

Planning, Taxi Licensing and Rights of Way Committee Report

Application Number: 23/1238/FUL
Grid Ref: E: 296278
N: 297693
Community Council: Carno Community Council
Valid Date: 16.08.2023

Applicant: Mr & Mrs Ceri & Edward Jerman-Jones & Jones

Location: Hendre Fach, Carno, Caersws, SY17 5JY.

Proposal: Erection of a rural enterprise dwelling, detached garage & change of use of agricultural building to mixed use (agricultural & commercial) & associated works

Application Type: Full Application

The reason for Committee determination

The application has been 'called-in' by the local member.

Consultee Responses

Consultee	Received
<u>Hafren Dyfrdwy</u>	15th Sep 2023

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.

<u>PCC-(N) Highways – First Response</u>	3rd Oct 2023
--	--------------

The County Council as Highway Authority for the County Unclassified Highway, U2539

Wish the following recommendations/Observations be applied

Recommendations/Observations

Previous applications at the site have included details of the proposed split of the agricultural building between the proposed commercial use and retention in part of the agricultural use. However, we note no such detail has been submitted with the current application. We therefore request that a revised drawing is submitted which details the proposed split and the access arrangements for each of the two uses.

PCC-(N) Highways – Second Response

11th Jan 2024

The Highway Authority (HA) has reviewed the revised drawings submitted in support of the application and wish to make the following comments.

We note the submitted application is akin to the previously withdrawn 23/0411/FUL application, we therefore consider that our response to that application is relevant to the current application. However, we do note some changes to the application, such as the redline.

The applicant should note that as the passing bay is to be constructed on land outside of the highway extents, that a Section 38 highways legal agreement shall be required to dedicate the land as highway. We advise the applicant to speak directly with the Highways Officer (Simon Crew) for more information - we suggest that rather than the applicant obtaining Streetworks licences for the access, and junction improvements, that these works are included within the legal agreement (combined S.38/278) to reduce the cost to the applicant.

We therefore recommend the following conditions be attached to any consent given.

1. Within 90 days of the date of this permission, the applicant shall construct one passing bay shown on Drawing Number 77063/GD/004.
2. The passing bay referred to above shall be constructed to adoptable standard prior first beneficial/operational use of the development hereby approved.
3. Within 90 days of the date of this permission, the junction visibility improvement associated works, as shown on Drawing Number 77063/GD/004 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.

4. Within 90 days of the date of this permission, the access onto the U2539 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 18 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 area(s) 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.
5. Upon formation of the visibility splays as detailed above the centreline of any new or relocated hedge should be positioned not less than 1.0 metre to the rear of the visibility splay and retained in this position as long as the development remains in existence.
6. Within 90 days of the date of this permission, the area of the access to be used by vehicles is to be constructed, shall be constructed in suitably bound materials (or to a minimum 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 12m from the edge of the adjoining carriageway.
7. Within 30 days of the date of this permission, provision shall be made within the site for the parking and turning of vehicles as detailed on the approved site plan 77063/GD/004. The parking and turning areas shall be retained for their designated use for as long as the development hereby permitted remains in existence.
8. A minimum 10% of the parking allocation secured under condition 6 above (min of 1 space) shall be constructed to incorporate Fast Charge electric vehicle charging points. See the EV Charging Strategy for Wales for further information.
9. Within 90 days of the date of this permission, the area of the access to be used by vehicles is to be finished in a suitably bound material (or 40mm depth bituminous surface course material) for a distance of 12 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.
10. No surface water drainage from the site shall be allowed to discharge onto the county highway.

PCC-Ecologist

No comments received at the time of writing this report.

Environmental Protection

18th Sep 2023

Thank you for the consultation. I would like to reiterate my previous comments to an application on this site in that I have no objection subject to the ownership of the dwelling and the business being in some way tied together. Given the close proximity a dwelling not in the ownership of the business would likely suffer poor amenity from noise and no assessment of the impacts has been undertaken by the applicant.

Natural Resources Wales (Mid Wales) DPAS

11th Sep 2023

Thank you for consulting Cyfoeth Naturiol Cymru (CNC)/Natural Resources Wales (NRW) about the above, which we received on 31st August 2023.

We have no objection to the proposed development as submitted and provide the following advice:

Flood Risk

The planning application proposes the change of use for an existing agriculture building (a low vulnerable development). The application site falls partially within Zone C2 of the Development Advice Map (DAM) contained in TAN15 and the Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding and falls into Flood Zone 2 & 3 Rivers. Our maps indicate that the location of the proposed rural enterprise dwelling as detailed in Proposed Block Plan (77063/GD/003 dated 24/07/2023) is not located within the flood zones.

We note that the change of use of the agricultural building to mixed use (agricultural and commercial) does not include an extension nor are groundworks proposed. On this basis we have no flood risk concerns. We acknowledge access could be affected and so we advise you to consult with others regards safe access/egress.

The availability of a flood warning service to the development location should be confirmed by visiting the Natural Resources Wales website. NRW provides warnings where it is technically possible but this service must not be relied on to guarantee the timely and safe evacuation of occupants. Where available, the flood warning service can be a useful means of alerting occupants who have voluntarily signed up to receive Flood Alerts and Flood Warning, enabling them to take action in advance of a flood event. Protection measures should not be wholly dependent on the flood warning service and should be implemented to manage risks and impacts of flooding.

Foul Drainage

We note from the Proposed Block Plan (77063/GD/003 dated 24/07/2023) that the Applicant intends on installing a package treatment plant to discharge to ground. If the private drainage solution is to be progressed, the Applicant will need to apply for an Environmental Exemption or Permit from us. It is important to note that a grant of planning permission does not guarantee that an exemption or permit will be granted, should a proposal be deemed to be unacceptable (either because of environmental risk or because upon further investigation, a connection to mains sewer was feasible). The Applicant is therefore advised to hold pre-application discussions with our Permitting Team on 0300 065 3000, at the earliest opportunity, to try to ensure that there is no conflict between any planning permission granted and the permit requirements.

Watercourse

Our maps indicate that a small watercourse is present on the application site. Therefore, we advise that as a precautionary measure, to prevent any potential pollution to the nearby watercourse that you refer the Applicant to the following relevant measures and guidance to be adhered to: Guidance for Pollution Prevention (GPP) documents | NetRegs | Environmental guidance for your business in Northern Ireland & Scotland

Protected Species

We are satisfied that the Preliminary Ecological Appraisal by Turnstone Ecology Ltd submitted in support of the above application dated 22nd August 2023 is satisfactory for the purposes of informing the public decision-making process.

No European Protected Species (EPS) were found present within the area affected by the proposal. If any protected species are found or seen during works, all work must stop immediately and advice sought from NRW before works can restart.

Other Matters

Our comments above only relate specifically to matters included on our checklist, Development Planning Advisory Service: Consultation Topics (September 2018), which is published on our website. We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our website for further details.

If you have any queries on the above, please do not hesitate to contact us.

Thank you for consulting Countryside Services on the above application.

A public right of way, public footpath 206/80/1, runs through the planning boundary. Whilst the main development will not affect the public footpath associated works such as fencing will.

In particular, a proposed access lane which crosses the public footpath is to be fenced off. It is noted on the plans that pedestrian gates have been specified at the fenced off boundaries. Whilst we do not have any problems with the proposal, they will need to be licenced under s147 Highways Act 1980. We would draw the applicant/agent's attention to the advice provided below.

LDP Policy SP7 of the Local Development Plan recognises public rights of way as a strategic asset and development must not have an adverse impact on the asset or its operation.

LDP Policy DM13, criterion 9 is concerned that public rights of way or other recreation assets listed in Policy SP7 (3) are enhanced and integrated within the layout of the development proposal; or appropriate mitigation measures are put in place where necessary.

You can access a digital interpretation of the Definitive Map using the link below. Please refer to the accompanying guide for access:

<https://prow.powys.gov.uk/standardmap.aspx>

PLEASE INCLUDE THIS SECTION AS AN INFORMATIVE IN THE EVENT OF A SUCCESSFUL PLANNING PERMSSION

In addition to the above, Powys County Council has a legal duty to 'assert and protect' public rights of way under the Highways Act 1980. Planning permission does not give legal consent to interfere or obstruct public rights of way that will be directly or indirectly affected by approved development.

- o 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...
- o Landscaping & Surfacing - Please seek advice before interfering or surfacing a public right of way.
- o 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.

o 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.

o Temporary closures - If the safety of the public cannot be guaranteed at all times during construction or that temporary obstruction of the public right of way may be necessary, 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.

o 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.

For advice, please contact Powys County Council Countryside Services with details of the development at:

rights.of.way@powys.gov.uk

01597 827500

Community Council

14th Sep 2023

1. This application is the latest in a series and the Community Council hopes that the Planning Authority will look at the application in a wider context than that set out in the guidelines. Guidelines, that the Community Council understands that are general accepted by all involved parties as being not fit purposes, having been overtaken by current circumstances. In particular issues surrounding the lack of dwellings and employment for local (young) residents acknowledged by Welsh Government and Local Authorities. The Community Council fully supports the request made by our Powys CC Ward Councillor (Les George) to have the application decided by the Planning Committee

which will allow for a wider discussion and greater flexibility in the decision-making process.

2. The Council wishes its register its support for this application in the strongest possible terms and hopes those making the decision will take into account the wishes of the local community and (to this community) the special circumstances surrounding this application.

3. In summary, the Community Council wishes to make the Planning Authority aware of why it feels it is important for this application to receive planning permission:-

o Recent news has been full of the difficulties faced by local people who wish to stay and work in their local communities due to a lack of available housing and/or employment. It is vital to the future well-being of rural communities, like Carno, when justifiable opportunities arise to allow for young people to develop their futures in their community, their endeavours receive the full support of all the authorities.

o In this case the applicants are fully engaged in the community life. Their businesses offer employment for local people and as one of those businesses is the provision of childminding facilities, gives others the opportunity to pursue their own ambitions.

o Besides the business benefits brought to Carno, the Applicants contribute to local clubs and societies. Allowing young people to remain in their community and assist in maintaining a vibrant social fabric, is also important to the well-being of a community.

o To demonstrate that the views of the local community are listened to and play a prime role in the decision making process especially when there is the strongest level of support coming from that community.

Ward Councillor

8th Sep 2023

Could you please register my request to implement the CALL - IN procedure on Application Ref No : 23 / 1238 / FUL , Grid Ref : E: 296278 N: 297693 , For the Erection of a Rural Enterprise Dwelling , Detached Garage & Change of Use of Agricultural Building to Mixed Use (Agricultural & Commercial) & Associated Works, AT : Hendre Fach , Carno, Caersws, SY17 5JY.

The reason for the Call - in procedure is the overwhelming support from the whole Community , a Unanimous agreement from the Community Council and specific requests from local an area Businesses wanting industrious and Enterprising Persons to settle and

support the Local Economy.

Powys Ramblers

4th Oct 2023

Powys ramblers wish to comment on this application please.

In the first instance we wish to strongly support the comments made by countryside services especially in relation to the proposed gates. As these gates are for the benefit of the applicant can it be a condition of any planning permission granted that these gates are properly maintained and that no costs fall on the Council for their installation and future maintenance.

We would also add that the applicant does not appear to have demonstrated how they will adhere to DM 13 - "public right of way to be enhanced and integrated within the layout of the development proposal". Can the applicant please be asked to provide further information about how they will adhere to DM 13. In particular, we would expect there to be enhanced way marking provided through the development site. We would, of course, be happy to comment further upon receipt of additional information.

Finally, in the event of permission being granted can the applicant please be advised of the importance of making sure that the footpath remains open during development works and afterwards.

Representations

Following the display of a site notice on 15/09/2023, no public representations have been received at the time of writing this report.

Planning History

App Ref	Description	Decision	Date
23/0411/OUT	Outline permission for proposed rural enterprise dwelling and associated works (with some matters reserved)	Refused	2nd Jun 2023
23/0410/FUL	Change of use of agricultural building to mixed use (agricultural and commercial), improvements to vehicular access and	Application Withdrawn	14th Jul 2023

associated works

22/1615/OUT	Outline permission with some matters reserved for the erection of a rural enterprise dwelling	Withdrawn	7 th Nov 2022
21/1070/OUT	Outline permission with some matters reserved for the erection of a rural enterprise dwelling	Refused	11 th May 2022

Principal Planning Constraints

Open Countryside
Right of Way
Mineral Safeguarding Sand_Gravel Cat 1
Mineral Safeguarding Sand_Gravel Cat 2
C2 Floodzone

Principal Planning Policies

Policy	Policy Description	Year	Local Plan
NATPLA	Future Wales - The National Plan 2040		National Development Plan 2021
PPW	Planning Policy Wales (Edition 12, February 2024)		National Policy
TAN2	Planning and Affordable Housing		National Policy
TAN5	Nature Conservation and Planning		National Policy
TAN6	Planning for Sustainable Rural Communities		National Policy
TAN11	Noise		National Policy
TAN12	Design		National Policy

TAN18	Transport	National Policy
TAN23	Economic Development	National Policy
SP1	Housing Growth	Local Development Plan 2011-2026
SP3	Affordable Housing Target	Local Development Plan 2011-2026
SP5	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
DM13	Design and Resources	Local Development Plan 2011-2026
DM15	Waste Within Developments	Local Development Plan 2011-2026
H1	Housing Development Proposals	Local Development Plan 2011-2026
H3	Housing Delivery	Local Development Plan 2011-2026
H4	Housing Density	Local Development Plan 2011-2026
T1	Travel, Traffic and Transport Infrastructure	Local Development Plan 2011-2026
SPGRES	Residential Design Guide SPG (2020)	Local Development Plan 2011-2026

SPGAH	Affordable Housing SPG (2018)	Local Development Plan 2011-2026
SPGLAN	Landscape SPG	Local Development Plan 2011-2026
SPGBIO	Biodiversity and Geodiversity SPG (2018)	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 Carno. The proposed development is not located within a settlement development boundary and therefore for the purposes of this application is considered as development within the open countryside as defined by the Powys Local Development Plan (2018). The site is currently an agricultural field, with further fields to the North and South. West of the site features an existing agricultural building (currently the subject of a separate planning application), and Afon Cwm-Llwyd. The farm holding of Hendre Fach is located to the East.

Consent is sought for the erection of a rural enterprise dwelling, together with the retrospective change of use of an agricultural building to mixed use to include the storage of forestry machinery and equipment. The agricultural building forms the base of the (currently unauthorised) rural enterprise which is the subject of this application.

The application proposes, when measured internally, a dwelling of 150 square metres and a garage of 32 square metres. The plot size of the dwelling would be 0.1 hectares.

Background

This application is the fourth application for a rural enterprise dwelling at this site. Two of the three previous applications have been refused, with the remaining application withdrawn by the applicants.

The development proposed is similar to the previously refused 23/0411/OUT, with the exception that this application now also includes the retrospective change of use of the

building used as the base for the enterprise and due to this, is made in full rather than outline. Other alterations to the scheme include the minor relocation of the dwelling slightly further to the West.

The level of information submitted as part of this application remains largely identical to the previous 23/0411/OUT.

Principle of Development

The application relates to two developments:

1. The retrospective change of use of the agricultural building, to regularise the currently unauthorised enterprise
2. The proposed erection of a rural enterprise dwelling

The policy considerations for the principle of development for each aspect differ, and as such, have been separated below for consideration.

- Change of Use of the Building

Technical Advice Note (TAN 23) supports the re-use / conversion of existing rural buildings, on the basis that:

- *they are suitable for the specific use;*
- *conversion does not lead to dispersal of activity on such scale as to prejudice town and village vitality;*
- *their form, bulk and general design are in keeping with their surroundings;*
- *imposing conditions on a planning permission overcomes any planning objections, for example on environmental or traffic grounds, which would otherwise outweigh the advantage of re-use;*
- *if the buildings are in the open countryside, they are capable of conversion without major or complete reconstruction;*
- *conversion does not result in unacceptable impacts upon the structure, form, character or setting where the building is of historic and / or architectural interest.*

It is noted that consent is sought for a mixed use (retrospectively) for the existing agricultural building which is proposed to now include what the applicant has described as a commercial use. Under further investigation, Officers however note that the building is to be used as a base for the forestry operation to store machinery and tools.

There are no specific policies within the Local Development Plan that refer to forestry development, however when considering TAN23 it is considered that the use of the building for agricultural and forestry is in principle considered to be acceptable.

- Rural Enterprise Dwelling

Policy H1 of the adopted Powys LDP relates to housing proposals. It confirms that there is a restrictive approach to housing in the open countryside, but that one of the exceptional circumstances where housing proposals could be considered in this location is where they relate to rural enterprise dwellings.

The application seeks outline consent for the construction of a permanent rural enterprise dwelling, in association with the running of EJC Ltd at Hendre Fach. Part 2.2 of the TAN 6 Practice Guidance on Rural Enterprise Dwellings confirms that the five groups of enterprises which are covered by the provisions of TAN 6 are as follows:

- *Agricultural and forestry;*
- *Activities which obtain their primary inputs from the site;*
- *Land management related activities;*
- *Land related tourism and leisure; and*
- *Support service related to rural-based activities*

Based on the above extract from TAN6, it is considered that the proposal falls within the scope of the rural enterprise dwelling policy area. The practice guidance goes on further to say that the primary sectors of the rural economy depend upon a wide-ranging network of support services for their effective functioning.

EJC Ltd undertake works for the local Forestry Commission, road maintenance, and site preparations for reforestation and afforestation.

In light of the above, the principle of development can be further considered subject to a review of the criteria contained within Part 4.4.1 of TAN 6.

Locational / Functional Need Test

This application is made in respect of the business known as EJC Ltd. This company works within the forestry sector, with the submitted information confirming that the majority of the work undertaken is forestry roading and ground preparation for existing/new plantations for the next generation of trees. In addition, the business also undertakes the following:

- Works to ensure timber is transported to a number of locations
- 24/7 contracts, being with NRW and TilHill, including emergency work relating to highways, pollution, and fire/water damage.
- Utilities sector, including undertaking works to remedy collapsed culverts etc.

It is also acknowledged within the information submitted that the application site, agricultural shed and yard area are within the legal ownership of the director's partner's parents, who own and run the farming business at Hendre Fach. The business of EJC

Ltd is independent from the farming enterprise and is indeed owned and operated by different people.

The dwelling is however sought in connection with the business of EJC Ltd and therefore no consideration of the agricultural holding/unit has been made by Officers.

As per Paragraph 4.2 of the TAN 6 Practice Guidance on Rural Enterprise Dwellings, an essential functional need relates to a specific management activity or combination of activities which require the ready presence of a worker at most times if the proper functioning of an existing enterprise is not to be prejudiced and which cannot be achieved by any other practical means such as electronic surveillance. Indeed, the TAN 6 Practice Guidance (Part 4.3) confirms it is a need determined by the character and management requirements of the enterprise, and not by any personal preferences or circumstances of any of the individual(s) involved.

Further to the above, Paragraph 4.8.1 of TAN 6 states that:

“A functional test is necessary to establish whether it is essential, for the proper functioning of the enterprise, for one or more workers to be readily available at most times. It should relate to unexpected situations that might arise, for which workers are needed to be on hand outside of normal working hours for the particular enterprise. Such requirements might arise, for example, if workers are needed to be on hand night and day to deal with an emergency that would threaten the continued viability and existence of the enterprise without immediate attention. Where there are existing dwelling(s) on the enterprise then the need for additional workers to live on the site for the proper functioning of the enterprise must be demonstrated to be essential”.

The Rural Enterprise Business Appraisal submitted with this application puts forward the argument that the business requires a 24/7 presence on site due to security and the possibility of theft, though as above, this could be overcome through the use of electronic surveillance and is not a reason for justifying an essential need for a dwelling as recognised by the practice guidance and relevant appeal decisions by the Welsh Government.

Section 4.3 of the Appraisal further attempts to justify a dwelling on the basis of requiring a 24/7 presence to be available to accept deliveries or greet unexpected visitors. It is considered that these circumstances are not ‘emergencies’ in terms of 4.8.1 of TAN 6, and further, it is considered that there are alternative ways of managing these circumstances. It is also not evidenced how failure to be present would threaten the ongoing viability of the business. Indeed, based on the submitted information it would appear that during the hours of 6am-6pm, Monday-Friday the applicant and other employees are at work at forests and not present at the base.

Further arguments put forward include weekend preparation work, however this is usual for this enterprise, and therefore can be planned for in advance. It does not represent an emergency situation for which a dwelling must be present.

Section 8.6 of the Appraisal references there being specific occasions whereby not having a 24/7 presence on site has “*restricted the ability to work*”, however no such appendix with examples of these has been submitted in support of the application.

Whilst it is accepted that the two 24/7 contracts which the business holds would result in unexpected call-outs, which could be during unusual working hours, it is not justified why the applicants existing dwelling cannot meet the needs of these situations. Indeed, the approximate 2.5 miles that the applicant would need to travel from their existing rented property in Carno, to the base, is a comparatively small distance to travel compared to the ongoing travel distance to any of the forests mentioned within 3.1 or 3.3 of the Appraisal. The 10 or so minutes that this would add is not sufficient to justify a dwelling on site.

Whilst the Appraisal argues that the erection of a dwelling would “*enable the rural enterprise workers to live at, or close to their place of work*” it is contended that the employees of EJC Ltd do not work at this location. Furthermore, TAN 6 Guidance makes clear that the purpose of a rural enterprise policy is not to provide a free choice for the personal preferences of the applicants, but rather the needs of the enterprise.

From the information provided, it is considered that the needs of the business can be met through the applicant’s existing property, together with the use of electronic surveillance.

Given the current nature of the business as described within the submitted Appraisal, it is not considered that a functional need would be established over time, and therefore there would also be no merit in granting consent for a temporary rural enterprise dwelling.

Overall, insufficient information has been provided to justify the functional need for a person to be available on site on a full-time basis and as such the proposal fails to accord with Technical Advice Note 6 and LDP policies SP6 and H1.

Time Test

Section 4.9.1 of TAN 6 states that “*if a functional requirement is established, it will then be necessary to consider the number of workers needed to meet it, for which the scale and nature of the enterprise will be relevant.*”

As has been established previously, in this instance the functional requirement has not been established.

Therefore, given a functional requirement has not been established, the proposed development also does not accord with the Time Test, and is therefore contrary with Technical Advice Note 6 and LDP Policies SP6 and H1.

It should be noted that should the above not have been the case, contrary to section 8.5 of the Appraisal, the submitted information does not contain any assessment in regard to the time test in any case.

Financial Test

Financial accounts have been submitted in support of this application for the year ending 31st March 2022, 31st March 2021, and for the time period of 1st January 2019 – 31st March 2020.

These accounts show profits for the business, though it is noted that the accounts appear to show that no direct wages are being paid for the number of EJC Ltd employees referenced within 4.5 of the Appraisal. This seems to be confirmed within the submitted Appraisal (section 9.5). The accounts show a 'directors' salary', though this 'salary' falls far short of a full-time wage, especially when accounting for the apparent 6am-6pm, Monday-Friday, core working hours of the business, together with the usual overtime and weekend work referenced within 4.3 of the Appraisal. This is contrary to section 5.1.6 of the TAN 6 Practice Guidance which states:

“With regard to the realistic return to unpaid labour, cross referencing to the labour assessment undertaken in the context of the functional test will be necessary. All labour required must be adequately remunerated either as a wage or a return, with an explicit entry in the financial appraisal showing ‘drawings’ in the form of money or kind. 28 It will not be realistic for a worker providing in excess of a standard day’s work to be costed and assessed on the basis of the basic daily rate. Furthermore, the labour cost must relate realistically to the skills of the individuals concerned. The absolute lowest threshold of remuneration will be the statutory minimum wage but, in the majority of cases, higher levels of remuneration will be appropriate. These can be defined by reference to returns in comparable enterprises or in the general economy. Evidence on this aspect will be an essential aspect of the Rural Enterprise Dwelling Appraisal.”

Whilst we do not know the number of hours worked by the part-time employees, based upon the above figure, the two full-time employees alone should be paid more than is shown in the accounts. With the appropriate wage expenditure unknown, it cannot be established with certainty that the profits would cover the wage expenditure, and remain at a level that would mean that the business is financially viable.

As such, it is considered that insufficient information has been submitted to demonstrate compliance with the financial test referred to in TAN 6.

Other Dwelling Test

Technical Advice Note 6 states that evidence must be provided to demonstrate that there are no buildings suitable for conversion on the holding, or any other dwellings within the locality which are suitable and available for occupation, which would fulfil the functional need of the enterprise.

The application has failed to establish a functional need for a dwelling on the site. Nevertheless, no information has been provided in respect of alternative accommodation available to buy, rent, or convert closer to the application site regardless. A search of Zoopla confirms that there is a property available for purchase approximately 1.2 miles from the application site. No information has been provided as to why this dwelling does not meet the applicant's perceived needs of the enterprise. Currently, from the information submitted it is considered that the applicant's current dwelling, being approx. 2.5 miles away from the site, meets the needs of the enterprise.

It is therefore considered that the applicants' current dwelling fulfils the needs of the enterprise. The proposed development therefore fails to comply with the other dwelling test in accordance with TAN6.

In light of the above tests, it is considered that the insufficient information has been submitted to support the proposal in regard to demonstrating a functional need for the proposed dwelling. The application also fails to justify the 'time', 'financial' and 'other dwelling' tests. The application is therefore contrary to policies SP6, H1, H6 of the Powys Local Development Plan (2018), Technical Advice Note 6-Planning for Sustainable Rural Communities (2006), and Planning Policy Wales (12th Edition, 2024)

For the reasons outlined above, it is therefore considered that the principle of development for both the change of use of the building, and the proposed rural enterprise dwelling, is contrary to current planning policy.

Design, Scale and Appearance

The agricultural building will not be subject to any external alterations as part of this application. The design, scale and appearance of the building itself will therefore remain as existing. Alterations are proposed in the form of creating parking areas, though the appearance of these will not be vastly different and will be expected alongside a building of this nature.

The dwelling as proposed measures 14.1 metres in width at ground level, and 7.1m in depth with a height of 7.3m to the ridgeline of the roof. The proposed detached double garage would measure 6.7m in width, and 5.4m in depth, with a ridge height of 4.7m. This would provide a dwelling with an internal floorspace of 150 square metres, and a detached double garage of 32 square metres.

TAN 6 Practice Guidance on Rural Enterprise Dwellings confirms that *“whether dwelling proposals are promoted as outline or full planning applications, all planning applications are required to indicate the scale of any proposed buildings and be supported by a Design and Access Statement. From this it will be possible to provide an indicative build cost to be provided as part of the financial testing. The expectation is that rural enterprises will be able to fund and sustain this cost in terms of either meeting a finance charge on borrowed capital or providing a modest return on the investment of personal capital.”*

It is further noted that TAN 6 requires that rural enterprise dwellings be used as affordable housing in the event that a rural worker cannot be found to occupy the dwelling. The Practice Guidance states that:

“The size of a dwelling should reflect the needs of the enterprise but, with the extension of potential occupancy to those eligible for affordable housing, applicants should also have regard to this consideration.”

The usual floorspace limit for affordable housing, as set out within the adopted Affordable Housing SPG, is 115 square metres for dwellings, and 15 square metres for detached outbuildings including garages. The scale of the proposed dwelling and garage as part of this application far exceeds that of the SPG, and is considered to be excessive of the needs of the enterprise, but also prohibitive to it being used as an affordable dwelling.

As such, it is considered that the scale of the dwelling and garage as proposed is contrary to TAN 6 and the Affordable Housing SPG.

Highways

PCC Highways have been consulted as part of the application process. Following the submission of additional information, they have confirmed that they have no objection to the development subject to recommended conditions being included on any granting of consent.

Neighbour Amenity

In considering the amenities enjoyed by occupiers of neighbouring properties consideration has been given to the LDP Residential Design SPG & LDP: DM13 (Part 11).

The proposed development is not considered to offer any impact upon loss of daylight to any neighbouring dwellings given the distance between the proposal and the closest neighbour (which is located some 120 metres away).

PCC Environmental Protection raised no objection to the proposed development subject to a tie between the proposed dwelling and proposed (retrospective) business to ensure that amenity is not impacted upon and possible future incompatibility of adjacent land uses. It is not clear as part of this application whether this approach would be appropriate, given that we do not have any information regarding noise to either confirm that it would have an impact upon the dwelling, or that it would not.

Should an application be progressing to a likely approval, it would need to be assessed further. Particular regard must be had at that time to TAN 6 Practice Guidance which states that *“where the functional need is associated with a building or group of buildings,*

the dwelling should not be sited so as to prejudice its potential future use as a unit of generally available affordable housing.” Given that there is land further away from the building available, it would need to be considered whether the re-siting of the dwelling would overcome concerns.

Should as part of any future planning application it be concluded that the amenity of the dwelling would be detrimentally impacted upon to a degree that would warrant it not being used as affordable housing, and that this could not be overcome by re-siting the dwelling further away, this would require a Section 106 agreement, which the landowners as well as applicants would need to agree to. Subject to this agreement, it is considered that the proposal would comply with relevant planning policy.

Flood Zone

With regard to flood risk, Natural Resources Wales's (NRWs) Development Advice Map (DAM) shows the application site to be partially within the C2 flood zone. The agricultural shed and yard falls entirely within this zone, whilst the area where the dwelling is proposed to be sited is outside of all flood extents. The more recent Flood Maps for Planning (FMfP) show the agricultural shed and yard are also located within Flood Zone 2 and 3. It is also noted that the U2539 which is utilised to access the site is located within a C2 flood zone and is located within Flood Zone 2 and Flood Zone 3 of the FMfP.

As part of this application “Land Adj Hendre Fach Flood Consequence Assessment” by Civil Engineering Solutions, dated May 2021, has been submitted. NRW have been consulted on the findings of the Assessment, and have confirmed that they do not object to it on the basis that the buildings proposed use is still low vulnerability, and no extensions are proposed which would displace flood water.

Whilst no comments have been received from the Land Drainage team as part of this application, it is noted that under a previous application (21/1070/OUT) they commented that as the Lead Local Flood Authority they are not aware of any past flooding here. The LLFA was content with the submitted FCA findings and recommended the applicant follow its recommendations. They also recommended that Emergency Planning be consulted, who went on to note that having visited the site, the river is well contained by raised banks and speaking to the occupier of Hendre Fach has never been known to break its banks at this location. Emergency Planning noted this is supported by no evidence of a flood debris ‘tide mark’ left on the adjacent fields. Emergency Planning noted in the event of flooding the most appropriate emergency plan would be to remain in the dwelling to wait for the flood water to subside, as it has historically been shown to. If there is a need to evacuate during a flood, for a medical emergency, then Emergency Planning recommended that this is done by 4x4 vehicle travelling east on the C2013 to Carno village, then south A470 towards Caersws.

Having considered PCC Land Drainage officers comments and Emergency Planning comments and the proposed development (a rural enterprise dwelling) it is considered

that the proposed development is acceptable in terms of flood risk.

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

Foul Drainage

The application proposes to install a private treatment plant with associated drainage to ground. This is in accordance with the hierarchy contained within Welsh Government Circular 008/2018.

NRW and Environmental Protection have been consulted and both have confirmed that they have no objection in relation to the proposed method of foul drainage.

Natural Environment

Protected Species

The application has been accompanied by "Preliminary Ecological Appraisal" by Turnstone Ecology dated August 2023. The Appraisal concludes that no signs of protected species were found, and recommends mitigation measures which should be adhered to.

NRW have been consulted on the submitted information and have not raised any objection. PCC Ecology have been consulted, though no comments have been received at the time of writing this report.

Officers note that the submitted Appraisal assesses the site for the proposed dwelling but does not include any assessment in relation to the building which is subject to change of use under this application. Nevertheless, it is acknowledged that this element of the proposal is retrospective, and that the building has not been subject to any physical alterations which may have impacted upon protected species at the time.

The implementation of the mitigation measures would be conditioned as part of any granting of consent.

Protected Sites

There are no statutorily designated protected sites within 2km of the development site. Further, there are no areas of non-statutory ancient woodland.

Biodiversity

Landscaping measures in the form of the new native hedgerow and trees is welcomed. These measures will ensure that a biodiversity net gain is achieved at the site, and will increase connectivity routes for bats, and nesting opportunities for birds.

No details of external lighting have been submitted, and a condition relating to the submission of these details prior to any external lighting being installed would therefore be attached to any granting of consent.

A Green Infrastructure Statement has not been submitted with the application. Nevertheless, it is acknowledged that the site where built development is proposed is currently grazed grassland, and no trees are understood to be required to be removed. A tree protection plan would be conditioned as part of any granting of consent to ensure that no detrimental impact was had upon the woodland area to the northwest.

Right of Way

Public footpath 206/80/1 runs through to the proposed development site, across the enterprise's yard, and proposed driveway of the dwelling.

PCC Countryside Services have been consulted on the proposed development, and have offered no objection to the development on the basis that pedestrian gates have been included for walkers to still utilise the footpath. These works will need to be licenced under S147 Highways Act 1980. This is separate legislation and consenting process to planning.

It is noted that Right of Ways (ROWs) are protected under separate legislation, which the planning system should not duplicate. The ROW would therefore be required to remain open and available for safe unimpeded public access at all times, both during development and following completion. An informative note in relation to this, on any granting of consent, is considered to be sufficient.

Conclusion

Having carefully considered the details submitted together with all statutory consultee responses, it is considered that the proposal would not comply with planning policy in that:

1. The application has failed to establish a functional need for a dwelling to serve the enterprise
2. No information has been provided in respect of the time test
3. Insufficient information has been provided in respect of the financial test
4. No information has been provided in respect of other dwelling test
5. The size and scale of the dwelling and garage does not accord with the requirements of the enterprise, and would be prohibitive to its use as an affordable dwelling

RECOMMENDATION

In light of the above, it is recommended that the application be refused based on the following reasons:

Reasons

1. Insufficient information has been submitted to support the principle of a rural enterprise dwelling in the open countryside, in terms of the functional need test, time test, financial test, and other dwelling test. As such the proposal fails to accord with policies SP6, H1, H6 of the Powys Local Development Plan (2018), Technical Advice Note 6 - Planning for Sustainable Rural Communities (2006), Planning Policy Wales (12th Edition, 2024).
2. The size and scale of the dwelling and garage as submitted does not accord with the requirements of the enterprise, and would be prohibitive of its use as an affordable dwelling. As such the proposal fails to accord with Technical Advice Note (TAN) 6 - Planning for Sustainable Rural Communities (2006), Planning Policy Wales (12th Edition, 2024), policies SP3, H1, and DM13 of the Powys Local Development Plan (2018), and the adopted Powys Affordable Housing Supplementary Planning Guidance (2018).

Case Officer: Rhian Griffiths, Senior Planning Officer
Tel: 01597 827352 E-mail: rhian.griffiths@powys.gov.uk