



## **PLANNING & DEVELOPMENT COMMITTEE**

**18 OCTOBER 2018**

### **REPORT OF THE SERVICE DIRECTOR, PLANNING**

#### **PURPOSE OF THE REPORT**

Members are asked to determine the planning application outlined below:

**APPLICATION NO:** 18/0954/10  
(GH)  
**APPLICANT:** Mr Powell  
**DEVELOPMENT:** Construction of a pond  
**LOCATION:** CWM MILL, HEOL FFRWD PHILIP, EFAIL ISAF,  
PONTYPRIDD, CF38 1AT  
**DATE REGISTERED:** 20/08/2018  
**ELECTORAL DIVISION:** Llantwit Fardre

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**RECOMMENDATION: GRANT SUBJECT TO THE CONDITIONS BELOW:**

#### **REASONS:**

The pond and associated landscaping works are not considered to be detrimental to the appearance of the site and surrounding area, or cause harm to the amenity of the closest neighbouring residents. The development is therefore considered to comply with Policies AW5, AW6 and AW10 of the Rhondda Cynon Taf Local Development Plan.

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#### **REASON APPLICATION REPORTED TO COMMITTEE**

Two letters and a petition containing nineteen signatures have been received, objecting to the proposal. Therefore, since the development is recommended for approval, the Council's Scheme of Delegation requires that the application is determined by Members.

#### **APPLICATION DETAILS**

Full planning permission is sought to retain a recently constructed pond, and associated ground works at Cwm Mill, Heol Ffrwd Philip, Efail Isaf.

The pond and land has been excavated within a paddock, which forms part of the planning unit of the Cwm Mill. Formerly maintained grass land, the pond is of

irregular shape having a width to a maximum of around 18m, maximum length of 60m and a surface area of approximately 759m<sup>2</sup>

The plans accompanying the application demonstrate that water enters the pond via an inlet from an existing pond to the south-east. The overflow from the new pond is directed to enter the adjacent Nant Y Felin watercourse slightly further upstream from where the existing pond previously discharged.

Lastly, a group of red cedar and hazel trees have been planted along a 20m long section of the north-western boundary, with the purpose of screening any views to and from the closest neighbouring dwelling.

## **SITE APPRAISAL**

Cwm Mill is a relatively isolated dwelling located close to the edge of the village of Efail Isaf. The property is a large two storey house located within a sizeable plot that benefits from additional paddock land, within the same planning unit, of approximately 6 acres.

Within the curtilage of the dwelling there is a detached garage/store, recently the recipient of consent for an extension and use as an annexe, and an L-shaped stable block. The property can be accessed from the road by two separate entrances. There is a large gated entrance adjacent to the road and also a private lane further along the road that leads to a gated entrance at the rear of the site.

A prominent bank of trees forms the rear boundary between an open field and the edge of the built up area of Efail Isaf. There are a small number of other dwellings around the periphery of Cwm Mill, including Ty Pica House in excess of 100m to the north-west, Tylery House 135m to the north-east, and Cwm Cottage around 225m to the south-west.

## **PLANNING HISTORY**

The most recent planning applications on record associated with the site are:

- 17/1184/10: Loft Conversion of existing annex building to create a study and games room. Construction of new dormer windows and extension to form car port. Increase ridge height by 1 metre. Decision: 08/12/2017, Refuse
- 17/1000/09: Certificate of Lawful Development for Existing Domestic Use - C3 to all land shown on site plan. Decision: 07/11/2017, Refuse
- 17/0533/10: Lower ground floor extension of existing garage/workshop to create ancillary annex accommodation. (Description change agreed by agent 26/5/17). Decision: 22/06/2017, Grant
- 16/0995/10: The construction of granny flat accommodation over existing garage and ancillary accommodation, and the formation of a new car port. Decision: 16/12/2016, Refuse

- 15/0422/10: Second Floor Extension to existing workshop and garage to create annex accommodation to the main house. Decision: 16/09/2015, Refuse
- 07/0825/10: Extension to dwelling to provide games room. Decision: 05/06/2007, Grant
- 06/1949/10: Extension to dwelling to provide games room and chimneys. Decision: 24/11/2006, Grant
- 06/0932/10: Remove conifer hedge and increase height of existing boundary wall. Decision: 03/07/2006, Grant

## **PUBLICITY**

The application has been advertised by direct notification to eight neighbouring properties and notices were erected on site.

Two letters and a petition of nineteen names objecting to the development have been received, raising the following concerns:

- a) erosion/land stability and public safety
- b) the development is retrospective
- c) too big to be considered a pond
- d) there has been no ecological survey
- e) the landscaping causes overlooking towards habitable rooms and the garden of a neighbouring property
- f) excessive noise from ducks and geese

## **CONSULTATION**

Natural Resources Wales - no objection.

Land Drainage - no objection, however the applicant should be advised that an Ordinary Watercourse Consent would be required and a condition is recommended in respect of water flow rates.

No other consultation responses have been received within the statutory period.

## **POLICY CONTEXT**

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

The application site lies outside and to the south of the settlement boundary for Efail Isaf

**Policy AW5** - sets out criteria for new development in relation to amenity and accessibility.

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

**Policy SSA23** - identifies Special Landscape Areas

**Supplementary Planning Guidance:** A Design Guide for Householder Development

### **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 Chapter 3 (Making and Enforcing Planning Decisions) and Chapter 4 (Planning for Sustainability), set out the Welsh Government's policy on planning issues relevant to the determination of the application.

Other policy guidance considered:

PPW Technical Advice Note 12 - Design

### **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:**

##### **Principle of the proposed development**

The application site is located outside the defined settlement boundary, as identified by the Local Development Plan, but is part of the land associated with the dwelling known as Cwm Mill.

The engineering of a pond, within what is considered in land use terms to be open countryside, does not in this case constitute a change of use, since it would still form part of the same planning unit and is for the benefit of the applicant and his family as landowners.

Accordingly, the matters for consideration are less about the principle of the development, but whether the engineering operations have resulted in visual harm to the landscape, detriment to the amenity of other residents, or have implications in respect of drainage and flooding. These matters are considered further below.

In addition, an objector has referred to the fact that this is a retrospective application and has questioned how it is possible to apply for consent, since it has 'already been allowed to be built' by the Planning Authority following the start of construction in May 2017.

Clearly, planning permission has not been granted for the pond and the application before members is the latest outcome of enforcement action taken by the LPA since the unauthorised development was first reported.

Initially, the applicant sought a Certificate of Lawful Existing Use (17/1000/09) on the basis that if the paddock was established to be part of the garden of Cwm Mill, then the pond could be considered to be permitted development.

The LPA refused to issue a certificate and as an aside, considered that the engineering works were of a scale in excess of that which would be considered permitted development. The applicant appealed the decision, however the appeal (3196193) was dismissed and the appointed Inspector concurred with the view of the Local Planning Authority. In order to regularise the development, the applicant has followed the Local Planning Authority's advice and submitted the current application.

Lastly, two of the objectors have challenged the description of the development as a pond, on the basis that its size disqualifies it as such. Nonetheless there is no recognised standard for what constitutes a pond or a lake, although the Ramsar Convention considers that a pond can have a size of up to eight hectares. In any event this is irrelevant since pond or otherwise, the scope of the development for which consent is sought is evident.

### **Impact on the character and appearance of the area**

The site is located within a countryside location, which is identified in the Local Development Plan as a Special Landscape Area. The area is noted for its unspoilt rural character and is vulnerable to development from Efail Isaf and surrounding settlements. Consequently, the LDP requires development proposals within SLAs to reflect the character of the local area.

Whilst the pond has had a significant impact on the appearance of the paddock land in which it has been excavated, its design is sympathetic to the surrounding land in how the ground has been landscaped and finished. Thus unlike an ornamental pond of formal style or regular dimensions and in the absence of any hard landscaping from the use of masonry or decoration, the pond does not detract from its setting.

Similarly, save for any views towards Cwm Mill and its grounds from the public footpath or neighbouring houses, the site is well-screened from the wider landscape and the construction of the pond has little or no impact in this regard.

Subsequently, it is considered the development is neither harmful to the visual character of the site or the surrounding area.

### **Impact on neighbouring occupiers**

Other than Cwm Mill itself the nearest dwelling to the application site is the property known as Ty Pica, which is located to the north-west of the pond. The distance between the rear elevations of Ty Pica to the top of the pond embankment at its closest point, amounts to a gap of around 28m, although the boundaries of both properties abut.

It has been suggested that the landscaping required to create the pond has enabled overlooking opportunities towards the habitable rooms of Ty Pica. However, whilst there are views towards the house from the edge of the pond, such views would have been possible prior to the works taking place. In this regard, the only physical change in the relationship is that the level of the land has increase by approximately 2m.

Given that there is not a great disparity in height between the ground floor of Ty Pica and that land around the edge of the pond, it is not considered that the landscaping has exacerbated any opportunities for intrusive views towards the neighbour's land and dwelling. Furthermore there is significant screening provided by the mature trees around the watercourse and bank, and the applicant has planted a swathe of red cedar trees which will create a denser, evergreen screen.

The matter of disturbance, caused by the noise of ducks and geese using the pond, has also been highlighted by an objector. However, the application site is part of a paddock which forms part of the planning unit of Cwm Mill, and which could be used for agricultural purposes i.e. the keeping of livestock. Therefore, whilst it is accepted that any birds attracted to the pond may indeed cause distracting noises, the site is located within open countryside where such a concern is considered to be of less material weight.

In light of the above, it is not considered that the development has resulted in an unacceptable degree of detriment to the neighbouring occupiers and in terms of the privacy and amenity of other residents, is acceptable.

### **Flood Risk Management**

As stated above, the application has been subject to consultation with Natural Resources Wales which has confirmed that the location of the site is within an area designated as a C2 Flood zone and within the 0.1% (1 in 1000 year) annual probability fluvial flood outlines of the Nant Y Felin.

Officers from NRW have undertaken a site visit and noted that the site is elevated above the Nant Y Felin and therefore is unlikely to be within its flood plain. NRW also noted that some regrading had been undertaken at the top of the embankment, although due to the distance from the Nant Y Felin no flood risk activity permit (FRAP) would have been required for the pond construction.

However, a FRAP should have been obtained for the outfall for the overflow pipe, albeit that having viewed the outfall NRW advises that it matches the cross-sectional area of the embankment and the structure itself is unlikely to pose any flood risk.

Consequently, whilst NRW does not object to the development, a number of informative notes, concerning future works, licensing for abstraction and fish stocking, are proposed to be appended to any consent.

Lastly, the Council's drainage section has requested that a condition is imposed on any consent, requiring the submission of details in respect of the inflow and outflow pipes and their capacity. This condition has been included as suggested.

### **Other Issues**

During the consultation period, concerns were highlighted in respect of the stability of the earthworks and whether the banking is satisfactorily designed and of sufficient strength to perform a retaining function.

No such details have been submitted with the application and given the proximity of the Public Right of Way to both the site and the Nant Y Felin, it is considered that it would be reasonable and necessary to require the submission of such details by condition. Consequently a suitably worded condition is recommended further below.

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

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

The application is for development of a kind that is not CIL liable under the CIL Regulations 2010 (as amended).

### **Conclusion**

It is considered that the scale and location of the pond and earthworks are acceptable in terms of their visual impact on the site and surrounding area, whilst the creation of the pond does not create additional overlooking opportunities that would cause harm to the amenity of neighbouring occupiers. As such the proposal is considered to comply with Policies AW5, AW6 and AW10 of the Rhondda Cynon Taf Local Development Plan.

### **RECOMMENDATION: GRANT SUBJECT TO THE CONDITIONS BELOW:**

1. Within three months of the date of this consent design details and structural calculations of the earthworks embankment which retains the pond, shall be submitted for the written approval of Local Planning Authority.

Reason: In the interests of public safety and amenity in accordance with Policy AW10 of the Rhondda Cynon Taf Local Development Plan.

2. Within three months of the date of this consent design details of the pond inflow and outflow pipes, including details of flow capacity, shall be submitted for the written approval of Local Planning Authority.

Reason: To ensure that drainage from the proposed development does not

cause or exacerbate any adverse condition on the development site, adjoining properties, environment and existing infrastructure arising from inadequate drainage.

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