

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

<b>Application No:</b> P/2017/1114	<b>Grid Ref:</b> 307147.89 246177.92	
<b>Community Council:</b> Erwood	<b>Valid Date:</b> 11/10/2017	<b>Officer:</b> Thomas Goodman
<b>Applicant:</b>	Mr Jones, Oak Villa, Erwood, Builth Wells, Powys	
<b>Location:</b>	Land at Alltmawr, Abernant, Erwood, Powys	
<b>Proposal:</b>	Full - Application for the retention of a single affordable dwelling and associated works.	
<b>Application Type:</b>	Application for Full Planning Permission	

### The reason for Committee determination

Cllr Laurie-Parry has called the application.

### Site Location and Description

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 Unitary Development Plan (2010). The application site is surrounded by agricultural land, with ancient woodland to the west, private access is to the north off the A470 trunk road.

Consent is sought retrospectively for the retention of a single affordable dwelling and associated works. The dwelling measures approximately 14 metres in length and 6.2 metres in width (86.8 metres squared externally). The dwelling measures approximately 5.5 metres in height to ridge and 2.7 metres in height to the eaves. The dwelling is finished in horizontal timber boarding under a slate grey corrugated steel sheet roof.

### Consultee Response

#### Erwood CC

Erwood Community Council agreed to support this application.

#### PCC Highways

Powys County Council as Highway Authority do not wish to comment on this application as the access is onto a trunk road which comes under the jurisdiction of the Welsh Government.

#### PCC Building Control

No response received at the time of writing this report.

## Wales and West Utilities

According to our mains records Wales & West Utilities has no apparatus in the area of your enquiry. However Gas pipes owned by other GT's and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.

Safe digging practices, in accordance with HS(G)47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus.

## Welsh Water

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

### Sewerage

As the applicant intends utilising a private treatment works we would advise that the applicant contacts Natural Resources Wales who may have an input in the regulation of this method of drainage disposal.

However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

If you have any queries please contact the undersigned on 08009172652 or via email at [developer.services@dwrcymru.com](mailto:developer.services@dwrcymru.com)

Please quote our reference number in all communications and correspondence.

## PCC Environmental Health

Details of the proposed package treatment plant or septic tank should be provided and prior to any planning permission being granted the applicant/agent should submit percolation test results in order to demonstrate that the package plant or septic tank, its soakaway and the ground conditions are suitable and sufficient for the foul drainage. The percolation test should be carried out in accordance with document H2 of the Building Regulations and calculations to be submitted for approval by completing and returning the attached Percolation Test Calculation Form.

Environmental Protection to be advised, via the Planning Authority, when the testing is carried out, so that a site visit can be made to examine the exposed ground and percolation test holes which must be left undisturbed until inspected.

In addition, Welsh Government has advised that, all septic tanks and small sewage treatment plant discharges in Wales will need to be registered with Natural Resources Wales. More information, including a step by step guide to registering can be found at the following link <http://www.naturalresources.wales/media/2879/septic-tank-registrationguidance.pdf?lang=en>.

### PCC Ecologist

The proposed development does not fall within Schedules 1 or 2 of the Town and Country Planning (Environmental Impact Assessment (Wales) Regulations 2017.

No ecological information has been submitted with this application. These observations are based on an interpretation of available aerial and street imagery, available plans, and historical biodiversity records provided by the Powys and Brecon Beacons National Park Biodiversity Information Service.

The application site is located to the west of the A470, approximately 6km south-east of Builth Wells. The site, which is accessed directly from the A470, lies within an extensive area of woodland, and forms part of an elongated operational yard which was originally in use for forestry-related activities. Approximately 120m south of this area is a building used for forestry purposes. The application site lies on a shelf above the level of the rest of the site and comprises a wooden chalet, associated shed with a wire run used as a kennel and CCTV which sits on top of a pole.

The site is screened by the mature trees of Fron Wood, which rise up the hillside directly to the west. The mature hedgerows and belts of trees to the east also screen the site from the A470.

Historic records show a number of different European Protected Species within the search area of the proposals. These include Hazel Dormouse (126m), several bat species including Lesser Horseshoe (705m), Noctule (26m), Common and Soprano Pipistrelle (26m) and Brown Long-eared bats (705m). Great Crested Newt (850m) and Otter records (240m) were also found within the search area.

The woodland to the west of the property may offer suitable habitat for Hazel Dormouse. I therefore recommend that prior to commencement of development, a Reasonable Avoidance Method Statement for Hazel Dormice shall be submitted to the Local Planning Authority and implemented as approved and maintained thereafter unless otherwise agreed in writing with the LPA. The application states that no trees are to be removed or adversely affected by the proposals, therefore no significant adverse impacts to Dormice are anticipated.

The mature woodland directly to the west, and the mature hedgerow and belts of trees to the east is considered to be suitable habitat for several species of roosting, foraging and commuting bats. There are many trees located within the immediate area and also bordering the nearby watercourse, which may offer important connectivity to other areas within the wider landscape. No adverse impacts on these areas are anticipated.

As artificial lighting can be extremely disturbing to some bat species, any external lighting features for the development should be carefully positioned with consideration for bats. Any such lights should be angled downwards to illuminate areas for human access and where health and safety considerations demand only, and should be placed no more than 2.5m

above ground level. These lights should also be on an automatic timer so that such lights switch off after a few minutes, and do not stay on all night. Motion sensors would be acceptable. A lighting design scheme to take any impacts on nocturnal wildlife into consideration shall be submitted for written LPA approval.

A number of ponds exist in the wider landscape which may offer suitable breeding ponds for Great Crested Newts (GCN), however these ponds are not located close to the proposed development and will not be affected by the proposals. The woodland, however, may provide suitable terrestrial habitat during the Winter for hibernation (generally October to February inclusive). As the application is for continued utilisation of the existing building, and no additional development is required, no adverse effects on GCN are anticipated.

The areas surrounding the River Wye/Afon Gwy may provide suitable areas for Otter resting sites/holts. However, due to the nature and scale of the proposals, and the fact these resting areas/holts are likely to be located at least 180m from the proposals (and separated by the A470 road, fields and a section of woodland) it is unlikely that any such areas would be adversely affected.

The surrounding woodland and mature hedgerows may provide suitable sheltering areas for common species of reptile. However, these areas will not be affected by the scheme, so no negative impacts on reptiles are anticipated.

There are historic records of Badger (426m), Hedgehog (480m), White-clawed crayfish (905m) and Red squirrels (374m) within the search area of the proposals.

The woodland to the west and mature hedgerows to the east of the property appear to offer suitable habitat for Badgers, Hedgehogs and Red squirrels. It is to my understanding that no trees or hedgerows are to be removed as part of the proposals, therefore the continued use of the building will not result in any adverse effects on these species.

The River Wye/Afon Gwy may provide suitable habitat for White-clawed crayfish. However, due to the nature, scale and distance of the site from the river (180m), no significant adverse impacts on this species is anticipated.

The applicant should be mindful that, in accordance with Powys County Council's duty under Section 7 of the Environment (Wales) Act 2016, TAN 5, UDP policies and biodiversity SPG, as part of the planning process PCC should ensure that there is no net loss of biodiversity or unacceptable damage to a biodiversity feature.

A number of Section 7 Priority Species were found within the search area of the proposals, including Pine Marten (733m) and Brown Hare (763m).

It seems the woodland to the west of the property may offer suitable habitat for Pine Martens and other small mammals. No adverse impacts to these species are anticipated due to the nature of the development.

Hedgerows are a Section 7 Priority Habitat. However, it is to my understanding that no hedgerows will be removed as part of the application. Therefore, no significant adverse impacts on hedgerows are foreseen.

Rivers are a Section 7 Priority Habitat, and the River Wye/Afon Gwy is located 180m east of the proposals and is separated from the site by the A470 road, a section of woodland, hedgerows and scattered trees, and agricultural fields. Due to the nature, scale and location of the site, no adverse impacts are anticipated as a result of the scheme.

The surrounding woodland, mature hedgerows and belts of trees within the immediate are of the proposals may offer suitable habitat for a number of Section 7 nesting birds. Therefore, it is recommended that two bird boxes should be provided as part of the proposals as a biodiversity enhancement measure.

The River Wye/Afon Gwy SAC is located approximately 240m to the east of the site. Due to the nature, scale and location of the proposals, no significant adverse impacts are anticipated.

Coed Aberedw SSSI is situated 700m north-east of the proposals and Llandeilo, Rhulen and Llanbedr Hills SSSI is located 450m east of the site.

The River Wye (Upper Wye)/Afon Gwy (Gwy Uchaf) lies 240m east of the proposed development.

Due to the nature, scale and location of the proposals, no significant adverse impacts are anticipated.

There are no Local Sites within 500m of the proposals, although a number of Sites of Importance for Nature Conservation (SINC) are situated within 1km.

Allt Mawr Uchaf is located 900m away in the north-western corner of Fron Wood, the distance and location from the site means this SINC will not be adversely affected by the proposals. – 900m

A cluster of three SINCS are also located to the north-west of the proposals. Old Bedw is located 1km away, Old Bedw 2 is situated 922m from the site, and the Old Bedw GCN pond is located 760m north-west of the proposals. These SINCS feature outside of the woodland and are at a distance that means the nature and scale of the proposals is not anticipated to affect them due to the distance between these sites and the proposal area.

No ecological information has been submitted with the application.

I recommend that two bird boxes should be provided as part of the proposals as a biodiversity enhancement measure.

## Informatives

### 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.

### Welsh Government Trunk Road Agency

I refer to your consultation of 4<sup>th</sup> January 2018 regarding the above application, and advise that the Welsh Government as highway authority for the A470 trunk road directs that planning permission is not granted at this time as the applicant has provided insufficient information to determine the application.

The applicant must provide the following information to support this application or resubmit the application with the following details;

The applicant must forward a suitably scaled drawing detailing the proposed access off the A470 trunk road, which must incorporate the following aspects:-

- a) Full length Visibility Splays in either direction from a suitable set-back.
- b) Gradient of the access road and the A470 trunk road carriageway
- c) Access width and radii dimensions
- d) Access surfacing type along with depth and width dimensions
- e) Parking areas
- f) If a gate is to be installed on the access

The above aspects must conform to the Design Manual for Roads and Bridges (DMRB).

The applicant must provide existing and proposed Annual Average Daily Traffic (AADT - vehicle traffic counts) for the access with the A470.

If you have any further queries, please forward to the following Welsh Government Mailbox [NorthandMidWalesDevelopmentControlMailbox@Gov.Wales](mailto:NorthandMidWalesDevelopmentControlMailbox@Gov.Wales).

### **Representations**

Following the display of a site notice and press advertisement, 1 letter of objection has been received from members of the public. In summary the objection refers to the following matters:

- The application is retrospective and therefore no significant weight should be given to the affordability argument.
- Landscape and visual impacts

## **Planning History**

None as per GIS

## **Principal Planning Constraints**

Open Countryside

## **Principal Planning Policies**

### National planning policy

Planning Policy Wales (Edition 9, November 2016)

- Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (2015)
- Technical Advice Note (TAN) 2: Planning and Affordable Housing (2006)
- Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009)
- Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010)
- Technical Advice Note (TAN) 12: Design (2016)
- Technical Advice Note (TAN) 18: Transport (2007)
- Technical Advice Note (TAN) 23: Economic Development (2014)

### Local planning policies

Powys Unitary Development Plan (2010)

- SP1 – Social, Community and Cultural Sustainability
- SP5 – Housing Developments
- GP1 – Development Control
- GP3 – Design and Energy Conservation
- GP4 – Highway and Parking Requirements
- ENV1 – Agricultural Land
- ENV2 – Safeguarding the Landscape
- ENV3 – Safeguarding Biodiversity and Natural Habitats
- ENV7 – Protected Species
- HP3 – Housing Land Availability
- HP4 – Settlement Development Boundaries and Capacities
- HP5 – Residential Developments
- HP6 – Dwellings in the Open Countryside
- HP9 – Affordable Housing in Rural Settlements
- HP10 – Affordability Criteria
- DC11 – Non-mains Sewage Treatment
- TR2 – Tourist Attractions and Development

Powys Residential Design Guide (October 2004)

## **Officer Appraisal**

### Section 38 (6) of the Planning and Compulsory Purchase Act 2004

Members are advised to consider this application in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

### Planning History

The dwelling hereby applied for is subject to enforcement notices. In relation to this application the enforcement notice required that the residential use of the dwelling shall cease and removed in its entirety.

### Principle of Development

For the purposes of the Powys Unitary Development Plan, the site lies within the open countryside. Policy HP4 states that 'outside settlement boundaries, proposals for new residential development will only be approved where they comply with UDP Policies HP6, 8 HP8 or HP9.'

When considering dwellings in the open countryside policy HP6 is carefully considered. The policy states that unless the proposal is for a development in compliance with the affordable housing policies of this plan, proposals for dwellings in the open countryside will only be permitted for agricultural or forestry uses or in association with a suitable rural enterprise such dwellings will only be acceptable where they meet the following criteria:

- It can be clearly demonstrated that there is a functional need for the development and that the proposed enterprise would be financially viable.
- The dwelling should utilise an existing building in accordance with the conversion policy (GP6) or if none is available, any new dwelling shall be located adjacent to existing buildings wherever possible.

In this instance the application does not relate to a forestry enterprise. The dwelling proposed is neither related to agriculture and therefore does not comply with policy HP6 of the Powys UDP. The proposed dwelling has therefore been put forward as an affordable dwelling within the open countryside.

The proposed development is not located within a settlement, nor does it adjoin a settlement with a development boundary, it is also not located within a rural settlement as defined by the Powys UDP. The nearest settlement is Erwood located to approximately 3,900 metres to the south east of the application site. The proposed development therefore does not comply with policy HP7, HP8 or HP9 of the Powys UDP (2010).



The proposal is therefore considered to be a departure from the adopted Powys Unitary Development Plan.

The departure is being justified by the applicant on the basis that Powys County Council does not have a 5 year housing land supply.

Paragraph 9.2.3 of Planning Policy Wales states that:

‘Local planning authorities must ensure that sufficient land is genuinely available or will become available to provide a 5-year supply of land for housing judged against the general objectives and the scale and location of development provided for in the development plan.’

The Powys Joint Housing Land Availability Study (JHLAS) 2015 states that there was 2.2 years supply of housing land in the Powys Local Planning Authority (LPA) area. Failure to have a 5-year housing land supply is an important material consideration that should be taken into account when determining this scheme. Technical Advice Note 1: Joint Housing Land Availability Studies (2015) states as follows:

“The housing land supply should also be treated as a material consideration in determining planning applications for housing. Where the current study shows a land supply below the 5 year requirement or where the local planning authority has been unable to undertake a study, the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies”.

The JHLAS identified an undersupply of housing land within Powys and, as mentioned above, TAN 1 confirms that the need to increase supply should be given considerable weight but only where the development would otherwise comply with development plan and national planning policies.

### Sustainability

In considering the proposed development, Members are asked to consider whether the provision of a single dwelling in this location will contribute to the noted shortfall and whether this is regarded as a sustainable location for new residential development. This can relate to a range of matters including education, shops and services.

The proposed development is located approximately 3,900 metres as the crow flies from the settlement of Erwood, the closest settlement with facilities. Given the proposed developments location it is considered that this development is in an unsustainable location within the open countryside.

In this instance the proposed development does not comply with the affordable housing policies of the Powys UDP and is located in an unsustainable location.

### Highway Safety

Policy GP4 of the Powys Unitary Development Plan requires a safe access, parking and visibility splays which are a fundamental requirement of any development.

Powys County Council's Highway Authority and the Welsh Government Trunk Road Agency have been consulted on the proposed development. The access from the application site joins the A470 trunk road and therefore falls under the jurisdiction of the Welsh Government Trunk Road Agency (TRA). The TRA have stated that the applicant has provided insufficient information to determine this application has been submitted in support of this application and would require information relating to visibility splays and details regarding the access.

Given the comments received from the TRA it is considered that insufficient information has been submitted in support of this application to demonstrate that the proposed development would not have a detrimental impact upon highway safety. The proposed development therefore fails to comply with policy GP4 of the Powys Unitary Development Plan (2010).

### Biodiversity

Policies ENV3 and ENV7 of the Powys Unitary Development Plan (2010) seek to safeguard and wherever possible enhance protected species and their habitats. This is further emphasised within Technical Advice Note (TAN) 5.

Powys County Council's Ecologist has been consulted on the proposed development. It is noted that no ecological information has been submitted with this application. The Ecologist has noted that the site is located within an extensive area of woodland. Historic records show a number of different European Protected Species within the search area of the proposal. It is recommended that a Reasonable Avoidance Method Statement be submitted prior to the commencement of development. Furthermore it is noted that the mature woodland provides suitable habitat for several species of bats, the ecologist has stated that the proposed development would have no adverse impacts on these areas. In order to ensure that no bats are adversely affected by artificial light, an appropriately worded condition will be attached to any granting of consent in order to secure a lighting scheme to be submitted and approved. The Ecologist has also considered the River Wye SAC which is located approximately 240 metres to the east of the site. The Officer has stated that due to the nature, scale and location of the proposal, there will be no significant adverse impacts anticipated.

In light of the above and the attachment of appropriately worded conditions it is considered that the proposed development fundamentally complies with policies ENV3 and ENV7 of the Powys UDP.

### Environmental Health

Powys County Council's Environmental Health Officer has been consulted on the proposed development and has stated that details of the proposed package treatment plant are required. Given that a private package treatment plant is to be utilised it is considered that an appropriately worded condition can be attached to any granting of consent in order to ensure an appropriate method of foul drainage.

### Other Legislative Considerations

#### Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those

functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

### Equality Act 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The above duty has been given due consideration in the determination of this application. It is considered that there would be no unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

### Planning (Wales) Act 2015 (Welsh language)

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material unacceptable effect upon the use of the Welsh language in Powys as a result of the proposed decision.

### Wellbeing of Future Generations (Wales) Act 2015

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that the proposed development is in accordance with the sustainable development principle through its contribution towards the well-being objectives.

### **Recommendation**

The proposed development is a departure from the Powys Unitary Development Plan (2010) and does not comply with affordable housing policies HP6, HP7, HP8 and HP9 of the Powys UDP (2010). The recommendation is therefore one of refusal on the following grounds:

1. The proposed development constitutes unjustified development in the open countryside contrary to adopted policies on development in the open countryside.

The proposed development does not comply with policies HP6, HP7, HP8 and HP9 of the Powys Unitary Development Plan (2010).

2. Insufficient information has been provided to properly assess the acceptability of the development as to whether the development will have a detrimental impact upon highway safety. The proposed development therefore does not comply with policy GP4 of the Powys Unitary Development Plan (2010) and Technical Advice Note: 18 Transport (2007).

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