

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 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 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.

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Applicant: Mr John Price

Location: Land at Llanthomas Lane,
 Llanigon

