

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:** **PLANNING AND DEVELOPMENT CONTROL COMMITTEE**

**DATE:** **4<sup>th</sup> SEPTEMBER 2013**

**REPORT BY:** **HEAD OF PLANNING**

**SUBJECT:** **050921 - VARIATION OF CONDITION NOS.6,8,9,13,15,16 AND 18 IMPOSED ON PLANNING PERMISSION REF: 048780 TO ALLOW FOR A PHASED APPROACH FOR THE UNDERTAKING OF (A) A SCHEME FOR FACILITIES FOR THE PARKING, TURNING AND UNLOADING OF VEHICLES (B) EXTERNAL LIGHTING (C) A SCHEME FOR THE COMPREHENSIVE DRAINAGE OF THE SITE (D) A SCHEME OF ECOLOGICAL MITIGATION (E) THE PROVISION OF TREE/HEDGEROW PROTECTION (F) THE INTRODUCTION OF REPLACEMENT WINDOWS/DOORS AND (G) VENTILATION EQUIPMENT RATHER THAN THE REQUIREMENT FOR ALL DETAILS TO BE PROVIDED BEFORE THE USE OF ANY PART OF THE SITE COMMENCES AS CURRENTLY PERMITTED AT "BANK FARM", LOWER MOUNTAIN ROAD, PENYFFORDD, NR. CHESTER, FLINTSHIRE**

**APPLICATION NUMBER:** **050921**

**APPLICANT:** **HOLTS CONSERVATORIES LTD**

**SITE:** **"BANK FARM", LOWER MOUNTAIN ROAD, PENYFFORDD, NR. CHESTER, FLINTSHIRE**

**APPLICATION VALID DATE:** **19.06.13**

**LOCAL MEMBERS:** **COUNCILLOR P. LIGHTFOOT**

**TOWN/COMMUNITY COUNCIL:** **HIGHER KINNERTON COMMUNITY COUNCIL**

**REASON FOR COMMITTEE:** **CALLED-IN BY COUNCILLOR D.T.M. WILLIAMS AS ADJOINING WARD MEMBER**

**SITE VISIT:** **NO**

## **1.00 SUMMARY**

- 1.01 The application seeks to vary condition numbers 6, 8, 9, 13, 15, 16 and 18 of planning permission reference 048780 which approved the change of use of agricultural buildings to light industrial use at Bank Farm, Lower Mountain Road, Penyffordd. All these conditions are pre-commencement conditions requiring submission of details of parking, loading and turning areas; external lighting; drainage; mitigation for safeguarding swallows; tree and hedgerow protection; window and door details and finishes; and, ventilation and fume extraction equipment. The current wording on all these conditions require details to be submitted prior to commencement of the development and also require their implementation in full before the use of any part the site commences. A copy of the current conditions is produced in full as Appendix 1 to this report.

The planning permission granted under reference 048780 allowed the change of use of 6 buildings on the site for light industrial use with Bank Farmhouse to be renovated and a further building demolished.

This proposal to vary conditions 6, 8, 9, 13, 15, 16 and 18 would still require the submission and approval of the details required under the conditions but would allow for the phased development of the site.

The main issues to be considered in the determination of this application are the impact of the variation of the conditions on road safety, the visual amenity of the area, and, the protection of protected species.

## **2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-**

- 2.01 To vary conditions 6,8,9,13,15,16 and 18 to read:-

6) Prior to the commencement of the development hereby approved, a scheme indicating the provision of facilities for the parking, turning, loading and unloading of vehicles and the phasing of the provision of those facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved details and thereafter retained for those purposes.

8) Prior to the occupancy of any of the buildings an external lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall include the phasing of the provision of the lighting scheme, measures to monitor the lux levels when the lighting becomes operational, and where necessary include remedial measures to reduce unnecessary light loss. The agreed

lighting plan shall be implemented in accordance with the approved scheme.

9) Prior to the commencement of the development hereby approved, a scheme for the comprehensive drainage of the site, indicating the proposed methods of disposal of foul, surface and land drainage waters from the site, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the phasing of the provision of the drainage of the site. Thereafter, the development shall be carried out in strict accordance with the approved scheme, or any such details as may subsequently be agreed in writing with the Local Planning Authority.

13) Prior to the commencement of the development hereby approved, a scheme of mitigation shall be submitted to and approved in writing with the Local Planning Authority which provides for the safeguarding of swallows. The approved scheme shall be implemented in full in accordance with the timetable to be agreed with the Local Planning Authority.

15) No development shall commence until a scheme for the provision of tree and hedgerow protection measures including the phasing of their provision has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved scheme shall be implemented in strict accordance with the approved details. No works (e.g. excavation, trenching, storage of materials, fires/burning, movement of machinery (associated with the development of the site) shall be undertaken within the root protection areas unless they have been subject to a method statement that has been approved in writing by the Local Planning Authority. The implemented protection measures in relation to each part of the site shall be thereafter retained for the duration of the development works on that part of the site unless the prior written approval of the Local Planning Authority is obtained to any variation.

16) Prior to the commencement of development hereby approved, full details of any new or proposed replacement windows and external doors shall be submitted to and approved in writing by the Local Planning Authority. For the traditional brick buildings edged in thick black on the plan attached to this permission such scheme shall provide for windows and doors of a timber construction with painted finish, the colour of which shall also be specified within the submitted details. The agreed scheme shall thereafter be implemented in full and there shall be no deviation from these agreed details without the prior written approval of the Local Planning Authority. (The traditional buildings referred to are as shown on the plan attached as Appendix 2 to this report).

18) Prior to the commencement of the development hereby approved, precise details of all ventilation and fume extraction equipment,

ducting, vents and cowls, including their precise location within or upon the buildings hereby approved, shall be submitted to and agreed in writing with the Local Planning Authority. The use of each building shall not commence until the agreed scheme for that particular building has been implemented in accordance with the approved scheme.

### **3.00 CONSULTATIONS**

3.01 Local Member: Councillor P. Lightfoot  
No response at time of preparing report

Adjacent Ward Member: Councillor D.T.M. Williams

Requests planning committee determination. Preliminary views that conditions were carefully applied on the original application and accepted at the time. Removal of the conditions before the development has started could lead to further applications that may not be supported.

Adjacent Ward Member: Councillor C. Hinds

Requests planning committee determination. Preliminary views are that as the building has been left to go to rack and ruin over many years the whole site needs to be developed and not just in part. The site is a disgrace and should have been tidied up years ago. The house and buildings could have been converted to houses to make a courtyard as long as it complies with planning policy. The planning committee previously gave permission with conditions and that should be it.

Higher Kinnerton Community Council

Support the planning application

In view of the proximity of the site to the adjoining communities of Penyffordd and Penymynydd, consultation has also been undertaken with the local members and Community Council for this area.

Penyffordd Community Council

No response at time of preparing report

Head of Assets and Transportation

No objection subject to conditions requiring detailed design of new access and drainage ditch crossing from Barracks Lane to be submitted and approved; permanent closure of existing access from Barracks lane; and, adequate facilities to be provided and retained internally within the site for the loading, unloading, parking and turning of vehicles.

Head of Public Protection

No objection to the proposed variation of condition 18 in respect of extraction, filtration and ventilation equipment subject to a condition

that the use of each building shall not commence until the agreed scheme for that particular building has been commenced.

Welsh Water/Dwr Cymru

No response at time of writing report

Natural Resources Wales

No objection.

**4.00 PUBLICITY**

4.01 Site, Notice and Neighbour Notification

No responses at time of writing report.

**5.00 SITE HISTORY**

5.01 **048780** Change of use of agricultural buildings to light industrial use. Permitted 06.01.2012

**040627** Certificate of lawfulness – residential, retail and associated storage. Refused 14.02.06

**038067** Outline, Demolition of existing buildings and erection of new dwellings. Application called in by Welsh Government and refused 13.10.05

**00/00733** Outline, Erection of 12 No. detached dwellings. Refused 05.09.00

**4/2/14925** Change of use of piggery to boarding kennels and cattery. Withdrawn 06.02.90

**050003** OUTLINE APPLICATION - ERECTION OF 12NO. DWELLINGS INCLUDING DEMOLITION OF EXISTING OUTBUILDINGS AND CREATION OF A NEW ACCESS AT "BANK FARM", LOWER MOUNTAIN ROAD, PENYFFORDD, NR. CHESTER, FLINTSHIRE. Withdrawn

**6.00 PLANNING POLICIES**

6.01 **Flintshire Unitary Development Plan**

Policy STR1 – New Development

Policy STR 2 – Transport and Communications

Policy STR 7 – Natural Environment

Policy STR 8 – Built Environment

Policy GEN1 – General Requirements for Development

Policy STR10 – Resources

Policy GEN3 – Development in the Open Countryside

Policy D1 – Design Quality, Location and Layout

Policy D2 – Design

Policy L1 – Landscape Character

Policy WB1 – Species Protection  
Policy AC13 – Access and Traffic Impact  
Policy AC18 – Parking Provision and New Development

## **ADDITIONAL GUIDANCE**

Planning Policy Wales Edition 5 – November 2012

### **7.00 PLANNING APPRAISAL**

#### **7.01 Introduction**

This application proposes the variation of a number of pre-commencement conditions on planning permission no. 048780 which approved the change of use of agricultural buildings to light industrial use at Bank Farm, Lower Mountain Road, Penyffordd.

#### **7.02 Site Description**

The site which is approximately 0.9 hectares in area, is located on the south eastern side of Chester Road, at its junction with Barracks Lane and Lower Mountain Road, approximately 0.5km to the east of Penyffordd.

The site accommodates a redundant farm dwelling with associated buildings in various state of repair. These buildings comprise a mix of older brick/timber frame outbuildings and more modern buildings constructed of breeze block and corrugated sheeting external walls. The site is bounded to the north by a mature and well established hedgerow, which also exists in part to the southerly end of the western site boundary with the remainder formed by the flank wall of one of the buildings. The demarcation of boundaries to the south and east is by way of a 1.2m high post and wire fence. The area surrounding the site is predominantly agricultural, although there are a number of scattered residential properties.

#### **7.03 Principle of Development**

The principle of the change of use of the buildings at Bank Farm to light industrial use is acceptable and has been established through the grant of planning permission under reference 048780.

#### **7.04 Main Planning Issues**

Given that the principle of the development has been established the main planning issues to be considered on this application relate to the potential impact of the variation of the conditions on:

- Highways and access issues
- Safeguarding of protected birds and their nests
- Impacts on the visual amenities of the area

Assessment of the application must consider whether the conditions as currently worded meet the tests set out in Welsh Office Circular 35/95 on “The Use of Planning Conditions”.

#### **7.05 Highways and Access Issues**

Condition 6 as currently worded requires the submission of a scheme indicating the provision of facilities for the parking, turning and loading of vehicles prior to commencement of the development and then requires the implementation of that scheme in full prior to the first use of the development.

Should the developer want to carry out the development in phases, a phased scheme allowing for the creation of parking, loading and turning areas for each of those phases could be implemented ensuring that there is no detriment to road safety.

The proposed variation to condition 6 would still require the submission and approval of all details relating to the provision of parking, loading and turning areas prior to commencement of the development but would be amended to also require details of the phasing of the provision of those facilities. The approved scheme would then have to be implemented in accordance with those phased details.

In this way it is envisaged that prior to the occupation of any particular building, the parking, turning and loading area for that particular building should be implemented.

There are no variations proposed to conditions requiring the provision of details of the new access points and closure of access points to the public highway.

#### **7.06 External Lighting**

Condition 8 requires the details of all external lighting to be submitted and approved prior to the occupancy of the buildings. As currently worded the condition requires the implementation of the approved scheme in full prior to the occupation of any of the buildings.

The proposed variation to condition 8 would again require the approval of the external lighting scheme for the entire site prior to the occupancy of any buildings. The variation would allow for a phased implementation allowing for the occupancy of buildings in a phased manner.

#### **7.07 Drainage**

Condition 9 requires the submission and approval of a scheme for the

comprehensive drainage of the site prior commencement of the development and also its implementation in full prior to the first occupation of any of the buildings.

The proposed variation of condition 9 would allow for its phased implementation. Whilst the drainage scheme for one particular part of the site might ultimately be linked to the site as a whole it is clearly possible for the foul and surface water drainage scheme for a particular building to work adequately in isolation. On that basis it would be acceptable for the drainage scheme relating to individual buildings to be implemented prior to the implementation of the drainage scheme for all the buildings.

#### **7.08 Ecology Issues**

The change of use application was supported by a Great Crested Newt survey and found that there is no recorded GCN activity or breeding ponds within 500m of the site.

Survey data also indicated that there was no bat activity on the site.

Evidence of the use of part of one of the buildings (Building 7) by swallows was found and this led to the imposition of condition 13 requiring the submission and approval of a scheme for mitigation for the safeguarding of swallows. The condition as currently worded requires the implementation of the scheme in full prior to the first use of the development.

The proposed variation of condition 13 would still require the mitigation scheme to be submitted prior to the commencement of development but would allow its implementation in accordance with a timetable to be agreed with the Local Planning Authority. This could then, for example, allow for the implementation of a change of use of one of the buildings where swallows were not present, provided the scheme submitted to discharge the condition showed that there would be no adverse impact on the nesting swallows.

#### **7.09 Tree and Hedgerow Protection**

Condition 15 requires the submission and approval of a scheme for the protection of trees and hedgerow and requires its implementation and retention in full in accordance with the approved details.

The proposed amendment to this condition would add some clarity in making it clear that the submitted scheme can again take account of the likelihood that the development may now be implemented in phases.

The variation to the condition would not reduce the level of protection afforded to any of the trees and hedgerows on the site and sufficient



control over trees can be provided over the whole site through the approval of the phased details.

#### **7.09 External Materials**

Condition 16 requires the submission of details of any replacement external windows and doors and also stipulates that the submitted scheme shall provide for windows and doors of a timber construction with painted finish. The condition also requires the implementation of the approved details in full.

The proposed amended condition put forward by the applicant seeks the deletion of the requirement that the proposed replacement windows and doors be of a timber construction with timber finish. There is no justification put forward in the submission for this change and the Conservation and Design Officer raises an objection to this change.

The site comprises an attractive early 19<sup>th</sup> Century farm complex with more recently added steel framed barns. Traditional painted windows make an important contribution to the character of the property, in particular to the character of the 19<sup>th</sup> Century brick buildings.

Whilst no justification has been submitted to support the removal of that part of condition 16 that deals with materials and finishes to windows and doors the condition as re-drafted still allows the Local Planning Authority to retain control over the approval of detailed finishes.

The retention of timber painted windows and doors in the traditional buildings is important and the proposed amended condition makes a distinction between these buildings and the more recent buildings. However, a more contemporary solution may be acceptable for the later steel framed barns. Variation of the condition as proposed would allow for this flexibility.

The amendment of this condition therefore does not preclude the Local Planning Authority requiring appropriate painted timber finished windows and doors on the traditional brick buildings at the time details are submitted.

#### **7.10 Ventilation and Fume Extraction**

Condition 18 requires the details of ventilation and extraction equipments including ducting and vents and cowls prior to commencement of development. The reason for the imposition of the condition was in the interest of the visual amenity of the area. The condition requires the implementation of the scheme in full prior to the first use of the development.

The proposed variation of the condition again allows for a phased implementation of the development and proposed that the use of each building shall not commence until the agreed scheme for that particular building has been implemented in accordance with the approved details.

This variation is consistent with the reason for imposing the condition on the original consent and still ensures that any ventilation equipment, ducts or cowls respect the character and appearance of the traditional buildings, thus safeguarding the visual amenity of the area.

#### 7.11 **Welsh Office Circular 35/95**

Any planning condition should be considered under tests set out within Welsh Office Circular 35/95. Those tests include the tests of necessity and reasonableness.

In this case the applicants state that the conditions as currently set out fail those tests as they require implementation of a number of matters in full prior to the occupation of any part of the development.

At the time the change of use application was submitted the application was presented on the basis of occupancy by a single user. However, the consent does not preclude the occupation of the site by a number of different light industrial users. On that basis the applicants have tried to secure funding for the development of the site and maintain that the conditions requiring completion of the development in full places an unnecessary and unreasonable burden on the applicant. As a result they have been unable to secure development funding.

Assessed against the tests in Circular 35/95 the retention of the conditions in their current form could fail the tests of necessity and reasonableness.

#### 8.00 **CONCLUSION**

8.01 Having regard to the above it is clear that the reasons for imposing the conditions in the first place can still be achieved through the proposed amended conditions as there would be no detriment to highway safety, visual amenity or the safeguarding of protected species.

8.02 Given the foregoing it is clear that the variation of the conditions forming the subject of this application is acceptable and complies with planning policy.

8.03 In considering this planning application the Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the

Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

**Contact Officer:**

**Telephone:**

**Email:**