

## PLANNING & DEVELOPMENT COMMITTEE

21 JULY 2022

### REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

#### PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

**APPLICATION NO:** 21/0747/15 (KL)  
**APPLICANT:** CJC Estates Ltd  
**DEVELOPMENT:** Variation of Condition 1 of planning ref. 17/0195/13 to permit a period of a further 3 years for the submission of reserved matters (Ecological Review Rec. 24/03/22)  
**LOCATION:** LAND TO THE REAR OF SION TERRACE,  
CWMBACH, ABERDARE, CF44 0AT  
**DATE REGISTERED:** 21/05/2021  
**ELECTORAL DIVISION:** Cwmbach

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**RECOMMENDATION:** Approve, subject to conditions and S106 Agreement.

**REASONS:** Although there has been a change in national planning policy since the approval of the previous outline consent (ref. 17/0195/13), the main thrust of planning policy remains the same in that residential development is supported within sustainable locations and within defined settlement boundaries. Nothing has changed in terms of the position of the site in that it remains within the settlement boundary of Cwmbach and it is therefore still considered to be a highly sustainable location. As such, the proposal is still considered to be acceptable in principle. Furthermore, the extant outline consent for up to 15 dwellings is considered to carry significant weight and, when balanced against the absence of a change in circumstance at the site and lack of objections from consultees, the greater weight lies in favour of granting approval for an extension of the timescale in which reserved matters may be submitted.

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#### REASON APPLICATION REPORTED TO COMMITTEE

- The proposal is not covered by determination powers delegated to the Director of Prosperity & Development

#### APPLICATION DETAILS

This application is submitted under Section 73 of the Town and Country Planning Act 1990 and seeks to vary Condition 1 of a previous outline planning application (ref.

17/0195/13) for the construction of 15 residential dwellings on land at the rear of Sion Terrace, Cwmbach, Aberdare. The original application was originally refused by the Planning and Development Committee on 27<sup>th</sup> June 2017 however, it was later allowed at appeal on 15<sup>th</sup> June 2018. A number of conditions were added to the consent with condition 1 of that permission being as follows:

*1) a) Approval of the details of the appearance, landscaping, layout and scale (hereinafter referred to as "the reserved matters") shall be submitted to and approved in writing by the local planning authority before the development begins and the development shall be carried out as approved.*

*b) Any application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this decision.*

*c) The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.*

The current application relates to part (b) of the condition and specifically seeks a variation to permit a period of a further 3 years for the submission of reserved matters, although a reserved matters application has been submitted alongside the Section 73 application and is currently being considered. Both applications were submitted before the expiration of the original outline application however, the applicant has indicated that the purpose of this Section 73 application is to protect the original outline approval should the reserved matters application be refused.

The original application indicated that 15 dwellings would be constructed on land at the rear of Sion Terrace. All matters except for access were reserved for future consideration however, an indicative site layout plan was provided to demonstrate how the development may be laid out.

The indicative site layout indicates that each dwelling would have minimum and maximum dimensions consisting of the following:

- Height (to ridge): Min. 7m; Max. 9m.
- Width: Min. 4m; Max. 12m (which can be combined to make a building of up to 25m wide)
- Depth: Min. 5m; Max. 12m.

Each garage would be between 4m and 5m high to ridge, between 3m and 7m wide (street frontage) and between 6m and 7m in length.

Access to the site will be served via a new access road between 6 and 7 Crown Row.

## **SITE APPRAISAL**

The application site relates to an irregular shaped parcel of land which is situated at the rear of existing residential properties in Sion Terrace to the south-west Bron Haul to the north-east. It measures approximately 0.62 hectares and slopes steeply from north-east to south-west. Access is provided off Sion Terrace. The site appears to have been recently cleared of all vegetation.

The surrounding area is predominantly residential in character with residential properties being located to the south-west and north-east. Cwmbach Church in Wales Primary School, a children’s play area and amenity grassland lie to the east whilst an area of mature ancient woodland lies to the north-west.

Existing properties in the area predominantly comprise of two-storey terraced and semi-detached dwellings which are typically set back from the highway.

## PLANNING HISTORY

21/0855	Land at the rear of Sion Terrace, Cwmbach	Application for reserved matters approval (appearance, landscaping, layout, access and scale) in respect of 15 dwellings and associated works (pursuant to outline planning approval: 17/0195)	Pending
19/1236	Land at the rear of Sion Terrace, Cwmbach	Outline application for 5 no. self-build plots with all matters reserved	Pending (S106 agreement)
17/0195	Land at the rear of Sion Terrace, Cwmbach	Outline planning application for residential development of approximately 15 dwellings, open space, landscaping, drainage features and associated infrastructure with all matters reserved except access.	Refuse 27/06/17 Allowed at Appeal: 15/06/18

## PUBLICITY

The application has been advertised through direct neighbour notification and through the erection of site notices in the vicinity of the site. A press notice has also been published in a local newspaper.

Two letters of objection have been received and are summarised as follows:

- The access road in and out of the site is adjacent to existing dwellings.
- Crown Row is the only way in and out and is an extremely small residential road.
- The road cannot take an increase in traffic.
- The first part of the road is difficult to get through due to cars parked opposite residents' homes.
- Queries how large vehicles like diggers will access the road should the application go ahead.
- There should be another road that leads out at the top of the site which would take the strain and congestion away from Crown Row.
- Concerns raised with regards to surface water drainage as a result of the development.

## **CONSULTATION**

The following consultation responses have been received:

**Countryside, Ecology and Landscape:** No objection subject to the conditions of the previous outline planning consent being re-imposed.

**Highways and Transportation:** No objection, subject to the conditions of the previous outline planning consent being re-imposed.

**Flood Risk Management:** No objection

**Public Health and Protection:** Does not wish to make any comments on the proposal to extend the time period for a further 3 years.

**South Wales Fire and Rescue:** No objection raised. Makes recommendations for the provision of adequate water supplies on the site for firefighting purposes and provision of access for emergency firefighting appliances.

**Welsh Water:** No objection subject to any drainage conditions imposed on the original outline consent being brought forward.

No other responses have been received.

## **POLICY CONTEXT**

### **Rhondda Cynon Taf Local Development Plan**

The application site is located within the defined settlement boundary and is not allocated for any specific purpose. The following policies are considered to be relevant to this application:

**Policy CS1 – Development in the North:** focus is on developing sustainable communities to support and reinforce the role of the Principle Town of Aberdare, achieved by providing high quality, affordable accommodation and ensuring the removal and remediation of under used and previously used land.

**Policy CS4 – Housing Requirements:** defines housing land requirements

**Policy CS5 – Affordable Housing:** requires provision of affordable housing

**Policy AW1 – Supply of New Housing:** sets out the means by which new housing will be delivered through the development plan

**Policy AW2 – Sustainable Locations:** advises that development proposals on non-allocated sites will only be supported in sustainable locations.

**Policy AW4 – Community Infrastructure & Planning Obligations:** lists community infrastructure and planning obligation contributions which the Council may seek in respect of key settlements.

**Policy AW5 – New Development:** sets out criteria for new development in relation to amenity and accessibility.

**Policy AW6 – Design and Placemaking:** requires development to involve a high quality design and to make a positive contribution to place making, including landscaping.

**Policy AW8 – Protection and Enhancement of the Natural Environment:** sets out the criteria for the protection and enhancement of the natural environment.

**Policy AW10 – Environmental Protection and Public Health:** development proposals must overcome any harm to public health, the environment or local amenity as a result of flooding.

**Policy NSA10 – Housing Density:** reinforces housing density targets for residential development proposals, stating that proposals should be a minimum of 30 dwellings per hectare.

**Policy NSA11 – Affordable Housing:** seeks 10% affordable housing provision.

**Policy NSA12 – Housing Development within and adjacent to Settlement Boundaries:** gives criteria for development within settlement boundaries.

## **Supplementary Planning Guidance**

Design and Placemaking

Affordable Housing

Nature Conservation

Planning Obligations

Access Circulation and Parking

## **National Guidance**

In the determination of planning applications regard should also be given to the requirements of national planning policy which are not duplicated in the Local Development Plan, particularly where national planning policy provides a more up to date and comprehensive policy on certain topics.

Planning Policy Wales Edition 11 (PPW) was issued on 24<sup>th</sup> February 2021 in conjunction with Future Wales: The National Plan 2040 (FW2040). PPW incorporates the objectives of the Well-being of Future Generations (Wales) Act into town and country planning and sets out Welsh Government's (WG) policy on planning issues relevant to the determination of all planning applications. FW2040 sets out the National Development Framework for Wales (NDF), WGs current position on planning policy at regional and national level.

It is considered that the proposed development is consistent with the key principles and requirements for placemaking set out in PPW; and is also consistent with the Well-being of Future Generations (Wales) Act's sustainable development principles through its contribution towards the Welsh Ministers' well-being objectives of driving sustainable development and building healthier communities and better environments.

It is also considered the proposed development is compliant with the NDF, with the following policies being relevant to the development proposed:

- Policy 1 – Where Wales will grow – Employment/Housing/Infrastructure
- Policy 2 – Shaping Urban Growth – Sustainability/Placemaking
- Policy 9 – Resilient Ecological Networks – green infrastructure/ecology

Other relevant policy guidance consulted:

PPW Technical Advice Note 2: Planning and Affordable Housing

PPW Technical Advice Note 12: Design

PPW Technical Advice Note 15: Development and Flood Risk

PPW Technical Advice Note 18: Transport

Manual for Streets

## **REASONS FOR REACHING THE RECOMMENDATION**

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

Furthermore, applications that are not in accordance with relevant policies in the plan should not be allowed, unless material considerations justify the grant of planning permission.

### **Main Issues:**

The key consideration in the determination of this application is that planning policy remains supportive of the proposed development within the terms laid down by the adopted Rhondda Cynon Taf Local Development Plan.

Applications made under 73 of the Town & Country Planning Act 1990 allow the Local Planning Authority to do one of two things when an applicant seeks to vary the condition. It can:

- a) Grant consent either with or without conditions; or,
- b) Refuse

In that the Council can approve with or without conditions, it is also appropriate to consider, if planning permission is to be renewed, the extent and nature of all the previous conditions and amend them to reflect current circumstances and requirements.

In this instance, the applicants are seeking to extend the period of time within which reserved matters can be submitted for the consideration of this Authority. In such circumstances, it is appropriate to consider whether there has been any change in policy or any other material circumstance that might affect the proposal; however, it is not appropriate to challenge the heart of the consent itself.

The Local Development Plan (LDP) remains the key policy consideration in this application however, national policy has changed with the publication of PPW11 and Future Wales – The National Plan 2040. Whilst this is a change since the approval of the previous application, there is still a clear emphasis for residential development in sustainable locations and within defined settlement boundaries. Nothing has changed in terms of the position of the site in that it remains within the settlement boundary of Cwmbach. It is therefore still considered to be a highly sustainable location and the proposal is still considered to be acceptable in principle. Furthermore, the extant outline consent for up to 15 dwellings is considered to carry significant weight and, when balanced against the absence of a change in circumstance at the site and lack of objections from consultees, the greater weight lies in favour of granting approval for an extension of the timescale in which reserved matters may be submitted.

On this occasion, the application to renew planning permission has drawn two objections from the public which predominantly relate to highways and drainage issues. Both of these issues were fully considered in the approval of the outline consent and Members should note that the Transportation Section and Flood Risk Management team have not raised any objections to the proposal, subject to the re-imposition of conditions that were applied to the previous consent.

It must be noted that the Preliminary Ecological Appraisal (dated September 2016) submitted to support the original application had expired by the time of the submission of the current Section 73 application. As such, an Ecological Review (dated 30<sup>th</sup> June 2022) has been submitted to support the current application and this has been assessed by the Council's Ecologist. The review indicates that since the original report, the site has been cleared and contains large areas of bare earth. It notes that small areas of bramble scrub, tall ruderal vegetation semi-improved grassland, improved grassland, Japanese Knotweed and fly-tipping were present around the

periphery of the site. As a result of this, conditions within the site have inevitably changed since the 2016 survey and the review indicates that the main considerations are now, the protection of the Ancient Semi Natural Woodland (ASNW) which lies to the north of the site, nesting birds, foraging and commuting bats, adequate protection of retained trees and treatment of Japanese Knotweed. The report makes several recommendations in relation to these issues. The Council's Ecologist concurs with these recommendations and considers that the condition imposed upon the original consent is still relevant and appropriate. A further Section 106 Agreement is also considered necessary to secure the long-term ecological management of the site, with details to include an annual work programme, monitoring, annual reporting to the Local Planning Authority and details of those responsible for delivering the plan (as per the original consent).

### **Community Infrastructure Levy (CIL) Liability**

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31 December 2014.

As planning permission first permits development on the day of the final approval of the last of the reserved matters CIL is not payable at outline stage, but will be calculated for any reserved matters or full applications.

### **Section 106 Contributions / Planning Obligations**

Section 106 of the Town and Country Planning Act (as amended) enables Local Planning Authorities and developers to agree to planning obligations to require operations or activities to be carried out on land (in-kind obligations) or require payments to be made (financial contributions), to mitigate any unacceptable impacts of development proposals.

The Community Infrastructure Levy (CIL) Regulations 2010, with effect from 6 April 2010, state that a planning obligation (under S.106) may only legally constitute a reason for granting planning permission if it is:

1. necessary to make the development acceptable in planning terms;
2. directly related to the development; and,
3. fairly and reasonably related in scale and kind to the development.

The Welsh Government Development Management Manual and Welsh Office Circular 13/97 Planning Obligations provide procedural guidance on the role of planning obligations in mitigating the site-specific impacts of unacceptable development to make it acceptable in planning terms. The Welsh Government Development Management Manual also advises planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition and when it meets the three tests above. Further guidance regarding what types of obligations developers may be expected to contribute towards is also contained within Policy AW4 of the Local Development Plan and the Council's SPG on Planning



Obligations, however it is made clear that this is intended to form the basis of negotiations between all parties.

### **The Section 106 requirements in this case**

The earlier application relating to the development of this site was subject to a Unilateral Undertaking which required the owner of the land to provide:

- not less than 10% of the dwellings as three bed low cost housing units in the form of houses; and,
- a public open space management plan which included the set-up, design and long-term management of the ecological mitigation area.

These issues are still considered to be relevant and the applicant will therefore need to enter into a deed of variation to carry forward the previous S106 agreement.

### **Conclusion**

In conclusion, the principle of a residential development remains acceptable under the current Local Development Plan and in the context of Planning Policy Wales 11, in light of this, the current application should be supported.

**RECOMMENDATION: Approve, subject to conditions and the applicant entering into a Section 106 agreement to secure 10% affordable housing and a long-term ecological management plan.**

1. a) Approval of the details of the appearance, landscaping, layout and scale (hereinafter referred to as “the reserved matters”) shall be submitted to and approved in writing by the local planning authority before the development begins and the development shall be carried out as approved.  
  
b) Any application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this decision.  
  
c) The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with Sections 92 and 93 of the Town and Country Planning Act 1990.

2. The development shall be carried out in accordance with the following approved plans and documents: JPW0585-001 Site Location Plan – dated

December 2016; ASP1448-01 Topographical Survey – dated March 2015; and SK06 Preliminary site access Plan – dated May '15.

Reason: To ensure compliance with the approved plans and documents and to clearly define the scope of the permission

3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and 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.

Reason: To ensure that the new development will be visually attractive in the interests of amenity in accordance with Policies AW5 and AW6 of the Rhondda Cynon Taf Local Development Plan.

4. Prior to the construction of the dwellings hereby approved details of the materials to be used in the construction of the external surfaces of the dwellings shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that the external appearance of the proposed development will be in keeping with the character of the area and adjoining buildings in the interests of visual amenity in accordance with Policies AW5 and AW6 of the Rhondda Cynon Taf Local Development Plan.

5. No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the residential use of the development and retained in perpetuity.

Reason: To ensure that the external appearance of the proposed development will be in keeping with the character of the area and adjoining buildings in the interests of visual amenity in accordance with Policies AW5 and AW6 of the Rhondda Cynon Taf Local Development Plan.

6. No development shall take place until a Species, Tree and Habitat Protection Plan for Construction has been submitted and approved in writing by the local planning authority. The plan shall include:

- a) An appropriate scale plan showing Protection Zones' where construction activities are restricted and where protective measures will be installed or implemented;

- b) Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
  - c) A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife and species could be harmed;
  - d) Details of specific species and habitat mitigation measures (including bat, nesting bird and reptile);
  - e) Details of wildlife sensitive lighting proposals;
  - f) Details of water pollution control measures;
  - g) Details of invasive plant control and removal;
  - h) Details of trees and hedgerow protection; and
  - i) An agreed scheme of progress reporting to the Council during the construction programme. Persons responsible for:
    - i) Compliance with legal consents relating to nature conservation;
    - ii) Compliance with planning conditions (Ecological Clerk of Works);
    - iii) Installation of physical protection measures and management during construction;
    - iv) Implementation of sensitive working practices during construction;
    - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
    - vi) Specific species and Habitat Mitigation measures; and
    - vii) Provision of training and information about the importance of the 'Protection Zones' to all construction personnel on site.
- All construction activities shall be implemented in accordance with the approved details and timing of the plan.

Reason: In the interests of maintaining biodiversity in accordance with Policy AW8 of the Rhondda Cynon Taf Local Development Plan.

7. Prior to the occupation of the dwellings hereby approved a plan indicating the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed as approved before the buildings are occupied.

Reason: To ensure that the new development will be visually attractive in the interests of amenity in accordance with Policies AW5 & AW6 of the Rhondda Cynon Taf Local Development Plan.

8. Demolition or construction works shall not take place outside the hours of 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays and at no time on Sundays or Public Holidays.

Reason: In the interests of the amenity and privacy of neighbouring residential properties, in accordance with Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

9. No development shall commence until a scheme has been submitted to and approved in writing by the local planning authority of 'intrusive site investigations' and shall include:
- a) A programme for the undertaking of that scheme of intrusive site investigations;
  - b) The submission of a report of findings arising from the intrusive site investigations; and
  - c) The submission of a scheme of remedial works for approval in writing by the local planning authority.

The remedial works shall be fully implemented prior to the development first being brought into beneficial use.

Reason: In the interest of health and safety and environmental amenity and so as to accord with Policy AW10 of the Rhondda Cynon Taf Local Development Plan

10. Notwithstanding the submitted plans, no works whatsoever shall commence on site until full engineering design and details of the internal road layout, traffic calming, street lighting, surface water drainage and highway structures including longitudinal and cross sections have been submitted to and approved in writing by the local planning authority. The highway works shall be fully implemented in accordance with the approved engineering details to the satisfaction of the local planning authority.

Reason: In the interests of highway safety, in accordance with Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

11. Off-street parking shall be in compliance with Rhondda Cynon Taf's Supplementary Planning Guidance on Delivering Design and Placemaking: Access, Circulation & Parking Requirements (March 2011).

Reason: In the interests of highway safety, in accordance with Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

12. HGV's used as part of the development shall be restricted to 09:30am to 3.00pm weekdays, 09:00am to 13:00pm Saturdays with no deliveries on Sundays and Bank Holidays.

Reason: In the interests of highway safety, in accordance with Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

13. No development shall take place, including any works of site clearance, until a Construction Method Statement has been submitted and approved in writing by the local planning authority to provide for:
- a) the means of access into the site for all construction traffic;
  - b) the parking of vehicles of site operatives and visitors;
  - c) the management of vehicular and pedestrian traffic;
  - d) loading and unloading of plant and materials;
  - e) storage of plant and materials used in constructing the development;
  - f) wheel cleansing facilities; and
  - g) the sheeting of lorries leaving the site.

The approved Construction Method Statement shall be adhered to throughout the development process.

Reason: In the interests of the safety and free flow of traffic, in accordance with Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

14. The Developer shall provide the occupier of each dwelling with a Travel Plan / Welcome Pack which should contain the following:
- a) Bus/Train Service providers, their contact details, frequency of service, timetable, bus stops/train stations, current ticket costs and financial incentives to encourage use of public transport;
  - b) Park and Ride/Park and Share facilities and associated costs and restrictions on use of such facilities;
  - c) Pedestrian links to public transport services, to local facilities, areas of employment, education and leisure;
  - d) Local and national cycle routes; and
  - e) Any other measures that would encourage use of sustainable modes of travel.

Reason: In the interests of promoting sustainability and Active Travel.