

## PLANNING & DEVELOPMENT COMMITTEE

5 APRIL 2018

### REPORT OF THE SERVICE DIRECTOR, PLANNING

#### PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

**APPLICATION NO:** 18/0120/15 (MF)  
**APPLICANT:** Llanmoor Development Co Ltd  
**DEVELOPMENT:** Removal/Variation of Conditions 8, 9 & 10 (Sustainable Homes) of previously approved application 13/0064/10 (Construction of 4 no semi detached houses 3 no 2 bedroom and 1 no 3 bedroom).  
**LOCATION:** LAND ADJACENT TO CLOS-Y-CARW, LLANTWIT FARDRE, CF38 2BP  
**DATE REGISTERED:** 08/02/2018  
**ELECTORAL DIVISION:** Llantwit Fardre

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**RECOMMENDATION:** Approve

#### REASONS:

As of 31 July 2014, national planning policy requirements for sustainable building standards were withdrawn and Technical Advice Note 22: Planning for Sustainable Buildings (TAN 22) was cancelled. Subsequently all requirements relating to energy efficiency are now included within Part L of the Building Regulations. Therefore the Code for Sustainable Homes conditions attached to the original consent are unenforceable and unnecessary, and their removal from the original consent is acceptable.

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Six letters of objection were received following the consultation process.

#### APPLICATION DETAILS

This application seeks consent to remove Conditions 8, 9 and 10 from planning permission ref. 13/0064/10. The original application proposed the construction of 4 no. semi-detached dwellings on land off Clos Y Carw, Llantwit Fardre. The application was allowed at appeal on 05/03/14 after firstly being refused by the Council on 13/09/13.

Conditions 8, 9 and 10 attached to the original consent relate to the former Code for Sustainable Homes regulations and state:

*'8. Each new dwelling hereby permitted shall be constructed to achieve a minimum Code for Sustainable Homes Level 3 and achieve a minimum of 1*

*credit under category 'Ene1- Dwelling Emission Rate' in accordance with the requirements of the Code for Sustainable Homes: Technical Guide, Version 3 (November 2010). The development shall be carried out entirely in accordance with the approved assessment and certification.*

*9. Construction of any dwelling hereby permitted shall not begin until an 'Interim Certificate' has been submitted to the Local Planning Authority, certifying that a minimum Code for Sustainable Homes Level 3 and a minimum of 1 credit under 'Ene1 - Dwelling Emission Rate', has been achieved for that individual dwelling in accordance with the requirements of Version 3 of the Code for Sustainable Homes: Technical Guide, Version 3 (November 2010).*

*10. Prior to the occupation of any individual dwelling hereby permitted, a Code for Sustainable Homes 'Final Certificate' shall be submitted to the Local Planning Authority certifying that a minimum Code for Sustainable Homes Level 3 and a minimum of 1 credit under 'Ene1 - Dwelling Emission Rate', has been achieved for that individual dwelling in accordance with the requirements of the Code for Sustainable Homes: Technical Guide, Version 3 (November 2010).'*

In June 2014 the Welsh Minister for Housing and Regeneration announced his intention to withdraw the national planning policy requirement for sustainable building standards and cancel TAN 22: Planning for Sustainable Buildings when the changes to Part L of the Building Regulations came into effect from the end of 31 July 2014. In announcing the change the Welsh Minister expressed his belief that TAN 22 had served its purpose now that the Welsh Government has control over the Building Regulations which provide a more appropriate vehicle for setting building standards. These changes came into effect on 31 July 2014.

As such, in light of the above alterations to the relevant legislation, the applicant has detailed that Conditions 8, 9 and 10 attached to planning permission ref. 13/0064/10 cannot be complied with and are therefore unnecessary and should be removed from the existing consent.

## **SITE APPRAISAL**

The application site forms a roughly rectangular parcel of land located at the edge of an existing residential estate within Llantiwt Fardre. It is sited immediately to the rear of properties along both Clos Y Carw and Ffordd Glas Y Dorlan, but whilst forming part of the wider housing estate, the plot was not developed during the original building out of the site and is currently vacant. As such the surrounding area forms a modern residential estate that comprises a mix of dwellings types of varying design and scale.

The plot itself slopes in north-west to south-east direction, falling steadily from one corner to another. It is bounded by nos. 12 and 17 Clos Y Carw to the north, and nos. 18 and 19 Clos Y Carw and 44 and 45 Ffordd Glas Y Dorlan to the west. A band of mature trees is located to the east of the site which forms part of SINC AW8 143 (Llantiwt Fardre West). An open area of land is sited to the south. The plot is

enclosed with close board timber fencing along the eastern and southern boundaries and access is gained via a private drive to the north, adjacent to no. 12 Clos Y Carw.

## PLANNING HISTORY

Previous planning applications submitted at the application site:

13/0064	Land adjacent to Clos Y Carw, Llantwit Fardre	Construction of 4 no. semi detached houses (3 no. 2 bedroom and 1 no. 3 bedroom)	Refused 13/09/13  Appeal allowed 05/03/14
98/2186	Land off the A473, Llantwit Fardre	Proposed residential development of 62 no. detached dwellings and associated highways	Granted 02/10/98
97/2740	“	Variation of time limiting Condition 1 of 93/0954	Withdrawn 23/01/98
96/2443	“	Amendment to Condition 4 (93/0954) specifying carriageway width of main access road	Granted 08/01/97
95/0146	“	Construction of a roundabout junction on the A473	Granted 10/07/95
93/0954	“	Residential development (outline)	Granted 07/10/94
93/0412	“	Residential development (outline)	Refused 30/11/93
90/0018	“	Residential development (outline)	Unknown
79/0952	“	Residential development (outline)	Granted 23/10/79

## PUBLICITY

The application has been advertised by means of direct neighbour notification and site notices in the vicinity of the site. Six letters of objection have been received from surrounding residents, making the following comments (summarised):

- The conditions that the applicant wishes to remove form an integral element of the permission and should therefore remain.
- The proposed dwellings would result in additional traffic and vehicles parking along the already busy and congested street. Further, the access in to the street is not adequate for additional vehicles and the private drive off the

street is also not adequate to serve the proposed. This would result in a detrimental impact upon pedestrian and highway safety to surrounding residents and additional pollution in the area from vehicles.

- The proposed development would not accommodate enough off-street parking for the number of vehicles that would be associated with the new properties.
- The proposed development would result in surface water running-off to the surrounding area, causing flooding.
- The proposed development would hinder the use of the adjacent open grassed area which is regularly used by local residents for recreation.
- The building works and associated deliveries would result in noise and disturbance to surrounding residents and could damage neighbouring property.
- The occupation of the new dwellings would result in noise and disturbance to existing surrounding residents.
- The design of the proposed dwellings will be out of character with the visual appearance of the surrounding properties.
- The proposed dwellings would have an overbearing and overshadowing impact upon the surrounding properties.
- The proposed dwellings would impact upon outlook of surrounding residents and overlook the adjacent properties.
- The site was not developed with the rest of the estate. Therefore the land must be unsuitable for residential development. Possibly a risk of subsidence.
- The excavation works associated with the proposed development may undermine the structural integrity of the surrounding properties.
- The proposed dwellings would reduce the value of the existing surrounding properties.
- The proposed dwellings would impact upon the woodland to the rear of the site.
- The introduction of 4 no. additional properties to the street would result in the developers having miss sold the properties to the current owner/occupiers.

## **CONSULTATION**

Transportation Section – no objection.

Public Health and Protection – no objection.

Flood Risk Management – no objection.

Countryside, Landscape and Ecology – no objection.

Western Power – no objection.

Dwr Cymru/Welsh Water – no response.

Wales and West Utilities – no response.

## **POLICY CONTEXT**

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

The application site lies within the settlement boundary for Llantwit Fardre, but is not allocated for any specific purpose.

**Policy CS2** – sets out the criteria for development in the Southern Strategy Area.

**Policy AW1** – sets out the criteria for new housing proposals.

**Policy AW2** – supports development in sustainable locations and includes sites that are accessible by a range of sustainable transport modes and would not unacceptably conflict with surrounding uses.

**Policy AW4** – details the criteria for planning obligations including the Community Infrastructure Levy (CIL).

**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 AW8** – sets out the criteria for the protection and enhancement of the natural environment.

**Policy AW10** – does not permit proposals where they would cause or result in a risk of unacceptable harm to health and/or local amenity.

**Policy SSA13** – identifies the criteria for assessment of development proposals within settlement boundaries.

### **Supplementary Planning Guidance**

- Design and Placemaking;
- 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 Chapter 2 (Local Development Plans), Chapter 3 (Making and Enforcing Planning Decisions), Chapter 4 (Planning for Sustainability), Chapter 5 (Conserving and Improving the Natural Heritage and the Coast), Chapter 8 (Transport) and Chapter 9 (Housing) set out the Welsh Government's policy on planning issues relevant to the determination of the application.

Other relevant policy guidance consulted:

- PPW Technical Advice Note 5: Nature Conservation and Planning;
- PPW Technical Advice Note 11: Noise;
- PPW Technical Advice Note 12: Design;
- PPW Technical Advice Note 18: Transport.

## **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.

### **Principle of the Proposed Development**

Full planning permission ref. 13/0064/10 sought consent for the erection of 4 no. semi-detached dwellings at the application site and was approved on 05/03/14, subject to a number of relevant conditions. This application seeks to remove the 3 no. Code for Sustainable Homes conditions (8, 9 and 10) imposed on the original planning permission only. It does not seek full planning permission for the development works or the removal/variation of any other conditions attached to the existing permission.

In June 2014 the Welsh Minister for Housing and Regeneration announced his intention to withdraw the national planning policy requirement for sustainable building standards and cancel TAN 22: Planning for Sustainable Buildings when the changes to Part L of the Building Regulations came into effect from 31 July 2014. In announcing the change the Welsh Minister expressed his belief that TAN 22 had served its purpose now that the Welsh Government has control over the Building Regulations which provide a more appropriate vehicle for setting building standards. These changes came into effect on 31 July 2014. In making these changes it is the view of the Welsh Government that any applications determined after the 31 July 2014, including Section 73 applications which might seek to remove extant conditions on planning permissions requiring the relevant Code for Sustainable Homes/BREEAM levels to be achieved, should be assessed in accordance with the policy changes and any existing adopted Local Development Plan policy which may require a higher standard.

Therefore the removal of the conditions is sought on the basis of the above changes to the relevant Welsh Government legislation, and the fact that there is no longer any requirement to meet mandatory levels of Code for Sustainable Homes/BREEAM accreditation as part of the planning process. The developer would instead be required to submit a separate Building Regulations application for the development and therefore meet the sustainability criteria set out for new homes through Part L of the Building Regulations.

With the above in mind, Welsh Government Circular WGC 016/2014: The Use of Conditions for Development Management includes the 'six tests' that have been laid down by the Courts as the general criteria for the imposition of conditions on a planning permission. These are detailed as follows:

*'The conditions must be:*

- i. necessary;*
- ii. relevant to planning;*
- iii. relevant to the development to be permitted;*
- iv. enforceable;*
- v. precise; and*
- vi. reasonable in all other respects.'*

As such, whilst the comments raised by the objector stating that the conditions form an integral element of the permission and should therefore remain are acknowledged, as the developer is required to submit a separate Building Regulations application for the development which will ensure the dwellings each meet the current sustainability criteria set out in Part L of the Building Regulations, it is considered that the retention of conditions 8, 9 and 10 of planning permission 13/0064/10 would be unreasonable and unnecessary, and unenforceable in future.

### **Other Issues**

It is acknowledged that a number of comments have been received from surrounding residents in respect to the development itself, however, the development already has planning permission (ref.13/0064/10) and this application simply proposes the Code for Sustainable Homes conditions imposed on the original planning permission be removed, i.e. the application does not propose any development or any amendment to the development already approved. As such these concerns are not material to the determination of this application. However, as the issuing of this decision grants a new permission, it is necessary to include the remaining conditions previously imposed on planning permission ref. 13/0064/10.

### **Community Infrastructure Levy Liability**

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31<sup>st</sup> December 2014.

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

## Conclusion

Due to the changes made to the relevant Welsh Government legislation regarding sustainability requirements for new development, the Code for Sustainable Homes conditions (8, 9 and 10) imposed on planning permission 13/0064/10 are now considered unreasonable, unnecessary and unenforceable. It is therefore recommended the conditions be removed.

## RECOMMENDATION: GRANT SUBJECT TO THE BELOW CONDITIONS:

1. The development hereby permitted shall begin not later than five years from the date of this decision.

Reason: To comply with Sections 91 and 93 of the Town and Country Planning Act 1990.

2. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction;
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii) hours of working.

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

3. No dwelling hereby approved shall be occupied until space has been laid out within the site in accordance with the application drawings for 2 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The parking and turning areas thus laid out shall be retained at all times thereafter.

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

4. No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are occupied. Development shall be carried out in accordance with the



approved details.

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.

5. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been 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 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.

6. None of the dwellings shall be occupied until works for the disposal foul and surface water have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.

Reason: To ensure adequate disposal of foul and surface water drainage in accordance with Policy AW10 of the Rhondda Cynon Taf Local Development Plan.

7. No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology that has been previously submitted to and approved by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby submitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Reason: In the interest of health and safety and environmental amenity and so as to accord with Policy AW 10 of the Rhondda Cynon Taf Local Development Plan.