

ATISN 16443

MARCHES PLANNING

Welsh Government

By email: planning.directorate@gov.wales

BY EMAIL ONLY

13th June 2022

Dear Welsh Ministers

Town and Country Planning Act 1990, Section 77

Celliwig Court, Llanwenarth, Abergavenny NP7 7EY

Brecon Beacons National Park Authority Planning Application Reference: 22/20853/FUL

We write on behalf of _____ to request that you call in the above planning application for determination by the Welsh Ministers pursuant to Section 77 of the Town and Country Planning Act 1990.

We further ask that the Welsh Ministers issue a holding direction in respect of the application, pursuant to Article 18(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, to prevent the grant of planning permission by Brecon Beacons National Park Authority (BBNPA) until this call-in request is decided.

We understand that BBNPA proposes that the application will be determined by the Planning and Rights of Way Committee but, as yet, no officer report has been prepared.

Section 1.35 of Planning Policy Wales explains that calling in applications is "*generally only considered appropriate where a proposal raises planning issues of more than local importance.*" It could be considered appropriate, for example, in the case of proposals that:

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- are in conflict with national planning policies;
- could have wide effects beyond their immediate locality;
- may give rise to substantial controversy beyond the immediate locality;
- are likely significantly to affect sites of scientific, nature conservation or historic interest or areas of landscape importance;
- raise issues of national security; or
- raise novel planning issues.

Supplementary guidance issued by the Welsh Government (2014) states that the key issue is *"whether or not it would be more appropriate for the particular application to be decided by the Welsh Ministers rather than the local planning authority"*. Five questions guide the determination of this issue:

- What are the issues raised by the application?
- Has the local planning authority identified those issues in its consideration of the application?
- Has the local planning authority identified the national planning policies and legislation/ directives relevant to those issues?
- Has the local planning authority assessed those issues in an appropriate manner? Here the concern is whether the local planning authority's assessment has been made in a reasonably robust way, using up-to-date technology and knowledge.
- Does the consideration of these issues lead to the conclusion that it would be more appropriate for the planning application to be determined by the Welsh Ministers rather than by the local planning authority?

BACKGROUND

The planning application is for the extension, conversion and change of use of farm buildings to a brewery, a B2 planning use. The proposals are described as an agricultural diversification project.

The application site is in a prominent position on the lower slopes of the Sugar Loaf mountain above the Usk Valley, some 1.2 km from the outskirts of Abergavenny.

Access to the site is via a public bridleway, over which the farmstead and a handful of dwellings have vehicle access.

The site is on a former farm called Tyr ywen, renamed Celliwig Court by the landowner. The 70-acre , since when the farmhouse has been unoccupied and the only agricultural activity to have taken place was the keeping of pigs on one field for a brief period. The planning application documents advise that orchard trees have recently been planted on the farmland and that these will not yield fruit for 10 to 15 years.

for the demolition of the farmhouse at Tyr ywen and the erection of a larger, three-storey replacement dwelling to the west of the farmstead. It is unclear whether this permission was implemented, but it is not addressed in the landscape or other assessments in support of the planning application for the brewery.

The application site includes existing modern farm buildings, one of which was partially erected following a prior notification under Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) Order 1995. Prior approval was given in 2021 to extend and enclose this building, despite the fact that the original buildings on the farmstead are not in any use, other than bearing solar panels, and there is no agricultural activity on the holding.

An internal photograph in the Applicant's ecology report shows the enclosed part of the application site building is being used to store construction materials and lined with what appear to be inverters for the solar arrays. (Fig. 1)

The current planning application provides very little information about the operational development entailed in the proposals, apparently relying on the prior approval decision. For example, the application form states that there is no requirement for any materials and that the development would not create any new floorspace.

Most of the illustrations of the existing and proposed development are photomontages and these do not conform to the few scaled drawings provided or represent the current condition of the buildings. These and the architectural drawing of the existing building misrepresent the size and condition of the buildings, showing them as if works approved under the prior approval have been carried out, although they have not. See figs 2), 3) and 4) below.

Although the proposals would create in excess of 1,500 sq m of floorspace and are consequently classed as major development under The Town and Country Planning (Development Management Procedure) (Wales) Order 2012, the Applicant did not carry out pre-application public consultation.

BBNPA issued a negative screening opinion under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, concluding that the development would be unlikely to have significant effects on the environment due to its "size and scale." However, the screening opinion cited paragraph 10b of Schedule 2 to the Regs, which covers infrastructure projects and for which the column 2 threshold is 1 hectare.

The proposals in fact fall under paragraph 7 (c), Food Industry development - "Brewing and Malting", for which the screening threshold is 1,000 sq m.

The development consequently falls well within Schedule 2 of the EIA Regulations and would meet several of the selection criteria set out in Schedule 3 of those Regulations: the proposal is for an industrial use that would use large quantities of water and produce significant waste; it would be in

a National Park, in proximity to two Special Areas of Conservation and within the settings of several heritage assets.

REASONS FOR CALL-IN REQUEST

In our view the application would be more appropriately determined by the Welsh Ministers for the reasons set out below:

1) The proposals are in conflict with national policies

Under Planning Policy Wales (PPW) paragraph 6.3.10 *"Major developments should not take place in National Parks or AONBs except in exceptional circumstances."*

The proposals would create more than 1,500 sq m of new floorspace, with additional external development including parking and turning areas and a water treatment plant. The proposals are defined under the The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPO) as major development and would be in a highly visible location within the National Park.

As the Applicant has not identified any exceptional circumstances to justify the granting of planning permission, the proposals are in conflict with this national policy.

Paragraph 6.3.5 of PPW says:

"The designated landscapes should be drivers of the sustainable use and management of natural resources in their areas, and planning authorities should have regard to their identified special qualities in the exercise of their functions and any relevant management plans."

The application documents do not provide any information about the natural resources that would be consumed by the development, the materials and processes used or the traffic generated. Nor

is there any information about how waste would be managed other than it would be taken off site by a licensed waste operator.

Breweries consume very large quantities of water and the proposed development would take some, if not all, of its water from natural springs within the catchment of the River Usk Special Area of Conservation, which is failing its conservation targets in part due to low flows.

The development would be accessed from the A40 via a public bridleway, with traffic serving the development travelling some 500m over this public right of way. Although the bridleway serves the farmstead and a handful of dwellings, it currently accommodates very little vehicle traffic. Given the size of the farm and its hillside character, even if the holding were returned to agricultural use it would be unlikely to generate frequent traffic movements or use by large farm vehicles.

The Applicant has not provided any information about what works would be carried out to the public right of way to make it suitable for commercial traffic. However, part of the right of way has already been diverted (without any definitive map modification order), sections have been resurfaced and track side trees removed.

The development would cause a further significant adverse change in the character of the bridleway and the experience of visitors to the area.

For the reasons explained below, the development would also have adverse impacts on the landscape, wildlife and cultural heritage of the National Park, contrary to paragraph 6.3.6 of PPW and the statutory purposes:

"Planning Authorities should give great weight to the statutory purposes of National Parks, which are to conserve and enhance the natural beauty, wildlife and cultural heritage, and to promote opportunities for public understanding and enjoyment of their special qualities."

2) The proposals could have wide effects beyond the immediate locality and give rise to substantial controversy

The application site is in a highly prominent position visible from the Usk Valley and the A40. The existing agricultural buildings already appear incongruous and disproportionately large in the landscape. The extension of the buildings, the addition of cladding, the creation of parking and turning areas and the introduction of heavy goods vehicles over a public bridleway would add to the visual and landscape harm to the National Park.

Users of the bridleway would be put at risk and their enjoyment impeded by traffic serving the development and by the introduction of noise, odour and industrial activity at a point where a number of rights of way meet and where there are open views across the landscape.

The application site is served by springs, which also supply the nearby dwellings. The Applicant has advised that a mains supply would be provided as a "back-up", but has not provided any information about when this "back-up" would be drawn upon.

An efficient brewery will use between 4-7 litres of water to produce 1 litre of beer, according to the International Finance Corporation and World Bank. (Environmental, Health, and Safety Guidelines for Breweries, 2007). In addition, water is required for heating, cooling, cleaning vessels, machinery, process areas, vehicles and for sanitary uses.

The use of mains water would add to the operator's costs and can adversely affect the taste of the beer so it is likely that the operator would prefer to use the spring water. Although the application documents do not say this, the Applicants may have chosen the site for its access to spring water.

The diversion of large quantities of water into the brewery process could pose a threat to the water supplies of nearby residents and have a significant adverse impact on the River Usk SAC.

3) The proposals are likely to have significant effects on Special Areas of Conservation and heritage assets

a) River Usk SAC.

The application site is approximately 1 km from the River Usk Special Area of Conservation, which is failing to achieve its conservation targets under the Water Framework Directive and Habitats Regulations.

Causes of the failure include foul drainage, poor agricultural practices and physical modifications and abstraction, according to Natural Resources Wales.

The applicant initially advised that both waste and sewage will be removed from the site by a licensed operator but in a more recent statement advised that foul drainage would be discharged to either a package treatment plant or cesspit. Neither of these options demonstrate compliance with Natural Resources Wales' current planning position statement on developments that could contribute to further deterioration in the condition of riverine Special Areas of Conservation (SACs), including the River Usk.

The Applicant has not provided any information about the disposal of waste water. The water is likely to contain high levels of nutrients, which would contribute to eutrophication if they enter the river. The disposal of hot and cold water, both products of the brewing process, may pose a further threat to the SAC by altering the natural water temperature.

There is, consequently, currently no evidence to demonstrate that the proposals will not have an adverse impact on the SAC through the discharge of nutrients, temperature changes or the removal of large quantities of water from the Usk catchment.

b) Sugar Loaf Woodlands SAC

The proposals may also pose a threat to Sugar Loaf Woodlands SAC some 600m away, which is also failing to achieve its conservation objectives and is vulnerable to airborne acid and nutrient deposition. The application documents do not provide any information about air emissions from the proposed development.

c) Heritage assets

The application site stands some 850m from and in direct line of sight of Grade II* listed Church of St Peter and a scheduled monument at Llanwenarth Citra in the Usk Valley below and is adjacent to an unlisted but nevertheless historically significant collection of buildings at Tyr ywen.

The applicant has submitted a heritage assessment concludes:

"In its present form the building has a negative impact on the setting of the former Ty'r Ywen Farm, which will be partially alleviated by cladding the exterior with open boards."

The building referred to was erected using agricultural permitted development rights following the submission of a prior notification in 2015. However, the building has never been used for agricultural purposes and is consequently unauthorised development.

The proposal is not, as the heritage assessment suggests, to enclose the building with open boards, but to extend the building and enclose it entirely, to add a water treatment plant and large areas of external hardstanding.

The development would also generate vehicle traffic, including heavy goods vehicles, over a bridleway, transforming the character of the area around the application site from traditional agriculture to industrial.

A heritage report produced for a 2015 planning application* to demolish the farmhouse and erect a new dwelling at Tyr Ywen said:

"The core of the settlement of Llanwenarth Citra lies at the valley floor, and the Church of St Peter's can be viewed from the farm."

The church is renowned for its beautiful setting and is Grade II* listed for its surviving medieval fabric and good sub-medieval work. It has a near-circular churchyard, suggesting that there has been a place of worship on the site since Celtic times.

The church cross within the churchyard is separately listed Grade II, while the cross base is a scheduled monument.

Cadw's listing for the scheduled monument advises: *"The monument is of national importance for its potential to enhance our knowledge of the organisation and practice of Christianity. It retains significant archaeological potential, with a strong probability of the presence of associated archaeological features and deposits. A cross base may be part of a larger cluster of monuments and their importance can be further enhanced by their group value."*

The proposed development is within the settings of these designated heritage assets and would stand at the centre of the view of Sugar Loaf mountain from the churchyard and from within the church itself.

The existing modern buildings on the application site already detract from both views and settings. However, the largest the building is incomplete and open sided and so has less impact than it would when clad and surrounded by parking spaces and operational areas and served by HGV traffic.

The Applicant has proposed a landscape scheme to mitigate the impact of the development but has not allowed for a very steep drop in ground levels immediately in front of the building, which would mean any planting would take decades to screen even the lower parts of the building.

Although not listed, the farm buildings at Tyr ywen have heritage value and form an important element of the historic landscape.

A heritage report submitted with a 2014 planning application to demolish the farmhouse and erect a new dwelling advised that the farm buildings dated from the 1870s, although the farmhouse has at least 17th century origins and the threshing barn dates from the 17th or 18th century.

The report says;

"Tyr Ywen farm has historical value through its connections with the various people who have occupied and managed the farm. In particular, historical value can be associated with the links to the notable local family, the Earls of Abergavenny who purchased the farm in the late 19th century."

"The farm has historical value as a farmstead which has existed for at least 400 years...The individual buildings at Tyr Ywen are an attractive group of former agricultural buildings. The aesthetic qualities of the group of buildings is enhanced through the setting, with the buildings nestling into the hillside.

"The position of the farm within the wider landscape also contributes to the incidental aesthetic value of Tyr Ywen, with the dramatic landscape of the Usk Valley below to the south, extending to the views of the Black Mountains.

"From the farm there is an overview of the valley landscape and this also contributes to the evidential value of the heritage assets."

* A 2014 planning application to demolish the farmhouse and erect a replacement dwelling was refused. A subsequent application for much the same development was approved in 2016.

3 The application raises novel planning issues

a) Definition of farm diversification

The planning application is described as an agricultural diversification project although, as set out above there has been no agricultural activity on the holding for several years and, on the Applicant's own evidence, the orchard trees planted in recent months will not bear fruit for at least a decade.

The application raises questions as to the definition of an agricultural diversification project:

- Is the introduction of a B2 use, usually reserved for development on industrial sites and in urban locations, acceptable in an agricultural landscape, particularly in a National Park?

And

- Can the introduction of an industrial operation that will dwarf any other agricultural activity on the holding constitute a diversification project?

The building would be the largest in the local area and substantially exceed the size of the farm buildings on the holding, which have a total footprint of some 530 sq m.

The operation will introduce a range of odour, noise and traffic very different to any agricultural operation, especially on a holding of this size.

The consequence of the development would be that any agricultural use on the holding would be the subservient use, in terms of scale and impact. The proposals cannot be described as the type of "*small on-farm operations*" supported by paragraph 3.7.1 of TAN 6.

The proposed development would be some 30m from the curtilage of the nearest dwelling (other than the farmhouse) and well within 400m of 9 dwellings, so in an area in which any business development would normally be expected to fall within the B1 use class.

b) Use of buildings erected using agricultural permitted development rights

The development would use agricultural buildings erected using permitted development rights, which have never been put to any agricultural use and for which no agricultural need has been demonstrated. The enclosed, older part of the building, which was erected before the current landowner acquired the holding, is currently used in connection with the solar panel development. (Fig. 1) The only use or apparent purpose of the newer, half-built section is as a platform for a solar array. The building comprises of a south-facing roof supported by steel struts.

The application documents appear to assume that because prior approval was given (or not required) for the extension and cladding of the buildings, that planning permission has already been granted for the proposed operational development.

TAN 6 advises

"3.3.1 Planning authorities should examine particularly carefully applications for re-use of buildings erected under agricultural permitted development rights. This should alert them to the possibility that the building was in breach of planning control when it was substantially completed, because there was no genuine agricultural justification.

LOCAL AUTHORITY'S HANDLING OF THE APPLICATION

The planning authority has not yet produced an officer report on the planning application. However, the way that the application has been managed to date raises concerns about how it will be determined.

The authority has not requested any information to address the potential risks to the two nearby Special Areas of Conservation and thus has not addressed the requirements of the Conservation of Habitats and Species Regulations 2017.

It has not corrected a fundamental error in its screening of the application under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, although this was drawn to its attention several weeks ago.

The Planning Authority has accepted drawings that do not accurately reflect the proposed development, including the use of photomontages claiming to show the existing development but in reality showing it as it would be following cladding and refurbishment. The application documents not include any information about the floorspace created, proposed materials, waste and storage arrangements or foul drainage and are misleading as to the requirement for parking spaces and the question of whether the application site is on an agricultural holding.

BBNPA has not required the Applicant carry out pre-application consultation as required by Part 4 of the Planning Wales Act 2015, despite the fact that the development would provide an industrial unit in excess of 1,500 sq m and would consequently be classed as major development.

Our clients also have concerns about the impartiality of the planning authority due to the fact that the chair of the planning and rights of way committee provided a letter in support of the application, which the authority did not publish and which the Applicant's agent asked officers to remove from the file and destroy. As noted above, the planning documents do not identify the landowner, although he is a former BBNPA member and Monmouthshire Councillor and will consequently have established relationships with both members and officers of BBNPA.

CONCLUSION

For the detailed reasons set out above it is our view this applications would be more appropriately determined by the Welsh Ministers. Accordingly, we request that it is called-in pursuant to s77 of the Town and Country Planning Act 1990 and that a holding direction is issued in respect of the application while this request is considered.

Yours faithfully

Marches Planning

cc. Brecon Beacons National Park Authority





Fig. 1) Internal view of building one from Applicant's showing solar inverters and stored equipment

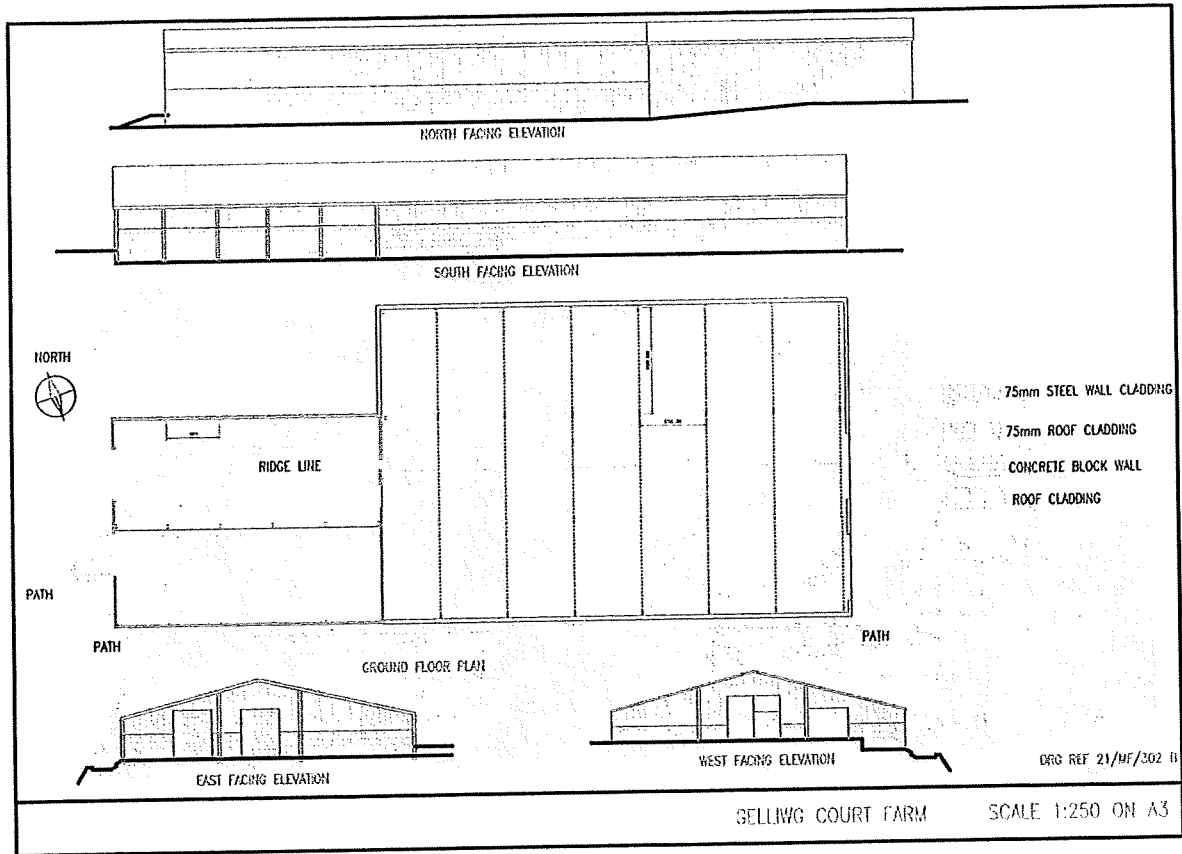


Fig. 2) Applicant's existing elevations and floorplan, showing the buildings as they would be following implementation of agricultural prior approval decision issued in 2021



Fig. 3) Photograph taken 27th April 2022, showing prior approval works have not been implemented, although concrete block infill underway.

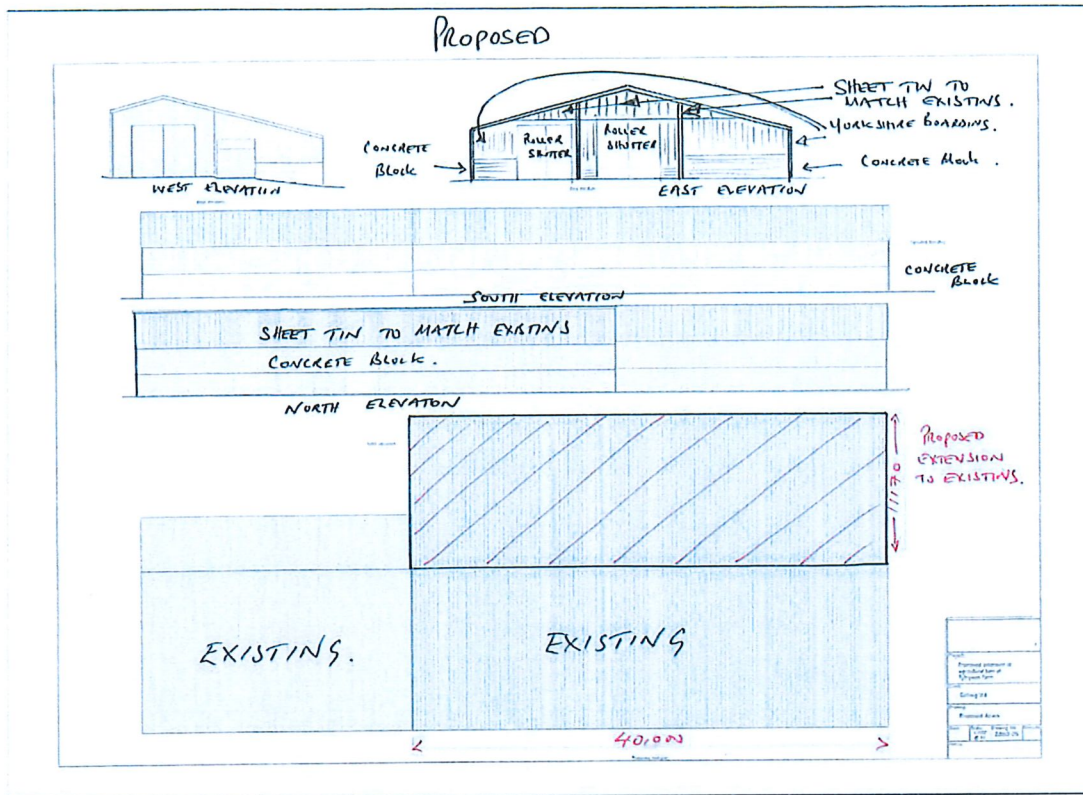


Fig. 4) 2021 Prior Approval plan

