



PLANNING & DEVELOPMENT COMMITTEE

16 JULY 2020

REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

APPLICATION NO: 19/0323/38 (CHJ)
APPLICANT: Tower Regeneration Limited
DEVELOPMENT: Application for the discharge of Condition 8 of Planning Permission 13/0466/15 (allowed at appeal APP/L6940/A/14/2212351) to provide a revised restoration scheme to that previously approved under Discharge of Condition Consent 17/0525) (Amended description 10 April 2019) (Additional information received 04/09/2019) (**Additional information received 29/04/20**)
LOCATION: TOWER COLLIERY RAILHEAD, RHIGOS MOUNTAIN ROAD, RHIGOS, HIRWAUN, ABERDARE, CF44 9UF
DATE REGISTERED: 04/05/2020
ELECTORAL DIVISION: Rhigos

Reason Application is reported to Committee

Councillor Graham Thomas (Rhigos Ward) has requested that this application be reported to Committee for determination as the issues involved and problems experienced in the past have implications for the wider community

Background Information

This application (to Discharge a Condition) is located within the area which is owned and operated by Tower Regeneration Ltd. It is located on an area of land south of the A465 (Heads of the Valleys) between the villages of Hirwaun and Rhigos. The original consent granted by Rhondda Cynon Taff CB Council on 16th December 2011, featured 95 conditions (10/0292)

This consent for the site was supported by an 'indicative vision' of the restoration scheme (for which Condition 6 refers) on the basis that a full detailed design was not possible to be submitted so far in advance of the completion of the mineral extraction.

Although a broad restoration strategy was approved in 2012 (pursuant to Condition 64 of the consent), full details of the restoration scheme were to be controlled via Condition 65 which requires the submission of a 'detailed restoration scheme'.

Following the grant of a subsequent consent (by the Planning Inspectorate) in 2013 (13/0466) 90 conditions were now imposed (some removed or reworded from the original consent) including Condition 8 which requires a revised restoration scheme to be agreed with the Council in the event of coaling ceasing (which is the same as Condition 10 of the original 10/0292 consent).

A revised restoration scheme was subsequently approved in accordance with details submitted under application reference 17/0525.

The landform of the currently approved restoration scheme (17/0525), broadly followed the landform of the consent in 2013 (13/0466/15) of an unbroken slope from the south, the top of the site to the development plateaux to the north.

Application Details and Site / Development History

The application before Committee seeks the discharge of Condition 8 of planning permission 13/0466/15.

Consent (13/0446) was granted at appeal by The Planning Inspectorate on 3rd June 2014 following refusal by Committee in December 2013 of an application which sought to vary conditions 19, 20, 21 & 22 of the parent / main approval of the application for open cast and remediation / reclamation of the old tips. The purpose of that application sought to extend (by variation) the operational hours to include working on site up to 4.00 p.m. on Saturday afternoon (from the previously approved 12.00 mid-day) and for more Saturdays than the original consent imposed (up to 26).

Committee is advised that there are now 90 conditions attached to the current (live) planning consent. As with all consents, some are “pre-commencement” conditions, some simply require compliance at all times (such as hours of operation), some require information to be provided at various stages throughout the development (**such as the current proposal**) and some relate to works that will be on-going after the development has been completed.

This (current) application comprises a revision (a shallower profile) to that restoration scheme previously approved on 19th April 2018 (Ref: 17/0525).

Condition 8 (which seeks discharge) states:

In the event of coaling ceasing, the Local Planning Authority shall be notified of the date of cessation in writing within one month of the date of cessation. In the event of coaling ceasing for a period of 6 months, or as otherwise approved in writing by the Local Planning Authority, a revised scheme for the restoration of the site shall be submitted to the Local Planning Authority within 6 months of the cessation of coaling for written approval. The revised scheme shall be implemented within 6 months of its approval, or as may be otherwise specified in writing with the Local Planning Authority.

Reason: To protect the character and appearance of the site and surrounding area and the living conditions of nearby residents, in accordance with policies

AW5, AW6, AW8, AW10 and CS10 of the Rhondda Cynon Taf Local Development Plan.

Committee is advised that this rather “wordy” condition merely states that if TRL finish mining before the end of their consented period they shall submit a new restoration scheme to the LPA for consideration and, if approved, they must carry it out in accordance with that approval.

Committee is also advised that while being a relatively rare occurrence (perhaps more so on large or complex schemes) an applicant can apply to discharge that condition on more than one occasion should there be a change in circumstances that warrant such a change.

On each occasion, the Council (as LPA) must consider each submission on its individual merit.

Committee is further advised that only the details required by, and submitted in respect of, this condition may be considered.

Members are also reminded that, as part of the S106 Agreement annexed to the planning consent(s), there is a Financial Bond where the full cost of restoration of the site is funded by the applicant but held by the Council and returned to Tower Regeneration Ltd (TRL) in tranches as and when the excavated void has been filled in and the cost / risk of the Council having to intervene in the restoration decreases.

The Council is / has been advised by the Coal Authority as to how much should be repaid each month following the submission of a claim by TRL.

Committee is advised that, based on the advice of the Coal Authority, sufficient money is still retained by the Council to complete the restoration works in accordance with the restoration scheme as has previously been approved on 19th April 2018. Should Committee approve this application, sufficient money will be retained by the Council to cover the cost of this restoration scheme.

The Need for a (further) Revised Profile

Committee is advised that the site is surrounded on 4 sides and any site restoration levels must tie, as naturally as possible, into the existing adjacent land. The proposed contours on the agricultural areas on the eastern and western limits of the site still closely accord with the approved restoration plan 17/0525/38.

As part of the submission TRL has provided supporting information and have advised the Council (as LPA) as to why a further restoration scheme is required. Committee is advised that there is no requirement for an applicant to provide this information however, the provision of this information does enable the LPA / Committee to understand why such changes are being proposed.

In the intervening period (between the submission of the previous restoration scheme and the current proposal), several factors have necessitated the proposed amendments, principally:

- a) The exposure of unrecorded mine workings in the southern high wall,
- b) The meteorological (weather) conditions over recent years, and
- c) Exposed ground conditions in the proposed development areas

This proposed amendment to the approved restoration scheme are designed to address these problems and to maximise the potential benefits revealed by the amendments in the interests of Health & Safety, the environmental and the future development potential of the site following restoration – principally in terms of:

(i) Health & Safety – through **essential** retention of part of the High Wall;

- a. The exposure of unrecorded mine workings in the high wall which are issuing water make it extremely hazardous to backfill against it. There would be the danger of back-pressure of the water in the old workings, the potential of it issuing at some other unknown location and the potential for liquidising the backfill which could result in a failure and mudflow.

(ii) Land drainage and attenuation - with the creation of swales and wet flush areas in various locations over the restored area;

- a. The currently approved restoration scheme has no water attenuation facilities. Over recent months several storms have caused major issues with water flows both on and off site. The proposed restoration includes the provision of 10 attenuation ponds and the off-site flows balanced to minimise both on and off site problems.
- b. The applicant advises that the scheme has been designed by consultant engineers in consultation with RCT and NRW engineers.

(iii) Pre-ground preparation for proposed development areas.

- a. As the site operations have progressed it has exposed the foundations of the Tip. No. 901. At the ground level in the approved restoration any future development would have to remove these unsuitable foundations. This obviously involves additional “muck-shift” but is required to provide a suitable area for development.

(iv) Ecology, geology (Geopark), historical, visual and landform benefits; and

The revised landform with the old mine workings (not accessible), exposed geology on the exposed rock-face, the creation of swales and wet flush areas provide an aspect to the site not previously available.

The applicant has advised that there has been favourable and supportive comments on these aspects have been made by multi-discipline visitors to the site.

Consultation and Publicity

Committee is advised that there are no requirements to carry out a public consultation as part of an application to discharge a condition however, given the nature of the application, a number of notices were placed on, and in the vicinity of, the site. As a result no objection or other correspondence was received.

The local Community Councils were also notified of the proposal. No response was received from the Rhigos Community Council while the Hirwaun and Penderyn Community Council wrote in to **support** the application.

As part of the original submission (parent consent) it is normal for the LPA to consult a large number of organisations (both internal and external) however, when discharging a condition, it is usual only to consult those bodies who are of direct relevance to the consideration of that proposal.

The Council's Drainage Section was consulted (in respect of several iterations of the proposal). Given recent events including Storms Callum and Dennis it was considered essential that any lessons learned from those events were incorporated into the new scheme with a confidence that the infrastructure would be better able to cope should similar situations arise again.

The comments of the Council's Drainage Section are as follows:

*"Following the submission of the below documentation, I can confirm that following a review of the amended drainage proposals and the associated calculations, the proposed restoration plan is compliant in terms of hydraulics when having due regards to **TAN 15: Development and Flood Risk**.*

The Restoration Plan does not propose to increase the surface water run-off from the site at each of the discharge points in comparison to the pre-mining conditions. Furthermore, the applicant has submitted appropriate details for the pond and control structures".

It was further advised that access to the watercourses is provided and bridge crossings will be designed so that the flow of the watercourse is not obstructed. It was agreed that should this change, then the applicant will contact the Lead Local Flood Authority to obtain an Ordinary Watercourse Consent (OWC) which, Committee is advised, falls under separate legislation (outside of Planning).

As such, the Council's Drainage Section recommend that the condition can be discharged subject to a note to the effect that any approval of details does not free the applicant from the need to obtain other licences, consents, approvals or permissions which may be required in law or in order to comply with any duties or responsibilities for conservation or protection of the environment - for example, an ordinary watercourse consent is required for any temporary or permanent works undertaken to an ordinary watercourse as this would fall under the Land Drainage Act 1991.

In addition to consulting the Council's Drainage Section, NRW's views were also sought in respect of this condition.

Committee is advised that NRW have principally two roles to play in the consideration of this condition, namely, as the organisation responsible for Wales's rivers and secondly, as Welsh Government's advisors on impacts on the landscape, which in this case, involved consideration of any impacts on the Brecon Beacons National Park.

Earlier this year, NRW had expressed concerns over the number of times their attendance at the site was required as a result of surface water flooding and resultant contaminated water entering the watercourses. They sought a meeting but, due to the early onset of Covid-19 this wasn't possible and resulted in a conference call instead. It was clear that, while some of the issues raised were solely in the remit of NRW, there was a synergy between the problems they were facing (and the resources they were having to allocate to the situation) and the issues that the Council were facing both as the Drainage Authority and the Local Planning Authority.

As a result of this meeting, NRW set out what information they considered was necessary to be provided in order for them to consider the application to discharge (sic) the condition. This information, while perhaps being slightly wider than the remit of what the condition was looking / required to agree, was provided by TRL.

NRW, after evaluating the information received advised that *"our previous concerns regarding details on the monitoring of water quality and a maintenance program to deal with any ochre build up into the wetland ponds have been addressed."*

In respect of surface water drainage they advise that *"we welcome the intention as part of the on-going site restoration to provide sufficient storage in the form of attenuation and settling ponds to ensure that the surface water discharging from the site is of a rate and quantity which does not adversely affect the receiving environment"*

Following the submission of this information those issues which were somewhat outside the remit of the condition can either be addressed through NRW's own consenting regime (see later comments) or are adequately dealt with through other conditions attached to the consent.

NRW also had some concerns over the impact of the revised restoration scheme on the setting of the BBNP. Following receipt of further information, they now advise that they *"do not consider that the revised restoration would have a significant adverse visual effect on the Brecon Beacons National Park"* and have *"no further objections"*

As a result, NRW have withdrawn their objection / significant concerns and are advising that the condition can be discharged.

Committee is advised however that NRW have been pursuing their own enforcement action in respects of alleged breaches by the applicant / developer. These are closely related to aspects of the Planning consent (in as much as they relate to the development and restoration of an open-cast coal mining operation) however any action / prosecutions will be made outside of the Planning system. Such works include the removal of tyres buried at the site and prevention of silts from entering the water environment. These are being pursued (in addition to other issues) through the Environmental Permitting Regulations S36(5), the Water Resources Act 1991 S161A and the Environment Act 1990 S59.

In addition to both NRW and the Council's Drainage Section, the Council's Ecologist was also consulted in respect of the proposal and has offered the following advice:

"I have reviewed the most recent iteration of landform restoration proposals submitted by Tower, it offers very significant opportunities to deliver effective biodiversity and habitat mitigation. The landform mitigation set out in this recent submission is, in my opinion, wholly in line with the requirements and process of the restoration strategy to maximise the biodiversity and habitat potential of this site. The recognition that these final details would only be forthcoming at this later stage in the process was (in my opinion) a clearly understood principle of the environmental working group. That is why pilot areas of restoration were deliberately established earlier in mining process to inform this later process. It was a recognition that the fine tuning and delivery of effective mitigation could only be achieved at this stage in the restoration process and would need to draw upon site specific examples and opportunities. That is an essential principle if the ecological mitigation is to have any realistic chance of successfully offsetting the significant ecological impacts which have been experienced.

It is important to remember that ecological loss was the most significant environmental impact associated with this planning permission. That impact was fully identified at the time of the determination of the planning application by both myself and the Countryside Council for Wales and was clearly reported as such in the Planning Report. While the Planning Report recognised that not every element of the site's original ecological importance would be mitigated, it required that every effort should be pursued within the restoration and aftercare scheme to maximise the habitat and ecological value of the final restored landform.

The most recent iteration of restored landform achieves two very important ecological outcomes. Firstly, it provides for much needed micro-topography variation. In particular the retained back-wall will allow lower plants, fern and wetland communities to re-find habitat niches which were lost when the original complex mosaic of tips (with their intricate micro-topographies) were lost through the opencast excavations. As I commented in my planning observations in June 2011, 'The issues of micro-topography, and patterns of surface and sub-surface drainage are fundamental to the diversity of the SINC habitats. The applicant has reacted to this issue, and it is acknowledged that some micro-topography and surface drainage features have been designed into the project. However, these are limited by the confines of land stability, and because of engineering constraints the complexity of the existing situation is not (and in reality cannot) be duplicated in a restored landform'. It is therefore very gratifying to see the efforts made in this most recent restoration iteration to appropriately maximise the opportunities for mitigation of micro-topography .

The latest restoration details are also realising an impressive diversity of wetland features and wet flushes. Again, these were very key and important components of the sites original habitat composition, and were very important in supporting the site's original diverse flora and fauna. The successful restoration of flush and wetland habitats is usually a particular problem for colliery restoration scheme, however, the latest landform iteration will allow an appropriately controlled, but still very effective diversity of wetland and flush communities to develop. These will be fed through original hillside springs, and the series of bowls, and seepage connections will allow a

far greater variety of wetland habitats to develop than earlier restoration iteration allowed. That improved habitat diversity is very good to see.

It is also important to recognise that this latest restoration iteration has been advised and informed by an updated ecological assessment. This has been particularly effective and important in drawing together the important messages and lessons from initial 'pilot' restoration works, other ecological mitigation works and the many sources of evidence of how nature has reacted on this site. As such I think this latest iteration is an effective culmination of the evolution of process, discussion and thoughts which has been the purpose of the environmental working group. As such I am confident that there is now real opportunity to achieve the meaningful habitat restoration this site requires.

I also note that the revised scheme provides evidence of improved tip stability provision through the controlled 'opening up' of water courses and attenuation, rather than the re-burial of spring lines".

The BBNP Authority were also consulted in respect of the application. No response has been received however, the response from NRW is considered to address the impact on the landscape and setting and the inherent special qualities of the BBNP.

Conclusion & Recommendation

In the discharge of Planning conditions generally, some require a Planning judgement / balance to be made (such as in issues of "visual amenity") while others are largely technical in nature and largely rely on the comments of specialist consultees. While the consideration of this condition contains an element of both, the majority of the weight afforded to the decision maker is one that is based largely on the technical expertise of individuals and organisations both inside and outside of the Council. Based on the information that has been received from NRW, the Council's Ecologist and the Council's Drainage Section, there would not seem to be any obvious technical reason to withhold discharge of the condition.

With regard to the retention of the "rear wall", it has introduced a new element to the landscape that was not there or proposed in the past. There are technical (safety) reasons put forward as to why at least part of it should remain exposed and environmental reasons why its retention in its current form would provide enhanced ecological opportunities for mitigation above and beyond the scheme that was previously approved. NRW have also advised that they do not consider that the proposed restoration landform would have any adverse impact on the BBNP, however, leaving safety issues aside, it does propose a significant change to the landscape that needs to be considered. It is clear that this area has been heavily worked through its industrial past and that any restoration will inevitably be largely artificial.

The retention of the "rear wall" does provide an interesting feature within the landscape and, while it too is man-made, it could be considered to be an honest remnant of the areas industrial heritage as well as, once it has weathered and "greened-up", be not too dissimilar to the dramatic rock faces which so characterise the immediate and wider area.

In addition the soon-to-be dualling of the A465 (Heads of the Valley) and the significant changes proposed to the large roundabout at Hirwaun, in combination with the creation of the plateaux that both this and the previous restoration schemes proposed (bringing forward the development of the Policy NSA8 site in the LDP), will mean that the foreground to this restoration scheme will also undergo significant changes such that any impact of the BBNP and communities of Hirwaun, Penderyn and Rhigos will be further minimised.

In light of the above considerations, **it is recommended that the application be discharged**. This will mean that TRL (in Planning terms) can complete the development thus bringing to an end a controversial development (being so close to nearby residential areas). The legacy of the open cast operation will still be experienced over the next few years and beyond as it returns to a more natural appearance, and the mitigation requirement itself will still be in place for decades as specified in the original consent and S106 Agreement.

Committee is advised / reminded / reassured that, notwithstanding the discharge of this condition, the developer would still need to comply with the requirements of NRW's Environmental Permitting Regulations and other related legislation, as well as all other conditions attached to the Planning consent.