sarnau Brecon Powys LD3 9PR
APP	Approve	13/08/2018	18/0484/HH	Householder	11/10/2018	Demolition of the existing porch and storage room and erection of a single storey extension	Waen Llwydion Llandinam Powys SY17 5AH
APP	Approve	14/08/2018	18/0478/FUL	Full Application	08/10/2018	Erection of garages and stores	Cambrian Yard Rhayader Powys LD6 5AB
APP	Approve	14/08/2018	18/0485/CAC	Conservation Area Consent	08/10/2018	Demolition of outbuildings	Cambrian Yard Rhayader Powys LD6 5AB
APP	Approve	17/08/2018	18/0178/FUL	Full Application	09/10/2018	Full: Change of use of part of the building from A3 to a dwelling (retrospective)	Manchester House Broad Street Llanfair Caereinion Welshpool Powys SY21 0RJ
APP	Approve	17/08/2018	18/0503/DIS	Discharge of Condition	09/10/2018	Discharge of conditions 5 and 6 from planning permission P/2017/0699	Plasnewydd Carno Caersws Powys SY17 5JR

Page 134



Delegated List

[← Go Back](#)**90 Applications**

APP	Approve	21/08/2018	18/0531/DECC	DECC overhead line	09/10/2018	Application under Section 37 of the Electricity Act 1989 to install a 11kv overhead line (retrospective)	Pykins Carno Caersws Powys SY17 5JU
APP	Approve	21/08/2018	18/0542/HH	Householder	11/10/2018	Proposed single storey extensions to the side and rear	Cysgod-y-coed Llanwrin Machynlleth Powys SY20 8QH
APP	Approve	24/08/2018	18/0406/FUL	Full Application	17/10/2018	Erection of an agricultural building	Cwm Cignant Bettws Cedewain Newtown SY16 3LH
APP	Approve	28/08/2018	18/0431/FUL	Full Application	11/10/2018	Change of use of land and creation of a manege	Llys Y Coed Laundry Lane Moelygarth Y Trallwng Powys SY21 9DA
APP	Approve	28/08/2018	18/0436/REM	Removal or Variation of Condition	17/10/2018	Section 73 application for variation of condition 2 of planning permission P/2017/1379 relating to changes to approved plans	Plot West South West Of Roundabout Buttington Cross Enterprise Park Buttington Welshpool Powys SY21 8SL
APP	Approve	29/08/2018	18/0453/NMA	Non-Material Amendment	01/10/2018	Application for a non-material amendment to planning permission P/2017/1342 in respects of changing the house design and removal of the garage to plot 4	Land Between 14 And 15 Ffordd Mynydd Griffith Machynlleth SY20 8DD
APP	Approve	04/09/2018	18/0597/NMA	Non-Material Amendment	10/10/2018	Application for a Non-Material Amendment to planning permission P/2017/0520 in relation to the approved plans	Castle Bank Caersws Powys SY17 5NR
APP	Approve	11/09/2018	18/0620/NMA	Non-Material Amendment	01/10/2018	Application for a Non-Material Amendment to planning permission P/2018/0335 in respects of altering the approved plans	Wilbury Cottage Stanner Kington Powys HR5 3NP
APP	Approve	11/09/2018	18/0622/TRE	Works to trees in Conservation Area	17/10/2018	Application for works to two silver birch trees within a conservation area	Tirionfa Llanfechain Powys SY22 6UJ
APP	Approve	18/09/2018	18/0569/NMA	Non-Material Amendment	08/10/2018	Application for a Non Material Amendment to planning permission P/2017/1111 in respect of Variation of Condition 2 (Approved Plans) to allow the replacement and addition of plans	Land North Of Cwm Gwilym Farm Talachddu Brecon Powys LD3 9TH
APP	Approve	18/09/2018	18/0692/CLE	Certificate of Lawfulness - Existing	16/10/2018	Section 191 application for a lawful development certificate for an existing use relating to the siting of a mobile home	The Old Stores At Rock House Discoed Presteigne Powys LD8 2NP



Delegated List

[← Go Back](#)**90 Applications**

APP	Approve	19/09/2018	18/0700/TRE	Works to trees in Conservation Area	16/10/2018	Application for works to trees within a conservation area	Larkey Cottage 13 The Cwm Knighton Powys LD7 1HF
APP	Approve	20/09/2018	18/0701/NMA	Non-Material Amendment	09/10/2018	Application for a Non-Material Amendment to planning permission P/2016/1204 in relation to reducing the red line site area	New Dwelling On Land At Parc Derwen Fawr Gorn Road Llanidloes Powys SY18 6DQ
APP	Approve	21/09/2018	18/0706/NMA	Non-Material Amendment	15/10/2018	Application for a Non-Material Amendment to planning permission P/2014/1102 - APP/T68650/A/15/3133966 in relation to re-wording of condition 8	Blaen Y Glyn Llangurig Llanidloes Powys SY18 6SL
CON106	Consent Section 106	03/07/2018	18/0137/FUL	Full Application	15/10/2018	Full: Erection of 2 dwellings, installation of a package treatment plant, construction of 2 accesses and all associated works	Land Adjacent To The Old Rectory Newchurch Powys HR5 3QF
AA	Prior Approval Approved	17/08/2018	18/0469/DEM	Demolition Notification	04/10/2018	Application for prior notification of proposed demolition	Youth Centre Plantation Lane Newtown Powys SY16 1LQ
REF	Refused	26/08/2016	DIS/2016/0151	Discharge of condition	04/10/2018	Discharge of conditions 9 & 21 of planning approval P/2016/0193	Caecappin Tregynon Newtown Powys SY16 3PB
REF	Refused	29/01/2018	P/2018/0127	Full application	01/10/2018	Full: Erection of a rural enterprise dwelling and associated works (part retrospective)	Plot West Of Maes Wen Llanymynech Powys SY22 6PA
REF	Refused	24/05/2018	P/2018/0573	Certificate of Lawfulness - Proposed	10/10/2018	Section 192 application for a lawful development certificate for a proposed use relating to extension of season by two months at an existing caravan park	Riverside Caravan Park Llangammarch Wells Powys LD4 4EP
REF	Refused	31/05/2018	P/2018/0567	Outline planning	03/10/2018	Outline - Proposed erection of 1 rural enterprise dwelling, installation of septic tank and all associated (some matters reserved)	Land Adj To Llawnt Uchaf New Mills Newtown Powys SY16 3NW
REF	Refused	03/08/2018	18/0350/HH	Householder	15/10/2018	Install replacement bay windows to front of the property	1- Ferncliffe Temple Drive Llandrindod Wells LD1 5LU
REF	Refused	11/09/2018	18/0522/NMA	Non-Material Amendment	16/10/2018	Application for a Non-Material Amendment to planning permission PR128420 in respect of removing condition 6	The Coach House Norton Manor Park Norton Presteigne LD8 2EG
Application Total		90					

Page 136

**MINUTES OF A MEETING OF THE TAXI LICENSING SUB-COMMITTEE HELD AT
COUNCIL CHAMBER - COUNTY HALL, LLANDRINDOD WELLS, POWYS ON
MONDAY, 13 AUGUST 2018**

PRESENT

County Councillor H Lewis (Chair)

County Councillors K Lewis

1.	RESOLUTION TO EXCLUDE THE PUBLIC AND THE PRESS
-----------	---

RESOLVED that in accordance with Section 100(a)(4) of the Local Government Act 1972 the public and press were excluded from the meeting on the grounds that there would be disclosure to them of exempt information under Paragraphs 12 and 18 of Schedule 12a Part 7 of the above Act in respect of the following item[s].

2.	APPLICATION FOR A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE
-----------	---

2.1. Sub-Committee procedures

The Chair introduced the Sub-Committee and its Clerk.

The Clerk to the Sub-Committee on behalf of the Solicitor to the Council explained the procedures to be followed by the Sub-Committee.

2.2. Application for a licence

Applicant – S.O.

The Licensing Officer presented the licensing authority's position as outlined in the report [copy filed with the signed minutes].

All parties confirmed that they had been able to make their representations.

The Sub-Committee withdrew to consider, in private, the application and the evidence they had heard, with the support of the Clerk.

On their return the Chair announced their decision. In reaching the decision members took into account the relevant written and verbal representations.

RESOLVED	Reason for decision
To grant the joint hackney carriage and private hire driver's licence to S.O.	The Panel was satisfied that the applicant was a fit and proper person to hold such a licence.

The Clerk to the Sub-Committee advised that he would confirm the decision in writing.

The Chair thanked all for attending.

County Councillor H Lewis (Chair)