

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

**Application Number:** 23/1372/FUL

**Grid Ref:** E: 327550  
N: 294575

**Community Council:** Churchstoke Community

**Valid Date:** 08.09.2023

**Applicant:** Mr Arwyn Davies

**Location:** Land Adjacent To Hollydene, Hall Bank, Churchstoke, Montgomery, Powys SY15 6EN

**Proposal:** Change of use of agricultural land to domestic curtilage adjacent to allocated housing site (19/0993/OUT)

**Application Type:** Full Application

### The reason for Committee determination

The Local Member has exercised their right to call in this application to be decided before planning committee.

### Consultee Responses

#### Consultee

#### Received

Community Council

29th Sep 2023

the community council objects to the application on the grounds

a)

the application land is outside the LDP development boundary and as such represents development in open countryside

b)

the houses and gardens have been developed and sold according to existing permissions and conditions which should be adequate without expansion post-development post-sale beyond development boundaries.

Ward Councillor

27th Sep 2023

I would like to call this in for further review. I think it needs more investigation.

Firstly, If read things correctly, this has been applied for twice previously and withdrawn on both occasions?

Secondly, I would question the trees and hedges section, I know that there is or certainly was a large Oak tree in the vicinity.

Thirdly, my main worry is with this extra land being added to the property, this could make room for such structures as a "garden office room" or similar which may cause ongoing disputes.

PCC-(M) Highways

13th Sep 2023

Based on the information provided, the Highway Authority does not wish to comment on this application.

Hafren Dyfrdwy

19th Sep 2023

Good Afternoon

With reference to the above planning application the Company's observations regarding sewerage are as follows.

As the proposal has no impact on the public sewerage system, I can advise we have no objections to the proposals and do not require a drainage condition to be applied.

IMPORTANT NOTE: This response only relates to the public wastewater network and does not include representation from other areas of Severn Trent Water/Hafren Dyfrdwy, such as the provision of water supply or the protection of drinking water quality

Should you require any further information please contact us on email below.

PCC-Contaminated Land Officer

11th Oct 2023

The above application has been considered alongside the original application 19/0993/OUT for which contamination conditions were applied. As those conditions are still outstanding I consider this current application does not materially affect those. Therefore, I have no further comments to make.

PCC-Ecologist

No comments made at the time of writing this report.

Environmental Protection

3rd Oct 2023

Environmental Protection has no objection to the application.

## Representations

Following the display of a site notice, two public representations have been received at the time of writing this report. A summation of the points are detailed below:

- Conflict with local plan
- Hedgerow and tree
- Residential amenity
- Fencing out of character with area
- Structure within extended curtilage

## Planning History

App Ref	Description	Decision	Date
19/0993/OUT	Erection of 4 dwellings with garages (all matters reserved)	Approve	27/09/2019
21/0980/RES	Reserved matters application in respect of outline planning consent 19/0993/OUT for the erection of 4 dwellings (all matters reserved)	Consent	10/09/2021
21/0982/FUL	Change of use of agricultural land to domestic curtilage adjacent to allocated housing site (19/0993/OUT)	Withdrawn	08/09/2021
21/1489/DIS	Discharge of conditions 6, 7, 8, 9 and 10 of planning permission 19/0993/OUT (contaminated land)	Split Decision	04/11/2021
21/1812/DIS	Discharge of conditions 4 and 5 attached to permission 19/0993/OUT, in relation hedge translocation scheme and external lighting scheme	Approve	14/10/2021
21/2198/DIS	Discharge of condition no. 8 attached to planning approval 19/0993/OUT (Pre-verification Plan)	Approve	08/12/2021

## Principal Planning Constraints

Historic Landscapes Register  
LDP Development Boundaries  
Mineral Safeguarding Sandstone Cat 2

Vale of Montgomery  
Churchstoke/ Yr Ystog

## Principal Planning Policies

<b>Policy</b>	<b>Policy Description</b>	<b>Year</b>	<b>Local Plan</b>
PPW	Planning Policy Wales (Edition 11, February 2021)		National Policy
NATPLA	Future Wales - The National Plan 2040		National Policy
TAN5	Nature Conservation and Planning		National Policy
TAN12	Design		National Policy
TAN18	Transport		National Policy
TAN23	Economic Development		National Policy
SP1	Housing Growth		Local Development Plan 2011-2026
SP2	Employment Growth		Local Development Plan 2011-2026
SP5	Settlement Hierarchy		Local Development Plan 2011-2026
SP6	Distribution of Growth across the Settlement Hierarchy		Local Development Plan 2011-2026
SP7	Safeguarding of Strategic Resources and Assets		Local Development Plan 2011-2026
DM2	The Natural Environment		Local Development Plan 2011-2026
DM4	Landscape		Local Development Plan 2011-2026

DM7	Dark Skies and External Lighting	Local Development Plan 2011-2026
DM8	Minerals Safeguarding	Local Development Plan 2011-2026
DM13	Design and Resources	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
SPGLAN	Landscape SPG	Local Development Plan 2011-2026

### **Other Legislative Considerations**

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

Marine and Coastal Access Act 2009

### **Officer Appraisal**

#### Site Location and Description

The application site is located within the community council area of Churchstoke, outside but adjacent to the development boundary of Churchstoke which is defined as a large village by the Powys Local Development Plan (2018). The site relates to an area of agricultural land adjacent to a residential development which seeks to extend the residential curtilage of the dwellings. The site is further bound by agricultural land to the east with residential properties on all other aspects.

Consent is sought for the change of use of agricultural land to domestic curtilage adjacent to allocated housing site (19/0993/OUT).

#### Principle of Development

The Local Development Plan (LDP) does not include policies which specifically permit the

change of use of land into residential, apart from if a housing scheme is proposed, however there are no policies specifically prohibiting such change of use either.

Policy DM4 of the Local Development Plan (adopted 2018) states that landscape proposals for new development within the open countryside must not, individually, or cumulatively, have an unacceptable adverse effect, on the valued characteristics and qualities of the Powys landscape. All proposals will need to:

- 1. Be appropriate and sensitive in terms of integration, siting, scale and design to the characteristics and qualities of the landscape including its: topography; development pattern and features; historical and ecological qualities; open views; and tranquillity; and*
- 2. Have regard to LANDMAP, Registered Historic Landscapes, adjacent protected landscapes (National Parks and Areas of Outstanding Natural Beauty) and the visual amenity enjoyed by users of both Powys landscapes and adjoining areas. Proposals which are likely to have a significant impact on the landscape and/or visual amenity will require a Landscape and Visual Impact Assessment to be undertaken.*

Following consideration of information supplied by Welsh Government through the Provision of Agricultural Land Classification, due regard has been given to the classification afforded to the application site. The site in question has been indicated as being grade 3b agricultural land.

Planning Policy Wales (PPW) paragraph 4.10 outlines national policy towards conserving Wales' Best and Most Versatile (BMV) agricultural land. PPW states that;

*“In the case of agricultural land, land of grades 1, 2 and 3a of the Department for Environment, Food and Rural Affairs (DEFRA) Agricultural Land Classification system (ALC) is the best and most versatile and should be conserved as a finite resource for the future. In development plan policies and development management decisions considerable weight should be given to protecting such land from development, because of its special importance.*

*Land in grades 1, 2 and 3a should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural grades is unavailable, or available lower grade land has an environmental value recognised by a landscape, wildlife, historic or archaeological designation which outweighs the agricultural considerations. If land in grades 1, 2 or 3a does need to be developed, and there is a choice between sites of different grades, development should be directed to land of the lowest grade.”*

It is noted the area subject to this change is a rectangular piece of agricultural land just outside of the settlement development boundary of the large village of Churchstoke and between an existing agricultural boundary. The extension would bring the curtilages of the dwellings inline with the existing rear garden of the property adjacent. It is noted the agricultural land is not farmed and is separated from the agricultural field adjacent and

would form a logical curtilage extension to the dwellings permitted previously and constructed under previous planning permission.

The boundary treatment will be post and wire agricultural fencing and a continuation of the close boarded fencing which currently separates the dwellings. The boundary treatments are considered appropriate.

Therefore, in light of the above, and considering the extent of the change of use proposed, it is considered that the proposed development fundamentally complies with relevant planning policy subject to the following material considerations:

#### Highway Safety

Policy DM13 part 10 states that development proposals should meet all highway access requirements (for transport users) and parking standards which include a safe access, visibility splays and adequate parking which is also supported by policy T1 of the LDP.

The proposed development does not seek to alter the existing means of access or area of parking. Powys County Council's Highway Authority has been consulted on the proposed development and has raised no objection to the proposed development.

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

#### Neighbouring Residential Amenity

Consideration has also been given to the impact the proposed development will have upon neighbouring properties. Powys County Council's SPG Residential Design Guide (2020) states that developments should not impinge upon the privacy and daylight of neighbouring dwellings. Consideration is also given to LDP Policy DM13 (11).

The proposed change of use of land and repositioning of an agricultural fence would not be considered a matter that would raise issues in respect of neighbouring amenity in terms of privacy and overshadowing.

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

#### Minerals Safeguarding

The application site is located within a Category 2 Minerals Safeguarding Area. As such, consideration must be given to Policy DM8 of the Powys LDP (Minerals Safeguarding). This policy can be read as follows;

*“Non-mineral development proposals within Mineral Safeguarding Areas will only be permitted where it can be demonstrated by the developer that:*

1. *The mineral resource is not of potential future value; or*
2. *The development is of a temporary nature and can be completed and the site restored to a condition that would allow for future extraction; or*
3. *The mineral can be extracted satisfactorily prior to the incompatible development taking place; or*
4. *Extraction would not meet the tests of environmental acceptability or community benefit as set out in National Policy; or*
5. *There is an over-riding need in the public interest for the development; or*
6. *The development is householder development and / or of a very minor nature such as extensions to existing dwellings, and associated development within the curtilage of the property.”*

It is noted the minerals on-site could be extracted satisfactorily prior to the development taking place in respect of criterion 3. It is therefore considered the development would be acceptable in this regard, and compliant with the above policy criteria.

### Natural Environment

Policy DM2 states that proposals shall demonstrate how they protect, positively manage and enhance biodiversity and geodiversity interests. Proposals which would impact on natural environment assets will only be permitted where they do not unacceptably adversely affect those assets. Technical Advice Note (TAN) 5 seeks to maintain biodiversity and safeguard important sites.

The application site relates to an area of agricultural pastural land which would be of low ecological value. The site is bordered by post and wire agricultural fencing to the east and west with boundary hedgerow and trees to the north. The proposal does not seek to impact or remove existing trees or hedgerow. The provision of a post and wire agricultural fence is considered an appropriate means of enclosing the development. The existing neighbouring close boarded fencing will be extended to the proposed new boundary line. Give the presence of hedgehog within the area, an appropriately worded condition will be attached to any granting of planning permission.

No biodiversity enhancements have been proposed and therefore an appropriately worded condition will be attached to any granting of planning permission to secure these measures.

It is noted that no Green Infrastructure statement has been provided, however given the scale and nature of proposed development and enhancements conditioned, it is considered acceptable in these circumstances.

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

### Loss of Agricultural Land



Paragraph 3.58 of Planning Policy Wales (Edition 11, 2021) relates to the quality of agricultural land, and states that:

*“Agricultural land of grades 1, 2 and 3a of the Agricultural Land Classification system (ALC) is the best and most versatile, and should be conserved as a finite resource for the future.”*

Paragraph 3.59 of PPW (Ed. 11) further states that;

*“Land in grades 1, 2 and 3a should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural grades is unavailable, or available lower grade land has an environmental value recognised by a landscape, wildlife, historic or archaeological designation which outweighs the agricultural considerations.”*

The proposed change of use relates to an area of agricultural land. The Welsh Government’s Predictive Agricultural Land Classification Map indicates that the area of the application site is graded as 3b, which relates to “moderate quality agricultural land”. It is therefore considered that this proposal is acceptable as it does not relate to land to be preserved.

In light of this, it is therefore considered that the proposal is therefore compliant with planning policy in this regard.

### Landscape

The site is located within the Vale of Montgomery Registered Historic Landscape. Whilst the site is relatively sensitive, being outside of a development boundary and within a historic landscape area classified as outstanding by the LANDMAP system and within the Registered Historic Landscape, it is considered that given the change of use relates to a small area of agricultural land associated with an existing residential development, providing a logical and minor curtilage extension which can be satisfactorily integrated into the landscape without an adverse impact.

## **RECOMMENDATION**

Approve

### **Conditions**

1. The development shall begin not later than five years from the date of this decision.
2. The development shall be carried out in accordance with the following approved plans and documents:
  - Application Form

- Site Location Plan
- 916 D01 Rev A titled Block Plan

3. Prior to the commencement of development, a detailed Biodiversity Enhancement Plan shall be submitted to the Local Planning Authority and implemented as approved and maintained thereafter unless otherwise agreed in writing with the LPA.

4. No external lighting shall be installed on the residential curtilage hereby permitted unless a detailed external lighting design scheme has first 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 in accordance with the recommendations outlined within the BCT and ILP Guidance Note 8 Bats and Artificial Lighting (12th September 2018). The development shall be carried out in accordance with the details once approved.

5. Access points to facilitate movement of hedgehog and small mammals shall be incorporated into all fencing forming any part of the site boundary or boundary between individual plots. A minimum of one access point comprising gaps of 130mm x 130mm (5" x 5") shall be installed along each interior fenced aspect of the boundary. A minimum of one access point shall be installed every 25m along the length of the perimeter boundary. If gravel boards are to be used, hedgehog friendly designs shall be used. The access points shall be maintained thereafter.

### **Reasons**

1. Required to be imposed by Section 91 of the Town and Country Planning Act 1990.

2. To ensure adherence to the approved plans in the interests of clarity and a satisfactory development.

3. 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 11, 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.

4. To comply with Policies DM2, DM4 and DM13 of the Powys Local Development Plan in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.

5. 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 11, February 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.

### **Informative Notes**

## Ecology

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

It is an offence for any person to:

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

Under the Habitats Regulations it is an offence to:

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

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended) that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0345 1300 228 or email [enquiries@bats.org.uk](mailto:enquiries@bats.org.uk)

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.

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