



### 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 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 development<sup>1</sup>.
- An objective approach is required. The intention with which the works were carried out is irrelevant<sup>2</sup>.
- 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 whole<sup>3</sup>.
- 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”)<sup>4</sup>. There are a number of recognised exceptions to the Whitley principle<sup>5</sup>.

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”<sup>6</sup>.

#### *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:

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<sup>1</sup> *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.

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

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

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

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

<sup>6</sup> *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

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# ANNEX 1 PREVIOUS COMMITTEE

## Planning, Taxi Licensing and Rights of Way Committee Report

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

## **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]**

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Applicant: Mr John Price

Location: Land at Llanthomas Lane,  
 Llanigon, Hay-on-Wye

