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For all enquiries relating to this agenda please contact Rebecca Barrett
(Tel: 01443 864245 Email: barrerm@caerphilly.gov.uk)

Date: 2nd September 2021

Dear Sir/Madam,

A digital meeting of the **Planning Committee** will be held via Microsoft Teams on **Wednesday, 8th September, 2021 at 5.00 pm** to consider the matters contained in the following agenda. You are welcome to use Welsh at the meeting, a minimum notice period of 3 working days is required should you wish to do so.

This meeting will be recorded and made available to view via the Council's website, except for discussions involving confidential or exempt items. Therefore the images/audio of those individuals present and/or speaking at Planning Committee will be publicly available to all via the recording on the Council website at www.caerphilly.gov.uk

Due to restrictions in relation to Covid19, Planning Committee Site Visits have been suspended and this meeting will not be open to the press and general public. However interested parties may make a request to attend remotely and speak in regard to any item on this agenda. To obtain further details on this process please contact the Committee Clerk at barrerm@caerphilly.gov.uk

Yours faithfully,

A handwritten signature in black ink, appearing to read 'CHarrhy'.

Christina Harrhy
CHIEF EXECUTIVE

AGENDA

- 1 To receive apologies for absence.

Pages

A greener place Man gwyrdach

Correspondence may be in any language or format | Gallwch ohebu mewn unrhyw iaith neu fformat



2 Declarations of Interest.

Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on this agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.

To approve and sign the following minutes: -

- 3 Planning Committee held on 11th August 2021. 1 - 4

To receive and consider the following report(s): -

- 4 Application No. 20/1073/FULL - Land At Grid Ref 315195 191134, Wingfield Crescent East Lane, Llanbradach, Caerphilly. 5 - 28
- 5 Tree Preservation Order 91 (2021) - Land within the curtilage of 60 Park Road, Bargoed. 29 - 48

Circulation:

Councillors M.A. Adams, Mrs E.M. Aldworth (Vice Chair), C. Andrews, J. Bevan, M. Davies, N. Dix, J.E. Fussell, R.W. Gough, L. Harding, A.G. Higgs, A. Hussey, B. Miles, J. Ridgewell, R. Saralis (Chair), J. Simmonds and J. Taylor

And Appropriate Officers

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PLANNING COMMITTEE

MINUTES OF THE MEETING HELD VIA MICROSOFT TEAMS ON WEDNESDAY, 11TH AUGUST 2021 AT 5:00 PM

PRESENT:

Councillor R. Saralis – Chair

Councillors:

M. Adams, C. Andrews, J. Bevan, M. Davies, N. Dix, J. Fussell, R.W. Gough, L. Harding, B. Miles, J. Ridgewell, J. Taylor

Cabinet Member: Councillor A. Whitcombe (Sustainability, Planning and Fleet)

Together with:

M. Woodland (Senior Solicitor), R. Kyte (Head of Regeneration and Planning), R. Thomas (Planning Services Manager), C. Powell (Area Principal Planner), A. Pyne (Principal Planner), E. Rowley (Area Senior Planner), L. Cooper (Assistant Engineer), M. Godfrey (Team Leader - Pollution Control and Emergency Planning & Resilience), R. Barrett (Committee Services Officer)

RECORDING AND VOTING ARRANGEMENTS

The Chair reminded those present that the meeting was being recorded and would be made available following the meeting via the Council's website – [Click Here to View](#) Members were advised that voting on decisions would be taken via Microsoft Forms.

1. APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillors E. Aldworth (Vice-Chair), A.G. Higgs, A. Hussey and J. Simmonds.

2. DECLARATIONS OF INTEREST

Councillor C. Andrews declared a personal and prejudicial interest in [Agenda Item No. 6 - 21/0564/COU - Unit 2, Victoria House, Victoria Road, Rhymney, Tredegar, NP22 5NU](#) on the basis of her involvement in a matter involving the applicant's father and a Member of Council, and left the meeting during consideration of this item.

3. MINUTES – 14TH JULY 2021

It was moved and seconded that the minutes of the meeting held on the 14th July 2021 be agreed as a correct record and by way of Microsoft Forms and verbal confirmation (and in noting there were 11 for, 0 against and 0 abstentions) this was unanimously agreed.

RESOLVED that the minutes of the Planning Committee held on 14th July 2021 (minute nos. 1-4) be approved as a correct record.

4. APPLICATION NO. 21/0350/FULL - REDLANDS, THE AVENUE, LLANBRADACH, CAERPHILLY, CF83 3LL

The Planning Case Officer presented the application, with it confirmed in the accompanying report that the recommendation in respect of the proposal had taken full account of, and was in conformity with, both Future Wales and Planning Policy Wales Edition 11.

Following consideration of the application it was moved and seconded that the recommendation in the Officer's report be approved, and by way of Microsoft Forms and verbal confirmation (and in noting there were 9 for, 0 against and 1 abstention) this was agreed by the majority present.

RESOLVED that:-

- (i) subject to the conditions contained in the Officer's report the application be GRANTED;
- (ii) the applicant be advised that many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Bats are protected under The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and Countryside Act 1981 (as amended).

Please be advised that, if bats are discovered, all works should stop immediately and Natural Resources Wales (NRW) should be contacted for advice on any special precautions before continuing;

- (iii) the applicant be advised that the proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is also available on the [Coal Authority website](#).

5. APPLICATION NO. 21/0382/FULL - ANEURIN PARK, HEOL ANEURIN, PENYRHEOL CAERPHILLY.

The Planning Case Officer presented the application, with it confirmed in the accompanying report that the recommendation in respect of the proposal had taken full account of, and was in conformity with, both Future Wales and Planning Policy Wales Edition 11.

Following consideration of the application it was moved and seconded that the

recommendation in the Officer's report be approved, and by way of Microsoft Forms and verbal confirmation (and in noting there were 10 for, 0 against and 0 abstentions) this was unanimously agreed.

RESOLVED that:-

- (i) subject to the conditions contained in the Officer's report the application be GRANTED;
- (ii) the applicant be advised that the proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is also available on the [Coal Authority website](#).

6. APPLICATION NO. 21/0564/COU - UNIT 2, VICTORIA HOUSE, VICTORIA ROAD, RHYMNEY, TREDEGAR, NP22 5NU

Councillor C. Andrews declared a personal and prejudicial interest and left the meeting during consideration of this item.

The Planning Case Officer presented the application, with it confirmed in the accompanying report that the recommendation in respect of the proposal had taken full account of, and was in conformity with, both Future Wales and Planning Policy Wales Edition 11.

Councillor C. Cuss spoke on behalf of local residents in objection to the application and Mr J. Jones (the applicant) spoke in support of the application.

Following consideration of the application it was moved and seconded that subject to the conditions contained within the Officer's report, together with an additional condition relating to the use of the adjoining café in the interests of highway safety and traffic movement, the recommendation in the Officer's report be approved. By way of Microsoft Forms and verbal confirmation (and in noting there were 10 for, 1 against and 0 abstentions) this was agreed by the majority present.

In accordance with Rule of Procedure 15.5, Councillor J. Bevan wished it recorded that he had voted against the application.

RESOLVED that subject to the conditions contained in the Officer's report and the following additional condition the application be GRANTED.

Additional Condition (07)

Notwithstanding the approved plans, the development hereby approved shall not be carried out until the existing A3 café use at the application site has ceased to trade. The HMO units hereby approved shall not thereafter be occupied concurrently with the A3 café use.

Reason

In the interests of highway safety and to ensure that adequate off street parking is provided in accordance with Policy CW3 of the Caerphilly County Borough Local Development Plan up to 2021 – Adopted November 2010.

The meeting closed at 6:27 p.m.

Approved as a correct record and subject to any amendments or corrections agreed and recorded in the minutes of the meeting held on 8th September 2021.

CHAIR

Application Number: 20/1073/FULL

Date Received: 10.02.2021

Applicant: United Welsh Housing Association

Description and Location of Development: Erect residential development of 23 No. affordable homes, car parking, landscaping and associated works - Land At Grid Ref 315195 191134 Wingfield Crescent East Lane Llanbradach

APPLICATION TYPE: Full Application

SITE AND DEVELOPMENT

Location: Land At Grid Ref 315195 191134, Wingfield Crescent East Lane, Llanbradach.

Site description: The application site is a broadly rectangular but irregular shaped parcel located on land to the east of houses on Wingfield Crescent/Plasturtwyn Terrace and to the south of bungalows on Heol Ty-Gwyn. The site also lies to the north of Wingfield Works which comprises commercial and industrial units.

In respect of existing dwellings, the site is located east of residential properties including a detached property (Lowlands) and the terrace 2-13 (sequential no's) Plasturtwyn Terrace with an intervening rear lane between the rear amenity spaces of these dwellings and the application site. The site then extends across to the western and northern boundaries of an existing industrial estate (Wingfield Works) and to the rear boundary of properties at end of the residential street of Heol Ty Gwyn (60-64 evens only and 65). The proposed vehicle access (shared with existing planning permission 18/1089/FULL which is currently being constructed) is to the north and this access then turns west to join the existing highway network close to an existing side lane between 13 and 14 Plasturtwyn Terrace which provides access onto Wingfield Crescent.

Development: Erect residential development of 23 No. affordable homes, car parking, landscaping and associated works.

The proposed site layout has its main vehicular access to the north to connect to the spine road of the adjacent residential development approved under a separate planning permission (18/1089/FULL) and which is now under construction and has its access from Wingfield Terrace via a side lane.

The development subject to this application is arranged around the continuation of the above mentioned spine road with a 'T' junction with two roads which extend to the east and west. The western spur then turns southwards before a further element projecting westwards and terminates just before the western boundary. The proposed housing

development roads are a mixture of adoptable road and private driveways located at the two ends.

The proposed houses and apartments in two storey blocks (apart from a bungalow) are arranged with their principal elevations fronting the internal access road with blocks 1 and 2 (comprising of 8 apartments) facing eastwards and all the other blocks facing northwards.

The proposed housing mix is as follows:

- 12 No. 1 bedroom apartments.
- 4 No. 2 bedroom dwellings.
- 4 No. 3 bedroom dwellings.
- 1 No. 2 bedroom accessible bungalow.
- 1 No. 2 bedroom dwelling.
- 1 No. 1 bedroom accessible apartment.

Dimensions:

Blocks 1 and 2 which each comprise 8 residential units both measure approximately 29m in length by 7.8m in depth (excluding entrance porches) with an overall height of 7.9m.

Block 3 which comprises 2 residential units measures approximately 7.9m wide by 9.9m deep (excluding entrance porch) with an overall height of 8.5m.

Block 4 which comprises 4 residential units measures approximately 23.5m wide with a maximum depth of 9.3m and an overall height of 8.7m.

Block 5 which comprises 4 residential units measures approximately 23.5m wide with a maximum depth of 9.3m and an overall height of 8.6m.

Block 6 which comprises 4 residential units measures approximately 15.3m wide by 7.9m deep (excluding entrance porch) and an overall height of 7.9m.

Block 7 (Bungalow) which comprises 1 residential units measures approximately 11.5m wide by 10.1m deep with an overall height of 5.9m.

Materials:

Walls.

Render : Through coloured render, Colour : cream.

Stone: Stone panel cladding.

Cladding boards: Grey coloured fibre cement (wood effect) horizontal boarding.

Roof: Blue/black artificial slate.

Windows: Grey PVCu.

Entrance canopies: GRP (Glass reinforced plastic) prefabricated porch in grey colour.

Ancillary development, e.g. parking: Parking provided in a mixture of on-plot, frontage and off-street parking bays.

PLANNING HISTORY 2010 TO PRESENT

18/1089/FULL - Erect residential development of 30 No. affordable homes, highway improvement works, access, car parking and associated works - Granted 22.03.19.

19/0680/NMA - Seek non material amendment to planning application 18/1089/FULL (Erect residential development of 30 No. affordable homes, highway improvement works, access, car parking and associated works) changes to the fenestration of the proposed dwellings including changes to facing materials - Granted 11.09.2019.

20/0607/COND - Discharge conditions 3 (external finishing materials), 5 (highway deposit scheme), 6 (highway scheme), 7 (travel plan), 9 (access improvement scheme), 13 (japanese knotweed and himalayan balsam), 16 (contamination - scheme to treat), 19 (CEMP), 20 (hard and soft landscaping scheme), 21 (boundary treatment/planting), 22 (drainage) and 24 (electric charging points for vehicles) of planning consent 18/1089/FULL (Erect residential development of 30 No. affordable homes, highway improvement works, access, car parking and associated works) - Pending Consideration.

POLICY

LOCAL DEVELOPMENT PLAN Caerphilly County Borough Local Development Plan up to 2021 - Adopted November 2010.

Site Allocation: The site lies within the defined settlement boundary.

Policies: Policy CW1 (Sustainable Transport, Accessibility and Social Inclusion), CW2 (Amenity), CW3 (Highways), Policy CW6 (Trees, Woodland and Hedgerow Protection), Policy CW7 (Protection of Open Space), Policy CW11 (Affordable Housing Provision), CW15 (General Locational Constraints), Policy SP4 (Settlement Strategy), SP5 (Settlement Boundaries), SP6 (Place making), Policy SP7 (Planning Obligations), SP10 (Conservation of Natural Heritage), Policy SP14 (Total Housing Requirements), Policy SP15 (Affordable Housing Target), Policy SP19 (Transport Infrastructure Improvements).

NATIONAL POLICY

Planning Policy Wales Edition 11.

Technical Advice Note 1: Joint Housing Land Availability Studies (2015).
Technical Advice Note 2: Planning & Affordable Housing (2006).
Technical Advice Note 5: Nature Conservation and Planning (2009).
Technical Advice Note 12: Design (2016).
Technical Advice Note 16: Sport Recreation and Open Space (2009).
Technical Advice Note 15: Development and Flood Risk (2004).
Technical Advice Note 18: Transport (2007).

SUPPLEMENTARY PLANNING GUIDANCE

Caerphilly Basin Masterplan - Approved July 2018.
Supplementary Planning Guidance note LDP 6 (Better Places to Live).

ENVIRONMENTAL IMPACT ASSESSMENT

Did the application have to be screened for an EIA? No.

Was an EIA required? No.

COAL MINING LEGACY

Is the site within an area where there are mining legacy issues? This is a Low risk area, and so it is intended to attach an informative note about mining conditions in the area.

CONSULTATION

Principal Valuer - No comments.

Ecologist - Raise no objection to the development, but make recommendations for the protection of biodiversity.

Transportation Engineering Manager - Raises no objections to the principle of development and confirms that the scale of the development is such that the additional trip generation would not have a detrimental impact on the local highway network. Advises that the proposed parking should be increased by three spaces.

Head Of Public Protection - Environmental Health have no adverse comments to make with regards to the above planning application, subject to the development should be carried out in accordance with The Noise Assessment Report and subject to conditions to address contamination and construction issues.

Senior Engineer (Land Drainage) - Confirm sustainable drainage approval (SAB approval) is required for the development. Recommend conditions and advisory notes are attached to any permission.

Senior Arboricultural Officer (Trees) - I note the contents of the tree survey and concur that there is little of amenity value in Arboricultural terms on the site itself. I note also that the off-site trees are identified and root protection fencing is to be installed to protect these trees/hedges. Such protection would need to be explicit within the consent, if permission is granted.

Head Of Public Services - Provides advice on waste collection and bin storage requirements.

Dwr Cymru - No objections.

Western Power Distribution - Request that developer is advised that if they require a new connection or a service alteration, they need to make a separate application to WPD.

Landscape Architect - Raises no objection to the development, provides advice and recommendations on boundary treatments, planting and maintenance.

CCBC - 21st Century Schools - Advise that there is adequate room for catchment pupils in all schools (both English and Welsh).

Llanbradach & Pwllpant Community Council - Whilst members of Llanbradach & Pwllpant Community Council acknowledge the need for affordable homes within the borough the proposal of phase two Plasturtwyn Case Ref: 20/1073/FULL raises many issues and our objections are as follows:-

- (i) Insufficient off-road parking bays for existing residents of Plasturtwyn Terrace.
- (ii) Health & safety issue with back gates opening directly onto the lane/proposed highway with no pavement.
- (iii) Garage openings too are directly onto a potential highway.
- (iv) Lane is not wide enough for the passing of two vehicles.
- (v) Land ownership issues.
- (vi) A proposed communal bin store is too close to an existing property.

Ultimately we also have to question the legitimacy and integrity of holding a public consultation during a pandemic, when local bye-elections have been placed on hold, members of the public have been instructed to stay at home and the Senedd elections possibly being rescheduled for the autumn.

CCBC Housing Enabling Officer - The need for affordable housing in the area is supported by the 2018 Local Housing Market Assessment. The development will help assist Council meet some of this identified need. The mix of units to be provided has been agreed with the Housing Department, which includes a bungalow for a disabled person.

Being an affordable housing development, all homes being provided for social rent will need to be built to DQR, Welsh Government's standard for social housing. All flats are required to have their own walk-ups.

In terms of a legal Agreement, Llanbradach falls within the Caerphilly Basin which attracts a 40% target for affordable housing, subject to viability. 40% of 23 homes equates to 9 homes when rounded. This would consist of:

8 x 1 bed 2 person flats; and;
1 x 2 bed 3 person bungalow.

It is understood that the applicant's intention is to provide 100% affordable housing development however the legal agreement should meet the above referenced target to safeguard the provision of affordable housing.

Dwr Cymru - No objections.

Western Power Distribution - If a new connection or a service alteration is required the development will need to make a separate application to Western Power Distribution.

Natural Resources Wales - Raise concerns in respect of flood risk but advise that Technical Advice Note 15 (TAN15) requires the Local Planning Authority to determine whether the development at this location is justified. Provides advice in respect of the submitted Flood Consequence Assessment which includes proposed dwelling and site levels meet technical requirements of the TAN and that there is no increase in flood risk elsewhere as a result of the proposed development.

Rights Of Way Officer - Provides confirmation that there are no formal public rights of way recorded in the area of the proposed development.

Heritage And Placemaking Officer - No objections.

ADVERTISEMENT

Extent of advertisement: The application was advertised via site notice, press notice and neighbour notification letters.

Response: Objections from 11 persons have been received. A letter has also been received from the Member of the Senedd highlighting residents' concerns.

Summary of observations:

The following matters have been raised in the correspondence received:

- Flood risk of site and climate change.
- Refer to another planning application being withdrawn.

- Parking problems in the area.
- Sewage issues.
- Knotweed.
- Wildlife.
- Determination during Covid-19 pandemic.
- Road Safety including inadequate access to the site, accident history in the area, raises matters related to a proposal for a one-way system and concerns in respect of the submitted Transport documentation.
- Transport Consultants are not independent.
- Speeding and increased risks of accident for adults and children with increased vehicles. No traffic calming.
- Concerns in relation to the rear lane.
- Infrastructure problems in the area.
- Issues with construction matters on the adjacent site.
- The existing permission should be revoked.
- Overlooking from two storey properties onto existing bungalows.
- Request for parking bays on the southern part of the rear lane.

SECTION 17 CRIME AND DISORDER ACT

What is the likely effect of the determination of this application on the need for the Local Planning Authority to do all it reasonably can to prevent crime and disorder in its area?

It is not considered that crime and disorder will be materially affected by the development.

EU HABITATS DIRECTIVE

Does the development affect any protected wildlife species? A survey was carried out and no evidence was found, but an advisory note will be attached to the consent and sent to the applicant as a precautionary measure.

COMMUNITY INFRASTRUCTURE LEVY (CIL)

Is this development Community Infrastructure Levy liable? The site lies within the higher viability zone for CIL attracting a charge of £40/sqm (Excluding Indexation). However as the applicant is a Registered Social Landlord it is anticipated that they would apply for exemption from the CIL charge.

ANALYSIS

Policies:

The application has been considered in accordance with national planning policy and guidance, local plan policy and supplementary planning guidance. The main considerations for the application are the impact on neighbour amenity, highway safety, flood risk and the visual appearance of the development on the character of the area.

The application site is located in the Southern Connections Corridor (SCC) within the Llanbradach settlement as defined within adopted Local Development Plan Policy SP3 (Development Strategy - Development in the Southern Connections Corridor). Policy SP3 seeks to promote sustainable development that redevelops previously developed land where feasible. The application site is vacant land and it is understood that the majority of the site was formerly used for commercial purposes with several structures appearing on historic mapping. Whilst it appears from available records that these structures were removed prior to 2001 there are areas of hardstanding still present on the site and it is not considered to have fully blended into the landscape. As such it is considered to fall within the definition of Previously Developed Land. It is also located within the defined settlement boundary of Llanbradach, in a sustainable location within easy reach of public transport and local facilities.

The application site is not allocated for any specific purpose within the adopted Local Development Plan and is located within settlement limits. It is therefore considered that there is a general presumption under Policies CW15 (General Locational Constraints) and Policy SP5 (Settlement Boundaries) that residential development would normally be allowed, taking into account material planning considerations and the impact on adjacent allocations.

National Planning guidance in terms of Planning Policy Wales (PPW) acknowledges that the efficient use of resources, including land, underpins sustainable development. In particular paragraph 4.2.22 of PPW states that "Planning authorities will need to ensure that in development plans and through the development management process they make the most efficient use of land and buildings in their areas. Higher densities must be encouraged on sites in town centres and other sites which have good walking, cycling and public transport links." In this instance the proposal with good links to bus and train services will constitute the development of a vacant land parcel within settlement limits which would provide much needed affordable homes in an efficient manner consistent with national planning guidance.

Flooding/Drainage

The application site lies within a designated Flood Zone C1 and would represent highly vulnerable development. The applicant has submitted a Flood Consequence Assessment with the planning application and Natural Resources Wales have been consulted and have provided advice and guidance.

In particular Nature Resources Wales have advised that in relation to Technical Advice Note 15 (Development and Flood Risk) and the acceptability criteria for flooding consequences that in respect of the following sections of the Technical Advice Note:

A1.14 Criteria

The baseline model results show that the site is predicted to flood to 76.89m AOD during the 1% plus climate change allowance flood event. This corresponds to a

maximum flood depth of 0.93m during this event. In order to meet the requirements of A1.14 of TAN15, the Flood Consequence Assessment states that the ground levels will be raised to 77m AOD and individual building levels set at 77.5m AOD. As such the development site, as assessed in the Flood Consequence Assessment, is predicted to be flood free during the 1% plus climate change allowance flood event. Natural Resource Wales confirms this meets A1.14 criteria.

A1.15 Criteria

During the 0.1% event, the model results show that that the peak water level of 77.41m AOD will impact the site. Based on the proposal to raise the site to 77mAOD and the building footprints to 77.5m AOD a maximum depth of 0.41m is predicted across the site. This is within the indicative tolerable conditions set out at A1.15 of TAN15 i.e. <600mm. In addition, as the buildings are to be raised to 77.5m AOD, they are predicted to be flood free during this event as confirmed by Natural Resources Wales.

Section 6 of Technical Advice Note 15 (Development and Flood Risk) advises in paragraph 6.2 that "New development should be directed away from zone C and towards suitable land in zone A, otherwise to zone B, where river or coastal flooding will be less of an issue. In zone C the tests outlined in sections 6 and 7 will be applied, recognising, however, that highly vulnerable development and Emergency Services in zone C2 should not be permitted. All other new development should only be permitted within zones C1 and C2 if determined by the planning authority to be justified in that location. Development, including transport infrastructure, will only be justified if it can be demonstrated that:-

- i) Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,
- ii) Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region; and,
- iii) It concurs with the aims of PPW and meets the definition of previously developed land; and,
- iv) The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 7 and appendix 1 found to be acceptable.

In response to these criteria, it is considered that the following is relevant to the proposed development:

- i) The provision of housing on the site within the defined settlement boundary of Llanbradach is supported by the adopted Local Development Plan particularly policies CW15 (General Locational Constraints) and SP5 (Settlement Boundaries) and the wider vision for the Caerphilly Basin that seeks to support the development of housing including affordable housing in sustainable locations within settlements including

Llanbradach as defined in strategic objective H of the adopted Caerphilly Basin Masterplan.

ii) not required to be met as part i) is already met;

iii) The application site meets the definition of previously developed land and therefore this test is met;

iv) NRW conclude that the proposed development is acceptable based on the submitted FCA subject to the requirements that the development plateau to be raised to a minimum of 77m AOD and buildings set at 77.5m AOD. This requirement can be secured via a suitably worded planning condition.

It is therefore considered that the development's location within Flood Zone C1 has been justified in accordance with the advice contained within Technical Advice Note 15.

Design

The proposed dwellings are arranged in blocks with facades which include a mixture of stone cladding, render and cladding with artificial slate roofs. They have a simple form with pitched roofs and some have gable roof details. Entrance canopies are provided on the principal elevations. The development has been designed to blend acceptably with the development granted permission to the north. The appearance of the proposed dwellings is acceptable and accords with Policy SP6 (Placemaking).

Neighbour amenity.

The impact on neighbour amenity has been considered. All of the new dwellings proposed within the application achieve separation distances to existing surrounding residential properties in excess of 21m between habitable room windows and in excess of 10.5m between new dwellings habitable room windows and the closest part of existing properties amenity areas. In this regard there will be no unacceptable overlooking or other unacceptable adverse impacts on amenity (including light, overshadowing or privacy) to existing surrounding residential dwellings. The development accords with Policy CW2 (Amenity).

Affordable Housing

Planning Policy Wales within paragraph 4.2.25 defines affordable housing as "A community's need for affordable housing is a material planning consideration which must be taken into account in formulating development plan policies and determining relevant planning applications. Affordable housing for the purposes of the land use planning system is housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers." PPW explains within paragraph 4.2.26 that "Affordable housing includes social rented housing owned by local authorities and

Registered Social Landlords and intermediate housing where prices or rents are above those of social rent but below market housing prices or rents."

The applicant has confirmed that they anticipate that all the properties would be social rented housing, however in line with the recommendation of the Affordable Housing Officer a legal agreement would be sought to require a minimum of 40% affordable housing units to be provided on the site. This would accord with the requirements of adopted Local Development Plan Policy CW11 (Affordable Housing Planning Obligation) and adopted Supplementary Planning Guidance LDP1 (Affordable Housing Obligations -October 2018).

Noise

The site is bound on the southern side by the Wingfield Works which includes existing commercial and industrial uses. The planning application submission was supported by a Noise Assessment. This assessment found that subject to mitigation measures (acoustic timber fencing on rear boundary and passive acoustic ventilation to windows) for those properties closest to the Wingfield works site that satisfactory noise levels can be achieved. The Environmental Health Officer has reviewed the details and advised that subject to the recommendations of the Noise Report being carried out that they have no objections to the development. It is therefore considered that suitable mitigation for future residents in respect of noise can be secure and the development accords with Policy CW2 (Amenity).

Natural Heritage

The planning application has been supported by ecological surveys which have indicated that the site is mainly comprised of areas of hardstanding and semi improved grassland, with some areas of scrubland on the periphery of the site. The report concludes that there is potential for nesting birds and reptiles on the site and a precautionary approach should be followed when undertaking site clearance to help avoid any habitats and species affected by the development. A tree survey reviewed by the Council's Tree Officer has concluded that there is little of amenity value in Arboricultural terms on the site itself. In terms of off-site trees that are identified it is recommended that tree protection details are submitted and this will be secured via condition along with finalised Landscaping details to include replacement tree planting.

Access and Highway considerations

The Highway Authority have advised that there are no safety concerns in terms of the proposed vehicular access which has been granted by both the earlier planning permission (18/1089/FULL) and a highway technical approval (S278 agreement). The Highway Authority has also considered the projected increase in trip generation in respect of the application and considers it to be minimal and will not have a detrimental impact on the local highway network.

The proposed level of parking within the layout includes a reduction in parking provision for meeting sustainability criteria within the adopted Supplementary Planning Guidance document LDP5: Parking Guidelines. However the total parking spaces in the amended layout (29 spaces) is several spaces below that recommended by the Highway Authority, taking into account reductions allowed for the Sustainability criteria. The applicant has sought to justify this further relaxation in parking standards on the likely low car ownership of prospective occupiers. It is noted however that there is sufficient unallocated room within the application site to accommodate further spaces if required and so it is proposed to require finalised parking arrangement to be agreed via a planning condition to ensure the matter of parking is resolved to the satisfaction of the Local Planning Authority in consultation with the Highway Authority.

It is also proposed to require the developer to provide a Travel Plan to promote active travel as was agreed on the earlier planning permission to the north to promote sustainable means of transport to future occupiers of the site.

The site will have access to the pedestrian/cycle route to Wingfield Crescent at the south-west corner of the adjacent site to the north and in accordance with Welsh Government Development Quality Requirements (DQR) the applicant has indicated the proposed houses will be provided with sheds which can be used as secure storage for bicycles and the apartments will be provided with a secure stand to store bicycles.

It is considered that with the requirements proposed above the development will accord with adopted Local Development Plan Policy CW3 (Highways).

Leisure and Open Space

The development does not include any public open space or play facilities as required under the criteria of Policy CW10 (Leisure and Open Space Provision) however it is noted that the Cwm Las playing field is located approximately 100m to the east of the site which includes a sizeable grassed area with sports pitch and an equipped playground area. The application site has no significant value as a recreational resource or an area of visual amenity and it is noted that existing and future residents have access to the Rhymney Riverside Walk both via informal links and also with a formal public right of way to the south of Lon yr Afon.

The supporting text in Policy CW10 states that "Where sufficient open space exists adjacent to the development site, developers will need to consider how to exploit this resource and thus provide well-designed public links within the development to these areas of land through a new footpath and/or cycle path provision." Informal paths presently exist outside of the eastern boundary of the application site across third party land towards the open space. The site layout has provided for pedestrian access towards these current links, however were these to be prohibited in the future it is noted that the connected development to the north includes provision of a three metres wide pedestrian link adjacent to the pumping station to connect with the existing lane onto

Plasturtwyn Terrace which would facilitate alternative access to the existing play facilities via Wingfield Crescent.

It is therefore considered that there are no site-specific impact mitigation requirements in respect of open space or play facilities in this instance.

Comments from Consultees:

In terms of the objections raised by the Llanbradach & Pwllypant Community Council these will be addressed under each numbered bullet point below:

(i) Insufficient off-road parking bays for existing residents of Plasturtwyn Terrace. The proposed development before Members in terms of its highway connection utilises the vehicular access which was approved under planning permission 18/1089/FULL and that planning permission is currently being implemented. The issue of off-road parking bays for existing residents was considered under the earlier application and provision for parking to offset that lost by the highway alterations were agreed under the planning permission and replacement parking has already been provided. The current application will provide sufficient parking for the new properties and is not considered to result in itself any further loss of parking bays for existing residents. In that respect the current application is not considered to introduce any material adverse impact in terms of parking for existing residents.

(ii) Health & safety issue with back gates opening directly onto the lane/proposed highway with no pavement.

(iii) Garage openings too are directly onto a potential highway.

(iv) Lane is not wide enough for the passing of two vehicles.

It is understood that these comments relate not directly to the application site but to the existing rear lane behind properties to the west of the site. The most direct route in terms of vehicle access from the housing proposed within this application to Wingfield Crescent would be along the spine road and via the side lane to Wingfield Terrace and as such is not considered likely to have a material increase in traffic on the lane referred to.

(v) Land ownership issues

No specific matters in relation to land ownership have been clarified in the objection and the application will be determined on the basis of the certificates signed in relation to the application site.

(vi) A proposed communal bin store is too close to an existing property

The bin store is located within the application site and close to the rear boundary of two neighbouring properties. These properties have generous sized amenity areas and as such it is not considered that the bin store would have any unacceptable impact on the

amenity of these properties. The final positioning of the bin store will be required under details to be submitted under condition.

Also question the legitimacy and integrity of holding a public consultation during a pandemic when other democratic processes have been delayed.

Welsh Government have provided advice to Local Planning Authorities throughout the pandemic and have advised that the planning process can continue with necessary modification to processes and procedures.

The response from Natural Resources Wales queried the level of the access road to the development which was subject to a previous approval. The agent for the development has clarified that the whole access road is set 77mAOD and this has been agreed under planning conditions for the 2018 application and a planning condition will be added to this permission with the same requirement if the access road is not provided under the earlier permission.

Comments from public:

- Flood risk of site and climate change.

The issue of flood risk has been considered above in the report and the application was supported by a Flood Consequence Assessment which considered the issue of flood risk both for the proposed dwellings and the existing surrounding dwellings. It is considered that with the requirement to raise the site to the levels advised within the FCA and as reviewed by Natural Resources Wales that the development will be acceptable in terms of flood risk. The calculations within the Flood Consequence Assessment take account of Climate Change implications as defined by Natural Resources Wales.

- Refer to other planning application being withdrawn.

This is not a material planning consideration for the current application.

- Parking problems in the area.

The new properties will be served by parking bays. Whilst not a consideration for the current applications the earlier planning permission included parking bays whose purpose was to provide alternative parking to existing residents.

- Sewage issues.

Dwr Cymru/Welsh Water was consulted on the application and raised no objections to the development.

- Japanese Knotweed.

This was identified within the surveys undertaken to support the planning application and it is proposed to require a treatment scheme to be submitted for the approval of the Local Planning Authority to ensure that suitable treatment is agreed.

- Impact on Wildlife.

The Council's Ecologist has been consulted on the application and subject to precautionary methods being adhered to in respect of reptile and agreement of ecological enhancement raises no objection to the application.

- Determination during Covid-19 pandemic.
Welsh Government guidance has been followed by the Local Planning Authority in respect of applications and planning committee during the pandemic.
- Road Safety including inadequate access to the site, accident history in the area, raises matters related to a proposal for a one way system and concerns in respect of the submitted Transport documentation.
- Transport Consultants are not independent.
- Speeding and increased risks of accident for adults and children with increased vehicles. No traffic calming.

The Highway Authority have advised that there are no safety concerns in terms of the proposed vehicular access which has been granted by both the earlier planning permission (18/1089/FULL) and a highway technical approval (S278 agreement). The consideration of a 1 way system was not required or suggested by the Highway Authority. The Highway Authority has also considered the increase in trip generation in respect of the application and considers it to be minimal and will not have a detrimental impact on the local highway network. The submission of Transport Assessments/documents which have been commissioned by applicants to support a planning application and which are reviewed by the Highway Authority is normal practice for planning applications.

- Concerns in relation to the rear lane.
The current application does not directly relate to the rear lane and the rear lane was considered in the earlier permission.
- Infrastructure problems in the area.
The 21 Century Schools consultation response has advised that there is sufficient provision in the area for both English and Welsh medium schools. A new Doctors Surgery facility has recently opened in Llanbradach and it is considered that the infrastructure is sufficient to support the scale of development proposed.
- Issues with construction matters on the adjacent site.
The matters of construction traffic and contractors on the adjacent site have been subject to dialogue with residents and the developer seeking to resolve issues as and when they arise. In terms of the development proposed within this application it is noted that the construction area will be likely to be served from the internal access road of the earlier phase bringing construction traffic further away from the residents and the site entrance will not be as close to the existing terrace dwellings as is the case at present. It is anticipated that this will provide greater opportunity to minimise problems with

contractors vehicles in terms of waiting and parking than has been the case in the earlier development works. There is a requirement within the proposed condition for submission of information relating to a method statement for development of the site and this will be reviewed in conjunction with consultees.

- The existing permission should be revoked.

It is not considered that there is a justification for the request which in any case could only be undertaken under judicial challenge subject to accepted legal challenge timeframes.

- Overlooking from two storey properties onto existing bungalows.

As included in the main body of the report the proposed properties meet accepted separation distances between new windows and existing surrounding properties and no unacceptable impacts in planning terms on the existing levels of amenity enjoyed by surrounding residential occupiers will result from the development.

- Request for parking bays on the southern part of the rear lane.

Parking for the new dwellings will be provided within the site and the earlier permission included a commitment from the developer to provide parking bays to the lane for the specific reason that highway improvement works would reduce existing parking on the west-east access between the terrace properties. The current application will utilise the same vehicular access route but as additional parking has already been provided to the rear of Plasturtwyn Terrace there is no reasonable justification for provision of further parking bays on the southern part of the rear lane.

Other material considerations:

The duty to improve the economic, social, environmental and cultural well-being of Wales, has been considered in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015. In reaching the recommendation below, the ways of working set out at section 5 of that Act have been taken into account, and it is considered that the recommendation is consistent with the sustainable development principle as required by section 8 of that Act.

Future Wales - The National Plan 2040 was published on 24 February 2021 and forms part of the statutory development plan for the county borough. In addition to this Planning Policy Wales (PPW) has been amended to take account of Future Wales and PPW Edition 11 has also been published on 24th February 2021. In reaching the conclusion below full account has been taken of both Future Wales and PPW Edition 11 and where they are particularly pertinent to the consideration of the proposals they have been considered as part of the officer's report. It is considered that the recommendation(s) in respect of the proposals is (are) in conformity with both Future Wales and PPW Edition 11.

RECOMMENDATION that (A) the application be DEFERRED to allow the applicants to enter into a Section 106 Obligation to provide the following:-

1. 40% provision of Affordable Housing.

On completion of the Section 106 Obligation that (B) planning permission is granted subject to the following conditions:

This permission is subject to the following condition(s)

- 01) The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.
- 02) The development shall be carried out in accordance with the following approved plans and documents (except for matters to be agreed as detailed under subsequent conditions on this decision notice):
Site location plan, drawing reference (90)001.
Proposed site layout drawing reference (SK)001
Proposed site layout, drawing reference (SK)002 revision U.
Proposed floor plans - block 6, drawing reference (SK)003B.
Proposed floor plans - block 4, drawing reference (SK)004B.
Proposed floor plans - block 5, drawing reference (SK)005C.
Proposed floor plans - block 3 drawing reference (SK)006C.
Proposed floor plans - block 7, drawing reference (SK)007B.
Proposed block elevations, drawing reference (SK)008D.
Proposed block elevations, drawing reference (SK)009C.
Proposed block elevations, drawing reference (SK)010D.
Proposed street elevation, drawing reference (SK)011.
Proposed floor plans - blocks 1,2, drawing reference (SK)015.
Noise Assessment Report (Job number: CA11869).
REASON: To ensure that the development is carried out only as approved by the Local Planning Authority.
- 03) Prior to the commencement of the development a scheme shall be submitted to and agreed in writing by the Local Planning Authority to deal with the contamination of the site. That scheme shall include a ground investigation and a risk assessment to identify the extent of the contamination and the measures to be taken to avoid risk to the occupants of the development when the site is developed. The development shall be carried out in accordance with the approved scheme.
REASON: In the interests of public health.
- 04) Before any soils or hardcore that do not fall within the green category set out in Table 2 of the WLGA document 'Requirements for the Chemical Testing of Imported Materials for Various End Uses and Validation of Cover Systems 2013' are brought on to site, a scheme for their importation and testing for contamination shall be submitted to and agreed in writing with the Local Planning

Authority. The development shall thereafter be carried out in accordance with the approved scheme.

REASON: In the interests of public health and in accordance with Policy CW2 of the Caerphilly County Borough Local Development Plan up to 2021.

- 05) No building approved by this permission shall be occupied or approved uses commence until a report has been submitted to and approved in writing by the Local Planning Authority which verifies that the required works have been undertaken in accordance with the remediation strategy.
REASON: To protect public health and in accordance with Policy CW2 of the Caerphilly County Borough Local Development Plan up to 2021.
- 06) Prior to the commencement of the development a Working Method Statement to control the environmental effects of the demolition and construction work shall be submitted to and agreed in writing by the Local Planning Authority.
The scheme shall include:
(i) control of noise,
(ii) control of dust, smell and other effluvia,
(iii) control of surface water run off,
(iv) site security arrangements including hoardings,
(v) proposed method of piling for foundations,
(vi) construction and demolition working hours,
(vii) hours during the construction and demolition phase, when delivery vehicles or vehicles taking materials are allowed to enter or leave the site.
The development shall be carried out in accordance with the approved scheme or as may otherwise be agreed in writing by the Local Planning Authority.
REASON: In the interests of the amenity of the area in accordance with policy CW2 of the adopted Caerphilly County Borough Local Development Plan up to 2021.
- 07) The development permitted by this planning permission shall only be carried out in accordance with the recommendations of the submitted Flood Consequence Assessment Report produced by Earth Science Partnership, reference ESP 5561s.04.3459, dated May 2021. In particular the following is required:
1. The development plateau level shall be set no lower than 77m Above Ordnance Datum (AOD).
2. Each building to be set no lower than 77.5m Above Ordnance Datum (AOD) in accordance with the block levels stated on drawing reference S.7501-10 rev A (unless otherwise agreed in writing with the Local Planning Authority).
REASON: To address the flood risk due to the location of the development within a designated flood zone.
- 08) The development hereby approved shall be carried out in accordance with the recommendations made in Section 5 of the Preliminary Ecological Assessment and Reptile Survey report dated 18 December 2019; Version 2.0 ; prepared by

by EcoLogical Services Ltd; unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure adequate protection and mitigation for protected species, in accordance with the Wildlife and Countryside Act 1981 (as amended).

- 09) Prior to the commencement of development a strategy to deal with the Invasive Non-Native species on site, shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be fully implemented prior to commencement of site clearance works.
REASON: To prevent the spread of invasive non-native species as a result of development works.
- 10) Prior to the commencement of development a lighting strategy plan shall be submitted and approved by the Local Planning Authority. The plan shall demonstrate the location of dark vegetated wildlife movement corridors around the site, including the placement of lighting columns to achieve this and shall be implemented in accordance with the approved details.
REASON: To provide continuity of movement for wildlife around the site in accordance with the Environment (Wales) Act 2016, and policy contained in Welsh Assembly Government's Planning Policy Wales (2016) and Tan 5 Nature Conservation and Planning (2009).
- 11) Prior to the commencement of development, a scheme for biodiversity conservation and enhancement shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include, but not be exclusively limited to: integrated bird boxes in a minimum of 12 units, wildflower planting and hedgehog friendly fencing under every fence throughout the development.
REASON: To provide biodiversity conservation and enhancement, in accordance with Part 1 Section 6 of the Environment (Wales) Act 2016, and policy contained in Welsh Assembly Government's Planning Policy Wales (2016) and Tan 5 Nature Conservation and Planning (2009).
- 12) Notwithstanding the submitted details, prior to the occupation of the first dwelling hereby approved details of a waste strategy and bin storage facility/facilities and timescale for their provision shall be submitted for the written approval of the Local Planning Authority. Such details as agreed shall be provided in accordance with the agreed strategy and timescale(s).
REASON: In the interests of amenity in accordance with policy CW2 of the adopted Caerphilly County Borough Local Development Plan up to 2021.
- 13) Notwithstanding the submitted details prior to the commencement of development details of the means of protection of all retained trees (including those off site but with root protection areas within the area of any proposed development) shall be submitted to and agreed in writing by the Local Planning Authority.

REASON: In the interests of amenity in accordance with policies CW2 and CW6 of the adopted Caerphilly County Borough Local Development Plan up to 2021.

- 14) Notwithstanding the submitted plans prior to the occupation of the development a scheme depicting hard and soft landscaping shall be submitted to and agreed in writing by the Local Planning Authority. Those details shall include:
- (a) Proposed finished ground levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor structures including furniture, play equipment, refuse or other storage units; and
 - (b) Proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating lines, manholes etc.); and
 - (c) Planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- The development shall be carried out in accordance with the agreed scheme and all planting, seeding, turfing/hard landscaping works. comprised in the approved details of landscaping shall be carried out in the first planting season following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

REASON: In the interests of the visual amenity of the area in accordance with policies CW2 and SP6 and highway safety in accordance with Policy CW3 of the adopted Caerphilly County Borough Local Development Plan up to 2021.

- 15) Notwithstanding the submitted details prior to the occupation of the development a scheme shall be submitted to and agreed in writing by the Local Planning Authority indicating the positions, design, materials, type of boundary treatment and timescale for erection or planting. The boundary treatments shall be completed in accordance with the approved details and agreed timescale(s).
- REASON: In the interests of the visual amenities of the area amenity in accordance with policy CW2 of the adopted Caerphilly County Borough Local Development Plan up to 2021.

- 16) The development permitted by this planning permission shall only be carried out in accordance with the recommendations (contained within section 6) of the submitted Wardell Armstrong Noise Assessment Report (Job number: CA11869).
- REASON: To ensure suitable measures to mitigate noise impacts on future residents in accordance with policy CW2 of the adopted Caerphilly County Borough Local Development Plan up to 2021.

- 17) Prior to works commencing on site details shall be submitted to and approved in writing by the Local Planning Authority which shall make provision to allow for the installation of electric charging points for vehicles for a minimum of 10% of the residential units to be constructed. The development shall be completed in accordance with the approved details.
REASON: In order to ensure that adequate mitigation is provided in respect of air quality in the interests of residential amenity and to comply with paragraph 4.1.39 of Planning Policy Wales.
- 18) Prior to the commencement of works on site, a method statement shall be submitted for approval to the Local Planning Authority detailing the treatment of Japanese Knotweed and Himalayan Balsam on site. The treatment of Japanese Knotweed and Himalayan Balsam shall be carried out in accordance with the approved details.
REASON: It is an offence under the Wildlife and Countryside Act 1981 (as amended) to "introduce, plant or cause to grow wild any plant listed in Schedule 9 Part 2 of the Act" . Japanese Knotweed and Himalayan Balsam is included within this schedule. All Japanese knotweed waste (the plant itself or material containing its rhizome) is classed as controlled/special waste and therefore must be disposed of in accordance with the Environmental Protection Act 1990 and the Environmental Protection Act Duty of Care Regulations 1991.
- 19) Prior to the occupation of the first residential dwelling hereby approved written confirmation shall be submitted to the Local Planning Authority that the proposed access works to the adopted Highway network have been completed in accordance with the details agreed under planning permission 18/01089/FULL or alternatively a scheme for access provision shall be submitted to and agreed in writing with the Local Planning Authority. The highway improvement works shall be completed in a timescale to be firstly agreed in writing with the Local Planning Authority.
REASON: In the interests of highway safety.
- 20) Prior to the commencement of work on site, a travel plan shall be submitted to and approved in writing by the Local Planning Authority and thereafter implemented in accordance with any timescales contained therein.
REASON: To encourage the use of a variety of transport options in accordance with policy CW3 of the adopted Caerphilly County Borough Local Development Plan up to 2021.
- 21) Prior to the commencement of the development (excluding site clearance works) a scheme shall be submitted to and agreed in writing by the Local Planning Authority indicating full engineering details of the road layout with sections, street-lighting, car parking and surface water drainage and a detailed programme for the provision of the proposed highways. The development shall be carried out in accordance with the agreed details and the approved car parking shall be

implemented prior to the occupation of the development and thereafter kept available for parking purposes at all times.

REASON: In the interests of highway safety in accordance with policy CW3 of the adopted Caerphilly County Borough Local Development Plan up to 2021.

Advisory Note(s)

WARNING:

SUSTAINABLE DRAINAGE APPROVAL IS REQUIRED PRIOR TO COMMENCEMENT OF THIS DEVELOPMENT.

Please note from the 7th January 2019, Schedule 3 of the Flood and Water Management Act 2010 commenced in Wales requiring all new developments of more than one house or where the construction area is of 100m² or more to implement sustainable drainage to manage on-site surface water. Surface water drainage systems must be designed and built in accordance with mandatory standards for sustainable drainage published by Welsh Ministers.

The Sustainable Drainage Approval process is a technical approval independent of the need to obtain planning permission, and as such you are advised to contact the Sustainable Drainage Approval Body. Their details are provided below:

Phone: 01443 866511

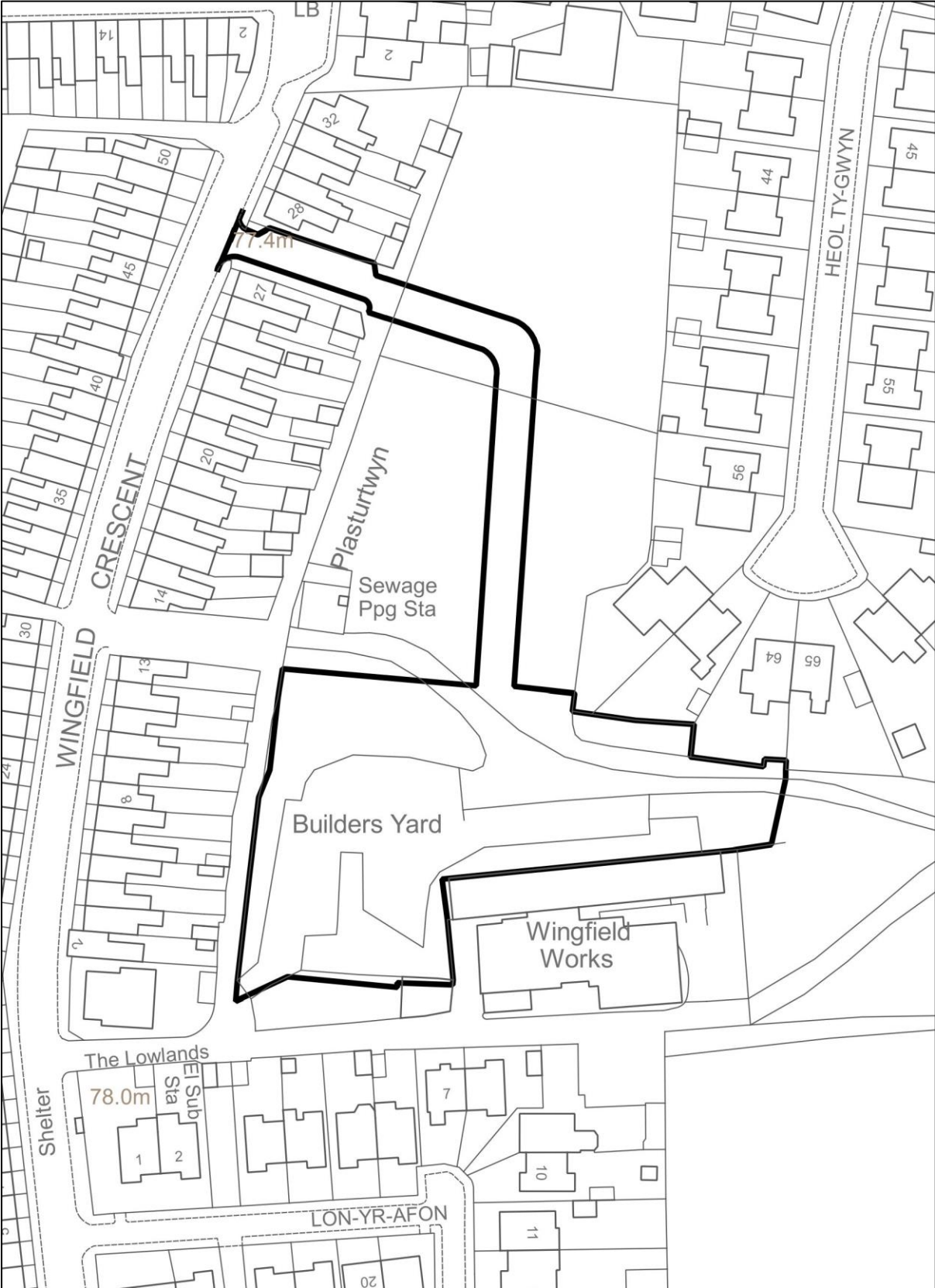
Email: drainage@caerphilly.gov.uk

Website: www.caerphilly.gov.uk/sab

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.

Please also be advised that works should not take place that will disturb nesting birds from March to July inclusive. All British birds (while nesting, building nests and sitting on eggs), their nests and eggs (with certain limited exceptions) are protected by law under Section 1 of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000. If birds are nesting on/in or within the vicinity of the proposed development, work should be undertaken outside the breeding season for birds to ensure their protection, i.e. works should only be undertaken between August and February. Further advice on the above can be sought from the local authority ecologists (01495 235253) or Natural Resources Wales (NRW) (029 20 772400).



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PLANNING COMMITTEE – 8TH SEPTEMBER 2021

SUBJECT: TREE PRESERVATION ORDER 91 (2021) - LAND WITHIN THE CURTILAGE OF 60 PARK ROAD, BARGOED

REPORT BY: HEAD OF REGENERATION AND PLANNING

1. PURPOSE OF REPORT – TPO 91 (2012) LAND WITHIN THE CURTILAGE OF 60 PARK ROAD BARGOED

1.1 A Tree Preservation Order (TPO) was placed on a single birch tree within the curtilage of 60 Park Road, Bargoed on 24th March 2021 at the request of the tree owner, in response to the threat of damage to the tree by neighbouring residents. A plan is attached showing the location of the TPO at Appendix 1.

2. SUMMARY

2.1 TPOs are made on a provisional basis to allow landowners and others to comment before they are confirmed by the Local Planning Authority. Twenty-eight days are usually given for comment. Objections were received within date in two emails. These have had a formal response, set out below.

3. RECOMMENDATIONS

3.1 This report seeks to Confirm the TPO with no amendments.

4. REASONS FOR THE RECOMMENDATIONS

4.1 This committee is taking place within the six-month period allowed for confirmation of the TPO. This period will end on 24th September 2021 at which time the tree will either have confirmed status or will have no formal protection and the paperwork removed from the system.

5. THE REPORT

5.1 The sections in bold summarise the query or objection from the residents at No 62 Park Road, followed by the response provided to them.

“Why a TPO and why in a private garden?”

Local Planning Authorities may make a TPO if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands

in their area' In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath. The benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape.

Tree Preservation Orders are placed, as appropriate, on privately owned trees or woodland. Those held by public bodies such as Local Government or Crown Estate are deemed to be at less risk of bad management practices that would threaten their health and amenity value. It is entirely appropriate, therefore, to place a TPO on a tree in the garden of a terraced property.

The tree was assessed by an experienced and qualified Arboriculturist and found to be in good condition, with a retention span in excess of 40 years. It is visible from a number of streets and therefore provides visual amenity to those who use the streets as well as those whose gardens are backing on to this urban area.

“What is the threat to the tree?”

It may be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In this instance, the threat to the amenity value of the tree was deemed to be foreseeable. It was understood that the tree was likely to be cut back to the boundary, in an unsympathetic manner that was likely to significantly impact the amenity value of the tree in terms of its aesthetics and inflict unnecessarily excessive wounds on the tree with the likelihood of colonisation by decay fungi that could hasten the demise of the tree.

“What is the significant public amenity value?”

Caerphilly County Borough Council Arboricultural officers use an industry wide, standardised method for assessing amenity when looking at trees for TPO worthiness. The system is call TEMPO – Tree Evaluation Method for Preservation Orders. The system is acknowledged to be sound and defensible in its approach and is used across the United Kingdom.

The TEMPO assessment breaks down amenity into 4 parts: Condition; Retention span; Relative public visibility; and Other factors, such as commemorative trees or elements within an avenue etc.

The tree was assessed by an experienced and qualified Arboriculturist and found to be in good condition, with a retention span in excess of 40 years. It is visible from the public highway and is also visible from a number of properties on neighbouring streets and, therefore, provides visual amenity to those who use the streets as well as those whose gardens are backing on to this urban area. No “other” factors were found in relation to this tree.

“Significant low branch over garden is a hazard to residents at 62 Park Road”

The neighbour residing at the property where the branch overhangs can ask the tree owner to manage the overhanging branch, so that it is above a height that can cause injury or obstruction. The tree owner will need to apply to the Local Planning Authority for prior written consent to undertake pruning work, which must be in accordance with industry best practice for tree work.

Such work takes into account the size and number of pruning cuts that a tree can tolerate and adapt to. This will vary according to genus and species, as well as existing growing conditions and time of year. Once the owner has written consent for the work, he or his arborist may need to access the tree from outside his garden to undertake the necessary work.

On the other hand, the residents at 62 Park Road can apply for prior written consent to undertake work to the tree themselves (or an experienced arborist on their behalf) if the owner at 60 Park Road refuses to take action. The tree owner is not legally obliged to carry out pruning maintenance to their tree, although they are advised to if there is a significant or reasonably foreseeable hazard or legal nuisance. Explicit written Planning consent will be required before any pruning work is undertaken to the tree. Without explicit written prior consent the pruning act will be illegal and the perpetrator can be pursued through the Magistrate's Court.

“The height of the tree has now become a health and safety issue”

There is no legislation relating to the height of trees. Fear of large trees is usually perceived, not actual: statistically trees are very safe. The Health and Safety Executive state that “*the risk of being struck and killed by a tree or branch falling is extremely low (in the order of one in 10 million for those trees in or adjacent to areas of high public use)*”. It is unlikely that a tree will cause harm just because it is tall. Trees have evolved over millennia to thrive and survive in all types of adverse conditions. They are bio-mechanically equipped by nature to cope with wind loading. The tree should move and flex with the wind. Seeing it moving does not mean an increased likelihood of failure.

It is important though, that owners of large trees near any potential target, arrange for periodic inspections by suitably qualified arborists, and that any necessary maintenance is arranged accordingly, and if protected by a TPO, with prior written consent.

Regarding this particular Birch tree, the inspecting officer's original observations regarding this tree included that it is in good condition, with no significant defects. If defects were present that might warrant remedial crown reduction surgery (to reduce the tree's size owing to a structural or other significant defect) then this would have been advised to the tree owner - but none were found.

Also, the tree owner brought this tree's potential amenity value (and possible suitability for a TPO) to our attention, following a consultation with their own privately engaged tree surgery contractor (a local reputable contractor, whose arboricultural opinion is respected by this authority). That same contractor also found no significant defects to be present that might warrant extensive pruning or remedial tree surgery.

It is accepted, and expected, that periodic pruning of this tree will be necessary - possibly perhaps every three to five years. As with any tree overhanging an adjacent property, it is reasonable to expect that occasional pruning of the lowermost branches which overhang an adjacent property, or the removal from the canopy of naturally occurring minor dead wood, will be necessary. **Those types of maintenance will not be prevented by the TPO.** The TPO's existence, though, will ensure that any future maintenance to the tree will be appropriate, not excessive or unnecessarily disfiguring and will not significantly diminish the amenity value that it presents to the wider community.

If at any time in the future the tree was found to be either dangerous, or significantly diseased; or that it was the direct cause of actual damage to an adjacent property, then an application to remove the tree or the relevant part of the tree concerned, or to cut them back so as to abate a particular problem, would be given the fullest consideration at that time.

5.2 **Conclusion**

Confirming a TPO on this tree will encourage continued good management in accordance with good arboricultural practice, retaining a visual amenity in good health for the benefit of current and future residents within this community in Bargoed.

6. **ASSUMPTIONS**

6.1 None

7. **SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

7.1 None

8. **FINANCIAL IMPLICATIONS**

8.1 None

9. **PERSONNEL IMPLICATIONS**

9.1 None

10. **CONSULTATIONS**

10.1 Not applicable

11. **STATUTORY POWER**

11.1 The Town and Country Planning Act 1990 as amended and related acts and statutes.

12. **URGENCY (CABINET ITEMS ONLY)**

12.1 N/A

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Background Papers: None

Appendices:

Appendix 1 Location plan

Appendix 2 Model order TPO 91 (2021) Land within the curtilage of 60 Park Road, Bargoed

Caerphilly County Borough Council
C.C.B.C. Tree Preservation Order 91 (2021)
Land within the curtilage of 60 Park Road, Bargoed
Grid Reference ST 14751 99612

1:1,000



Authorised Officer

Rhe Kyste

Date 24th March 2021



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TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999

Town and Country Planning Act 1990 Caerphilly County Borough Council Tree Preservation Order No. 91 (2021) - Land within the curtilage of 60 Park Road Bargoed CF81 8SR Location grid ref 314751 , 199612

The Caerphilly County Borough Council, in exercise of the powers conferred on them by sections 198 [201] and 203 of the Town and Country Planning Act 1990 hereby make the following Order—

Citation

1. This Order may be cited as the Caerphilly County Borough Council Tree Preservation Order No. 91 (2021) – Land within the curtilage of 60 Park Road, Bargoed Location Grid Ref 314751, 199612

Interpretation

2. In this Order “the authority” means the Caerphilly County Borough Council and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, **this Order shall take effect provisionally on 24th day of March 2021 (24/3/21)**

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners), and subject to article 5, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exemptions

5.—(1) Nothing in article 4 shall prevent—

- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary—
 - (i) in the interests of the safe operation of the undertaking;

- (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
 - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (aa) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders and schemes);
 - (ab) the cutting down, topping, lopping or uprooting of a tree where that work is urgently necessary for national security purposes;
 - (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
 - (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
 - (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
 - (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of Natural Resources Wales to enable NRW to carry out development permitted by or under the Town and Country Planning (General Permitted Development Order) 1995;
 - (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose “drainage body” and “drainage” have the same meanings as in the Land Drainage Act 1991; or
 - (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

(2) In paragraph (1), “statutory undertaker” means any of the following—

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,

- a relevant airport operator (within the meaning of Part V of the Airports Act 1986),
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewerage undertaker,
- the Civil Aviation Authority or a body acting on behalf of that Authority,
- the Post Office.

Application of provisions of the Town and Country Planning Act 1990

7.—(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

Directions as to replanting

8.—(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated (“the relevant land”) a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to—

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

Compensation

9.—(1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of—

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article—

- (a) if more than 12 months has elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person—

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

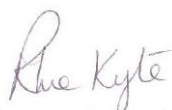
(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article—

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

“owner” has the meaning given to it by section 34 of the Forestry Act 1967.

Dated this 24th day of March 2021

A handwritten signature in cursive script that reads "Rhian Kyte".

Rhian Kyte
Head of Regeneration and Planning
Caerphilly County Borough Council

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Birch	see plan

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
None		

Groups of trees
(within a broken black line on the map)

Reference on map	Description	Situation
None		

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
None		

SCHEDULE 2

PART I PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1)—</p> <p style="padding-left: 40px;">(i) omit—</p> <p style="padding-left: 80px;">“, in such manner as may be prescribed by a development order,”,</p> <p style="padding-left: 80px;">“such” in the second place where it appears, and</p> <p style="padding-left: 80px;">“as may be so prescribed”; and</p> <p style="padding-left: 40px;">(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2)—</p> <p style="padding-left: 40px;">(i) after “contain” insert “, as regards each such order”; and</p> <p style="padding-left: 40px;">(ii) for paragraphs (a) and (b) substitute—</p> <p style="padding-left: 80px;">(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p style="padding-left: 80px;">(b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.”.</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1)—</p> <p style="padding-left: 40px;">(i) substitute—</p> <p style="padding-left: 80px;">“Subject to subsections (1A) and (1B), where” for “Where”;</p>

	<p>“the authority” for “a local planning authority”;</p> <p>“consent under a tree preservation order” for “planning permission” where those words first appear; and</p> <p>“consent under the order” for “planning permission” in both of the other places where those words appear;</p> <p>(ii) after “think fit”, insert—</p> <p>“(including conditions limiting the duration of the consent or requiring the replacement of trees)”;</p> <p>(iii) omit “subject to sections 91 and 92,”.</p> <p>(b) After subsection (1) insert—</p> <p>“(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”.</p> <p>(c) Omit subsections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute—</p> <p>(i) “Any” for the words from “Without” to “any”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission to develop land”;</p> <p>(iii) “the consent” for “the permission”; and</p> <p>(iv) “the land to which the order relates” for “the land”.</p> <p>(b) Omit subsections (2) and (3).</p>
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) In subsection (1) substitute—</p> <p>(i) “the authority” for “a local planning authority”;</p>

	<p>(ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;</p> <p>(iii) “consent under such an order” for “planning permission” in the second place where those words appear;</p> <p>(iv) for paragraph (c) substitute—</p> <p> “(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</p> <p> (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,”.</p> <p>(b) Omit subsection (2).</p> <p>(c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.” substitute—</p> <p> “in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—</p> <p> (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Secretary of State may allow;</p> <p> (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.”.</p> <p>(d) For subsection (4), substitute—</p> <p> “(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”.</p> <p>(e) For subsection (5), substitute—</p>
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	<p>“(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”.</p>
<p>Section 79 (determination of appeals)</p>	<p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute—</p> <ul style="list-style-type: none"> (i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”; (ii) “consent under a tree preservation order” for “planning permission”; and (iii) “the authority” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of sections 65 or 71.”. <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78”.</p>

PART II
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990,
AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order—

- (a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and
- (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

.....

(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

(1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order—

- (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

(1) Where the authority—

- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

.....

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

.....

Section 79

(1) On an appeal under section 78 the Secretary of State may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

.....

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

.....

(7) Schedule 6 applies to appeals under section 78.

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