

Planning, Taxi Licensing and Rights of Way Committee Report

Application Number: 23/0297/FUL

Grid Ref: E: 318339
N: 298901

Community Council: Berriew Community

Valid Date: 09.03.2023

Applicant: Mr Jones

Location: Land At Pied House, Garthmyl, Montgomery, SY15 6SQ,

Proposal: Formation of a slurry lagoon

Application Type: Full Application

UPDATE REPORT

This report forms an update to the previous report circulated to Members of the Committee.

Consultee Responses

Consultee

Received

PCC-(N) Highways

14th March 2023

Does Not Wish to Comment on the Application

PCC-Environmental Protection

28th June 2023

Environmental Protection has no objection to the application.

Principal Planning Constraints

Listed Building – Approx 300 metres to North West
Open Countryside
Historic Park and Garden
Right of Way

Principal Planning Policies

Policy	Policy Description	Year	Local Plan
NATPLA	Future Wales - The		National Policy

National Plan 2040

PPW	Planning Policy Wales (Edition 11, February 2021)	National Policy
TAN5	Nature Conservation and Planning	National Policy
TAN6	Planning for Sustainable Community	National Policy
TAN11	Noise	National Policy
TAN12	Design	National Policy
TAN18	Transport	National Policy
TAN23	Economic Development	National Policy
TAN24	The Historic Environment	National Policy
DM2	The Natural Environment	Local Development Plan 2011-2026
DM4	Landscape	Local Development Plan 2011-2026
DM7	Dark Skies and External Lighting	Local Development Plan 2011-2026
DM13	Design and Resources	Local Development Plan 2011-2026
SP7	Safeguarding of Strategic Resources and Assets	Local Development Plan 2011-2026
T1	Travel, Traffic and Transport Infrastructure	Local Development Plan 2011-2026
SPGBIO	Biodiversity and Geodiversity SPG (2018)	Local Development Plan 2011-2026
SPGHE	Historic Environment	Local Development Plan 2011-2026
SPGLAN	Landscape SPG	Local Development

Other Legislative Considerations

Crime and Disorder Act 1998
Equality Act 2010
Planning (Wales) Act 2015 (Welsh language)
Wellbeing of Future Generations (Wales) Act 2015
Marine and Coastal Access Act 2009

Officer Appraisal

Highways

Policies DM13 and T1 of the Powys Local Development Plan (2018) indicates that development proposals should incorporate safe and efficient means of access to and from the site for all transport users, manage any impact upon network and mitigate adverse impacts.

As part of the application process the Highway Authority were consulted on the proposed development, they have confirmed that they have no comments to make on the proposal. The proposed lagoon does not impact upon any vehicular access or parking and is not considered to result in any increase in traffic movements to the farm holding.

In light of the above it is considered that the proposed development is in accordance with relevant planning policy.

Amenity

The application site is located approximately 300 metres to the south east of a residential dwelling.

TAN 6 states that when considering applications for livestock and slurry units, Local Planning Authorities should exercise particular care to avoid potential future conflict between neighbouring land uses and it is important also for planning authorities to keep incompatible development away from other polluting or potentially polluting uses. Criterion 11 of LDP Policy DM13 requires that the amenities enjoyed by the occupants or users of nearby or proposed properties shall not be unacceptably affected by levels of noise, dust, air pollution, litter, odour, hours of operation, overlooking or any other planning matter. Criterion 1 of LDP Policy DM14 states that Development proposals will only be permitted where any resultant air pollution does not cause or lead to an unacceptable risk of harm to human health. Proposals will need to demonstrate that measures can be taken to overcome any significant adverse risk, with particular attention being paid to the National Air Quality Strategy objectives and any Air Quality Management Areas.

Given the distance to neighbouring residential properties and nature of the development,

there are no concerns regarding overlooking or overshadowing, however consideration of the impact of the development on matters such as noise, odour, air quality and pests is required.

In terms of noise, it is accepted that there would be noise associated with transporting slurry to the site and depositing slurry in the lagoon as well as during the construction phase. It is not considered likely that there would be significant additional noise from traffic relating to the development. It is accepted that the depositing of slurry into the lagoon may cause additional noise as well as the construction of the development, however such noise is likely to be over a short time period and it is also acknowledged that agricultural operations such as slurry application can legitimately take place on the land currently which have the ability to generate noise. It is not considered that the proposed development would generate unacceptable additional levels of noise to that that can currently take place on site.

In terms of odour, Environmental Protection have not requested any additional information such as an odour assessment. The submission indicates that the slurry would not be agitated during storage which is considered to assist in mitigating any odour impacts.

In terms of flies and pests, Environmental Protection have not requested any additional information.

In terms of air quality, LDP Policy DM14 is intended to ensure that proposed developments will not intensify existing problems, cause new problems or result in people being exposed to unacceptable levels of air pollution. The UK Air Quality Strategy (2007) sets out the standards (concentrations of pollutants in the atmosphere which can broadly be taken to achieve a certain level of environmental quality) and objectives (policy targets not to be exceeded). It is noted that emissions from agricultural units can result in local hotspots of high ammonia concentrations and nitrogen deposition around installations which is occurring against a background of high nitrogen deposition across Powys, however this matter will be assessed in the report below in respect of the impact upon the environment, in particular protected sites.

The site is not located within an Air Quality Management Area and Environmental Protection have not raised any concerns in respect of the development leading to unacceptable levels of air pollution or exceeding the standards set out within the UK Air Quality Strategy and as such it is concluded that the development would lead to an unacceptable risk of harm to human health in terms of air pollution.

It is concluded that the development would not unacceptably affect the amenities enjoyed by the occupants or users of nearest property in accordance with Criterion 11 of LDP Policy DM13 and any resultant air pollution would not cause or lead to an unacceptable risk of harm to human health in accordance with LDP Policy DM14.

Right of Way

A public right of way is within 110 metres of the application site to the west. It is not considered that any constructed development will cause any harm to the ROW however there is potential that the ROW is impeded during the construction phase with construction and delivery vehicles.

As such, an informative note will be included on any granting of consent to ensure that the applicant knows their responsibilities to ensure that the ROW is not always blocked and kept open.

RECOMMENDATION

In light of the above considerations, it is therefore considered that the proposed development does comply with relevant planning policy. The recommendation is one of conditional consent.

Conditions

1. The development shall begin not later than five years from the date of this decision.
2. The development shall be carried out strictly in accordance with the plans approved on the date of this consent: 23/165/P 01
3. No external lighting shall be installed unless a detailed external lighting plan is submitted to and approved in writing by the Local Planning Authority. The external lighting scheme shall identify measures to avoid impacts on nocturnal wildlife in accordance with the Bat Conservation Trust and Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK Bats and the Built Environment series and shall be implemented as approved and maintained thereafter.
4. Prior to the commencement of development, a Hedgerow Planting Scheme shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include a written specification clearly describing species, sizes, densities and planting numbers proposed, as well as aftercare measures. The approved scheme shall be implemented in full and maintained thereafter.
5. Within one month from the completion of the development hereby approved, the biodiversity enhancement measures shown on plan '23/165/P01' shall be erected and maintained thereafter as long as the development remains in existence.
6. The development shall only be used for the storage of slurry produced by the agricultural unit known as Pied House Farm.

Reasons

1. Required to be imposed by Section 91 of the Town and Country Planning Act

1990.

2. To ensure adherence to the plans as approved in the interests of clarity and a satisfactory development.
3. To comply with Policy DM2 of the Powys Local Development Plan (2018) in relation to the natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, February 2021), Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009) and Part 1 Section 6 of the Environment (Wales) Act 2016.
4. To comply with Policy DM2 of the Powys Local Development Plan (2018) in relation to the natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, February 2021), Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009) and Part 1 Section 6 of the Environment (Wales) Act 2016.
5. To comply with Policy DM2 of the Powys Local Development Plan (2018) in relation to the natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, February 2021), Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009) and Part 1 Section 6 of the Environment (Wales) Act 2016.
6. To comply with Policies DM2 and DM13 of the Powys Local Development Plan (2011-2026) in relation to The Natural Environment and the amenities enjoyed by the occupants of neighbouring properties, and to meet the requirements of Planning Policy Wales (Edition 11, February 2021) and Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009).

Informatives

Work should halt immediately and Natural Resources Wales (NRW) contacted for advice in the event that protected species are discovered during the course of the development. To proceed without seeking the advice of NRW may result in an offence under the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife & Countryside Act 1981 (as amended) being committed. NRW can be contacted by phone at 0300 065 3000.

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 on 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.

Advice from Natural Resources Wales (NRW)

Please note we will require sample results from trial pits dug to determine suitability for The earth bank lagoon – permeability cannot exceed 10.9m/s, typically a clay content of 20% to 30% with sufficient material available to ensure an impermeable layer at least 1m thick or detail regarding a liner to be used. We have received calculations for the sizing of the lagoon and they are considered acceptable.

Facilities where slurry is generated must comply with the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) Regulations 2010. Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or groundwater. A minimum of 14 days' notice must be given to Natural Resources Wales in writing before construction of a new, substantially enlarged or reconstructed store containing slurry or silage begins.

Right of Way Informative

- **Development** over, or illegal interference with, a public right of way, is a criminal offence and enforcement action will be taken against a developer who ignores the presence of affected public rights of way.

This includes temporary obstructions such as rubble mounds, building materials, parked vehicles etc...

- **Landscaping & Surfacing** – Please seek advice before interfering or surfacing a public right of way.
- **Structures on public rights of way** – under s146 Highways Act 1980 it is the legal responsibility of the landholder to provide and maintain structures such as gates and stiles on public rights of way. If you are unsure what structure to install, please contact Countryside Services.

- **New fencing or boundaries** – If intending to create a boundary across a public footpath or bridleway, advice must be sought. A section 147 Highways Act 1980 license is required for a structure such as a gate to be installed across a public footpath or bridleway.

We cannot authorise a structure across a Restricted Byway or Byway Open to All Traffic.

- **Temporary closures** – If the safety of the public cannot be guaranteed at all times during construction, consideration should be given to applying for a temporary closure of the public right of way.

The process can take a couple of months to put into place so early consultation with Countryside Services is recommended if a temporary closure is required. This is a separate procedure for which a fee applies.

- **Legal Diversion** – If development will directly affect a public right of way and the affected public right of way cannot be appropriately incorporated into the development, the developer will need to seek advice from the council. No development can take place on a public right of way until a legal order is confirmed by the council.

A legal public path order process typically takes at least 6 months. This is a separate procedure for which a fee applies. For more information, please discuss with Countryside Services at the earliest available opportunity.

Case Officer: Luke Woosnam, Planner
Tel: 01597 827345 E-mail: luke.woosnam@powys.gov.uk