

Application No.
P/16/0111

Date
6th April 2016

Determining Authority
MTCBC

Proposed Development

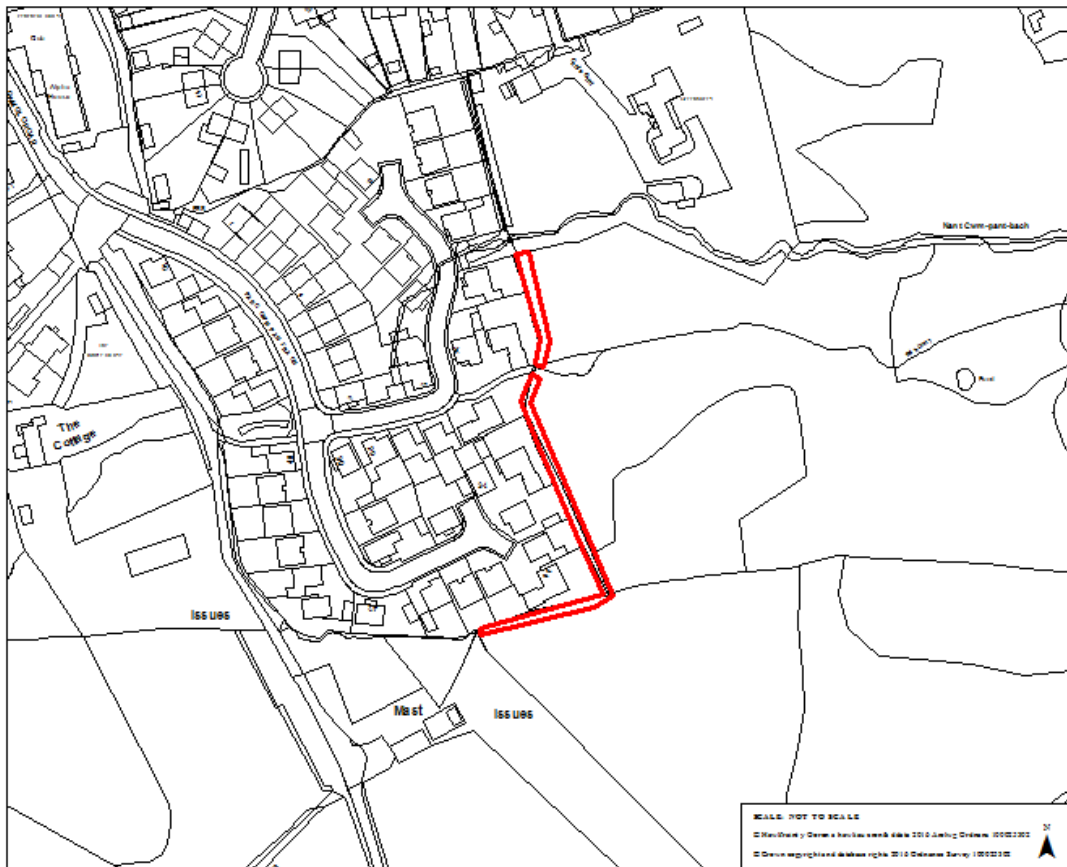
Location

Name & Address of Applicant/Agent

Change of use of land to provide a 1 metre wide landscape buffer (enclosed by fencing) to the rear of plots 13, 14, 15, 16, 17, 18, 19, 28, 29 and 31, to protect the Cwm Glo Glyndyrus SSSI

Land To The South And East
Of The Parc Cwm Pant Bach Estate
Heolgerrig
Merthyr Tydfil

Redrow Homes South Wales
F.a.o. Mr J Poole
Redrow House
Copse Walk
Cardiff Gate Business Park



Councillor Chaplin has requested that this application be reported to Committee to assess the impact on the Cwm Glo Glyndyrus Site of Special Scientific Interest (SSSI).

APPLICATION SITE

The application site relates to a 1 metre strip of land located beyond the eastern and southern boundaries of the dwellings recently constructed on the Parc Cwm Pant Bach estate. The land to the south and east of the application site is heavily wooded, containing trees protected by Tree Preservation Orders (TPO's). This land and the application site is a designated Ancient Semi-Natural Woodland, forms part of the Cwm Glo a Glyndyrus Site of Special Scientific Interest (SSSI) and is also a Site of Importance for Nature Conservation (SINC).

The application site lies just outside the Heolgerrig settlement boundary as identified in the Merthyr Tydfil Local Development Plan 2006-2021.

PROPOSED DEVELOPMENT

This application seeks planning permission to change the use of a strip of undeveloped land to provide a 1 metre landscape buffer.

The 1 metre buffer would be sited between the existing side/rear 1.8 metre high close boarded boundary fences of the residential dwellings and a 1 metre high post and wire fence. The proposed 1 metre wide buffer would be planted with native scrub species.

Above, but detached from the close boarded fences (enclosing the residential dwellings), a timber trellis measuring approximately 0.45metres in height would be erected. The trellis would be attached to new timber posts sited on the inner edge of the landscape buffer.

PLANNING HISTORY

The following applications are relevant to the determination of this application:

P/16/0139 - P/16/0138 – Variation of condition 22 Planning Permission P/11/0150, to provide an amended landscape buffer to the rear of residential plots 13, 14, 15, 16, 17, 18, 19, 28, 29 and 31, to protect the Cwm Glo a Glyndyrus SSSI – Under consideration.

P/16/0138 – Variation of condition 19 Planning Permission P/11/0150, to provide an amended landscape buffer to the rear of residential plots 13, 14, 15,17, 18, 19, 28, 29 and 31, to protect the Cwm Glo a Glyndyrus SSSI – Under consideration.

P/11/0150 – Re-plan of planning consent P/10/0236 for the variation and substitution of plots 5-15, 17-31, 41 and 53 to include 1 extra plot and electricity sub-station – Approved: 17th October 2011.

P/10/0236 – Erection of 52 dwellings and associated infrastructure works – Approved: 28th March 2011.

CONSULTATION

Town Planning Division's Policy and Implementation Group Leader	No objection.
Town Planning Division's Countryside Officer	No objection.
Town Planning Division's Landscape Officer	No objection, subject to a condition requiring a management and maintenance plan being submitted and implemented.
Natural Resources Wales (NRW)	No objection, subject to a condition relating to the provision and management of the buffer zone.

PUBLICITY

In accordance with the Town and Country Planning (Development Management Procedure) Order (Wales) 2012, adjacent properties have been consulted and a site notice has been displayed in the immediate vicinity of the site. Four letters of objection have been received as a result of this exercise. The concerns raised are summarised below:

- The erection of the proposed fence would block access to the public footpath and a stile should therefore be provided;
- The land on which Redrow seek to erect a fence and provide a landscape buffer lies within the ownership of residents;
- The approved planning permissions required a buffer zone 2 metres wide and the proposed buffer is only 1 metre wide;
- The resulting height of the fence would obstruct views and result in a feeling of being imprisoned in your own home.

POLICY CONTEXT

National Planning Policy

- Planning Policy Wales (Edition 8, January 2016)

Chapter 5 which relates to conserving and improving natural heritage and the coast, seeks amongst other things, to ensure that statutorily designated sites are properly protected and managed. Paragraph 5.2.8 considers that '*...The planning system has an important part to play in meeting biodiversity objectives by promoting approaches to development which create new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable...*' Moreover paragraph 5.5.1 states that '*...the effect of a development proposal on the wildlife or landscape of any area can be a material consideration. In such instances and in the interests of achieving sustainable development it is important to balance conservation objectives with the wider economic needs of local businesses and communities. Where development does occur it is important to ensure that all reasonable steps are taken to safeguard or enhance the environmental quality of land...*'

Paragraph 5.5.8, which relates specifically to SSSI's, states that '*...SSSIs can be damaged by developments within or adjacent to their boundaries, and in some cases, by development some distance away. There is a presumption against development likely to damage a SSSI. Before authorising operations likely to damage any of the notified features on a SSSI, local planning authorities must give notice of the proposed operations to Natural Resources Wales, and must take its advice into account in deciding whether to grant planning permission and in attaching planning conditions...*'

- Technical Advice Note 5 Nature, Conservation and Planning (2009)

Paragraph 2.1 states that a key principle of the TAN is to look for development to provide a net benefit for biodiversity conservation with no significant loss of habitats or populations of species, locally or nationally. Furthermore paragraphs 4.3.2 and 4.3.3 states that '*...Landscaping proposals should be included together with any measures designed to avoid, mitigate or compensate for potential adverse effects on nature conservation. Any*

proposals for enhancement of nature conservation interests should also be included. These matters should not normally be left for later submission under conditions imposed on any permission given, because they will be material to the determination of whether planning permission should be granted. Where proposals for addressing nature conservation interests are uncertain or require monitoring to identify potential effects, the application should include proposals as to how these issues will be implemented...' Paragraph 6.2.2 goes on to state that '*...It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision...'*

Local Planning Policies

- The Merthyr Tydfil Local Development Plan 2006-2021

BW1: Development strategy Primary Growth Area
BW4: Settlement Boundaries / Locational Constraints
BW5: Natural Heritage;
BW7: Sustainable Design and Placemaking
AS4: Historic Landscape
AS6: Local Nature Conservation Designations

- Supplementary Planning Guidance

Supplementary Planning Guidance Note 5: Nature and Development (May 2015)

PLANNING CONSIDERATIONS

The issues to consider under this application relate to whether the proposal would be acceptable with regards to its impact upon the SSSI, SINC and trees protected by a Tree Preservation Order. The impact of the proposal upon the amenities of nearby occupiers is also an important consideration.

Site History

The previous applications P/10/0236 and P/11/0150, as noted in the planning history, were granted for the residential development of the allocated housing site (H13) which lies to the west of the SSSI and SINC.

Condition 22 of planning permission P/10/0236 states:

The 2 metre wide continuous infill planting strip and 1.8 metre high double board fencing, as indicated on Drawing Nos. 15-04-02 (F) and 15-04-200(B) at the rear of Plot No's 13-19, 29-30 and 32-35 shall be in situ before the respective dwellings are brought into beneficial occupation. They shall be maintained thereafter to the approval of the Local Planning Authority.

Likewise condition 19 of planning permission P/11/0150 states:

The 2 metre wide continuous infill planting strip and 1.8 metre high double board fencing, as indicated on Drawing No HE02-15-04-02, at the rear of plot no's 13-19, 28, 29 and 31 shall be in situ before the respective dwellings are brought into beneficial occupation. The planting strip and fencing shall be maintained thereafter to the approval of the local Planning Authority.

The reason that these conditions were imposed was to protect the SSSI.

It was brought to the attention of the Local Planning Authority that the residential development had been completed and the properties occupied without the buffer (required by the above mentioned conditions) being provided.

Indeed, following a site visit by the Enforcement Officer it was revealed that the developer had extended the gardens of the properties to include the entire area of land intended to be used as the 2 metre wide buffer area. Therefore, there is a clear breach of the two conditions highlighted above.

This breach of planning control is clearly regrettable and in an attempt to find a solution to overcome the problem, the applicant has negotiated with NRW and the Council's Countryside Officer. The provision of a retrospective buffer would serve to protect and limit further harm to the protected areas. As such, NRW and the Council's Countryside Officer have concluded that the proposed scheme would be acceptable. However it is suggested that the future management and maintenance of the landscape buffer must be strictly controlled. If Committee is minded to approve this application, this could be secured by a suitably worded condition.

The post and wire fence and the timber trellis are considered acceptable with regards to their physical appearance and material finishes.

The proposed development is therefore considered acceptable and complies with LDP Policies BW5, BW6 and BW7.

Residential Amenity

The proposed landscape buffer has been considered with regards to its impact upon the amenities of nearby occupiers. Given the relationship between the residential properties and the landscape buffer, the development would not be detrimental to the amenities of nearby occupiers.

The residential properties are separated from the landscape buffer by the close boarded fence which was erected as part of the residential development. A post and wire fence would be maintained/provided to the outer boundary of the application site. This fence would measure 1 metre in height and therefore be obscured when viewed from the curtilage of the neighbouring dwellings. Therefore it would have no visual or overbearing impact.

The proposed development also includes the erection of a trellis which would be located above the existing close boarded fence. The purpose of the trellis is to increase the overall height of the boundaries to discourage residents disposing garden and other waste over the fence and into the protected landscape. It would be 0.44 metres higher than the 1.8 metre close boarded fence. As such, this would not be overbearing or result in the loss of light to

these properties. It is noted that one of the concerns from neighbouring residents relates to the loss of views across the woodland (to the east) which, it is suggested, would be obstructed by the proposed trellis. However, in this respect, it is important to note that the right to view is not a planning consideration and as such, can not be taken into account in the assessment of this application. In any case, a trellis is not a solid structure and as such views of the landscape beyond could still be achieved from the gardens of these properties.

As such, the proposal would not have an adverse impact on residential amenity and would therefore comply with LDP Policy BW7.

Responses to Representations

Many of the concerns raised in the objection letters have been considered above. With regards to other issues raised, these are addressed below:

- The site outlined in red does not include the footpath which runs between plots 28 and 29. As such, the proposed landscape buffer would not obstruct access to the footpath;
- The application form indicates that the application site is owned by Marvel Ltd and is not owned by the residents;
- The landscape buffer approved under the previously approved applications (P/10/236 and P/11/0150) did not form part of the SSSI or SINC. Increasing the landscape buffer under this application from 1 metre to 2 metres, would result in a larger and more severe incursion into the SSSI and SINC which would be more harmful to the character and features of this protected landscape.

Conclusion

As stated above, it is extremely disappointing that the development was not carried out in accordance with the conditions attached to the previous planning permissions. Nevertheless, the proposal is considered to be a pragmatic solution which would help ensure the future protection of the SSSI, SINC and ancient woodland. Committee should also be aware that if the current breach of conditions are enforced (and the enforcement case successful), the owners of the properties that are affected would have their garden areas reduced by 2 metres. Thus, any enforcement action would affect the property owners rather than the developer who failed to comply with the conditions. Given the above, the application is therefore recommended for approval.

RECOMMENDATION: BE APPROVED subject to the following **CONDITIONS**:

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

Reason - To comply with Section 91 of the Town and Country Planning Act 1990.

2. The development shall be carried out in accordance with the following approved plans and documents:

- HEOL-15-04-203, received 21st October 2016;
- HEOL-15-04-202, received 6th April 2016;

Reason -To ensure compliance with the approved plans and clearly define the scope of the permission.

3. **Prior to the commencement of development** a scheme of landscaping to include native species shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. The scheme shall be carried out on-site in accordance with the approved details and remain in perpetuity.

Reason - To ensure that the new development will be visually attractive in the interests of amenity and to accord with Policy BW5 and BW7 of the Merthyr Tydfil Local Development Plan.

4. 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 completion of the development; 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 and to accord with Policy BW7 of the Merthyr Tydfil Local Development Plan.

5. **Prior to the commencement of development** a landscape management plan, including management responsibilities and maintenance schedules for the buffer area hereby approved, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.

Reason - To ensure that the new development will be visually attractive in the interests of amenity and to accord with Policy BW5 and BW7 of the Merthyr Tydfil Local Development Plan.