



UPDATE REPORT

Application Number: 19/0970/FUL

Grid Ref: E: 321500
N: 243653

Community Council: Clyro Community

Valid Date: 19.06.2019

Case Officer: Rhys Evans

Applicant: Powys County Council

Location: Land South Of Castle View, Castle View, Clyro , Powys, HR3 5SZ

Proposal: Change of use of agricultural land to public open space and erection of recreational equipment / structures

Application Type: Full Application

REPORT UPDATE

This report forms an update to the previous report circulated to members in light of receiving an additional consultee response from Contaminated Land.

Consultee Responses

Consultee	Received
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<u>Land Contamination</u>	5 th Sep 2019
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In relation to planning application 19/0970/FUL, the following advice is provided for the consideration of Development Control.

Advice

1. Records identify that the application site is located within 100 metres of a closed landfill site. Closed landfill sites are a potential source of land contamination, The Department of the Environment, Industry Profile 'Waste Recycling, Treatment and Disposal Sites – Landfills and Other Waste Treatment or Waste Disposal Sites' (1996)

provides information on the potential sources of contamination associated with these land uses.

Furthermore, the application proposal involves the change of use of agricultural land to public open space. Agricultural land could contain potential sources of contamination, depending on what it was used for in the past, such as: pesticides, fuels and oils, slurry tanks and pits, fire sites, animal burial pits or other buried waste, fertiliser, sheep dip pits, asbestos, old machinery, waste chemical drums and ammunition.

2. Paragraph 6.9.14, of Chapter 6 'Distinctive and Natural Places', of the Welsh Government document 'Planning Policy Wales' (2018) states: "Responsibility for determining the extent and effects of surface and subsurface risks remains with the developer. It is for the developer to ensure that the land is suitable for the development proposed, as a planning authority does not have a duty of care to landowners."

3. In respect of contaminated land paragraph 5.55, of the Welsh Government (WG) circular 'The Use of Planning Conditions for Development

Management' (ref: WGC 016/2014), states that: "Conditions might also be imposed requiring the developer to draw to the attention of the planning authority the presence of significant unsuspected contamination encountered during redevelopment".

4. Furthermore, in paragraph 5.56 of the WG circular (ref: WGC 016/2014) it is stated: "The level of work required must be proportionate to the problems that are envisaged and the more onerous conditions should not be imposed as a matter of course."

5. Based on the available information, current planning guidance and in consideration of the application proposal (change of use), it is recommended that the following condition and note, to the applicant, are attached to any permission granted for planning application 19/0970/FUL:

Potential Contamination

In the event that the presence of contamination is encountered when carrying out the approved development immediate contact must be made with the local planning authority and works must cease in that area. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority.

Following completion of the remedial works identified in the approved remediation scheme, a verification report that demonstrates compliance with the agreed remediation objectives and criteria shall be produced, and is subject to the written approval of the local planning authority, prior to commencement of use of the development.

Reason: 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.

Officer Appraisal

Land Contamination

With respect to land contamination, specific reference is made to LDP policy DM10 which seeks to control development on contaminated or unstable land.

Records identify that the application site is located within 100m of a closed landfill site. Having considered the extent of the proposed development, the PCC Contaminated land Officer has recommended that the risk is acceptable at the site, subject to the attachment of a condition and informative note to the granting of any consent. This would ensure that should the presence of contamination be encountered during the development process, then immediate contact be made with the Local Planning Authority and works must cease in that area.

In light of the above, and subject to the attachment of a condition and informative note, it is considered that the proposed development complies with relevant planning policy.

RECOMMENDATION – CONDITIONAL CONSENT

Having carefully considered the proposed development, officers consider that the proposal complies with relevant planning policy. The recommendation is therefore conditional consent subject to the amended conditions as outlined below:

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. The development shall be carried out strictly in accordance with the plan received on 13/06/19 (drawing no: Site Location Plan), and amended plans received on 30/08/19 (drawing no's: 686 01 Rev D & 686 02 Rev A).
3. The development shall be carried out in accordance with the following approved highway drawing no. 676/01 dated Aug 2019.

4. Prior to the commencement of development, detailed engineering drawings for a 2m footway along the full frontage of the site and associated works, shall be submitted to and approved in writing by the Local Planning Authority.
5. Prior to the commencement of development, detailed engineering drawings for the pedestrian crossing points to the site, as shown on drawing no. 676/01, and associated works, shall be submitted to and approved in writing by the Local Planning Authority.
6. Before any other works commence on site, all Highway Improvements, referred to above (Conditions 4 and 5), shall be fully completed to the written satisfaction of the Local Planning Authority and shall be retained for their designated use for as long as the development hereby permitted remains in existence.
7. No development shall commence until provision is made within the field to the west of 4 Kilvert View for the parking of all construction vehicles together with a vehicle turning area.
8. No other development shall commence until the 'alternative maintenance access' has been constructed so that there is clear visibility from a point 1.05 metres above ground level at the centre of the access and 2.4 metres distant from the edge of the adjoining carriageway, to points 0.6 metres above ground level at the edge of the adjoining carriageway and 43 metres distant in each direction measured from the centre of the access along the edge of the adjoining carriageway. Nothing shall be planted, erected or allowed to grow on the areas of land so formed that would obstruct the visibility and the visibility shall be maintained free from obstruction for as long as the development hereby permitted remains in existence.
9. Before any other development is commenced the area of the 'alternative maintenance access' to be used by vehicles is to be constructed to a minimum of 410mm depth, comprising a minimum of 250mm of sub-base material, 100mm of bituminous macadam base course material and 60mm of bituminous macadam binder course material for a distance of 10 metres from the edge of the adjoining carriageway. Any use of alternative materials is to be agreed in writing by the Local Planning Authority prior to the access being constructed.
10. Prior to the first operational use of the recreation area the area of the 'alternative maintenance access' to be used by vehicles is to be finished in a 40mm bituminous surface course material for a distance of 10 metres from the edge of the adjoining carriageway. This area will be maintained to this standard for as long as the development remains in existence.

11. The gradient of the 'alternative maintenance access' shall be constructed so as not to exceed 1 in 15 for the first 10 metres measured from edge of the adjoining carriageway along the centre line of the access and shall be retained at this gradient for as long as the development remains in existence.
12. No surface water drainage from the site shall be allowed to discharge onto the county highway.
13. The mitigation, avoidance and compensation measures regarding proposed and priority species identified in section 4 of the Extended Phase One Ecology Survey produced by Ecological Services Ltd dated June 2019 shall be adhered to and implemented in full and maintained thereafter.
14. Prior to commencement of development a Reasonable Avoidance Method Statement regarding Reptiles shall be submitted to the Local Planning Authority and implemented as approved and maintained thereafter.
15. Prior to commencement of development a Tree and Hedgerow Protection Plan in accordance with BS:5837:2012 shall be submitted to the Local Planning Authority and implemented as approved and maintained thereafter.
16. No external lighting shall be installed unless a detailed external lighting design scheme has been submitted to and approved in writing by the Local Planning Authority. The external lighting scheme shall identify measures to avoid impacts on nocturnal wildlife. The development shall be carried out in accordance with the approved details.
17. No development or site clearance shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land, identify those to be retained and those to be planted additional and set out measures for their protection throughout the course of development.
18. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; 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.
19. In the event that the presence of contamination is encountered when carrying out the approved development immediate contact must be made with the local planning authority and works must cease in that area. An investigation and risk assessment must be undertaken and where remediation is necessary a

remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority. Following completion of the remedial works identified in the approved remediation scheme, a verification report that demonstrates compliance with the agreed remediation objectives and criteria shall be produced, and is subject to the written approval of the local planning authority, prior to commencement of use of the development.

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. To ensure no detrimental impact upon highway safety in accordance with LDP Policy DM13 (Part 10) and T1.
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12. To ensure no detrimental impact upon highway safety in accordance with LDP Policy DM13 (Part 10) and T1.
13. To comply with Powys County Council's LDP Policies DM2, DM4, DM13 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 and Part 1 Section 6 of the Environment (Wales) Act 2016.

14. To comply with Powys County Council's LDP Policies DM2, in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
15. To comply with Powys County Council's LDP Policy DM2 and DM4, in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
16. To comply with Powys County Council's LDP Policies DM2 and DM7 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
17. To comply with Powys County Council's LDP Policies DM4 and DM13 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, November 2018).
18. To comply with Powys County Council's LDP Policies DM4 and DM13 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, November 2018).
19. 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 LDP (2018).

Informative Notes

PCC – Ecology

Reptiles – Wildlife & Countryside Act 1981 (as amended)

All species of reptiles known to occur within Powys, namely the common lizard, slow-worm, grass snake and adder, are protected under the Wildlife and Countryside Act 1981 (as amended).

It is therefore an offence to:

- Intentionally kill or injure these species of reptiles,
- Trade (live or dead animals) i.e. sale, barter, exchange, transporting for sale and advertising to sell or to buy.

The maximum penalty that can be imposed - in respect of each offence - is a fine of up to 5,000 pounds, six months imprisonment or both.

In addition these species of reptiles are also listed in Part 1 Section 7 of the Environment (Wales) Act 2016 – which is a list of the living organisms of principal importance for the purpose of maintaining and enhancing biodiversity in relation to Wales. Species of reptiles known to occur in Powys are also listed as Species of Conservation Concern on the Powys LBAP.

If reptiles are discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and/or the Council's Ecologist.

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.

Land Contamination

Potential Contamination