



## Appeal Decision

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by H W Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 08/11/2023

Appeal reference: CAS-02538-P7R7B7

Site address: Land at Grid Ref 311173 206438, Adjacent to Pontlloftyn Reservoir, Fochriw Road to Hill Road, Pontlloftyn, New Tredegar.

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- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr G Roper against an enforcement notice issued by Caerphilly County Borough Council.
  - The enforcement notice, numbered ENF/20/0132, was issued on 13th January 2023.
  - The breach of planning control as alleged in the notice is without planning permission, an engineering operation involving the importation of materials used for the purpose of raising the land.
  - The requirements of the notice are:
    1. Remove all imported materials used for raising the ground level from the land.
    2. Restore the land to the condition it was in prior to the development taking place.
  - The period for compliance with the requirements is within 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
  - A site visit was made on 20 September 2023.
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### Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely an engineering operation involving the importation of materials used for the purpose of raising the land at Land at Grid Ref 311173 206438, Adjacent to Pontlloftyn Reservoir, Fochriw Road to Hill Road, Pontlloftyn, New Tredegar as shown on the plan attached to the notice and subject to the following conditions:
  - 1) Within 2 months of the date of this decision a scheme for the provision of a native species mix hedgerow on the eastern perimeter of the site shall be submitted for the written approval of the Local Planning Authority. The scheme shall include a timetable for its implementation and the provision of stock-proof fencing and a five-year

maintenance scheme. On approval by the Local Planning Authority the landscaping works shall be carried out in accordance with the scheme.

Reason: In the interests of visual amenity and landscape character, in accordance with Policies CW2 and SP10 of the Caerphilly County Borough Local Development Plan up to 2021, and to provide biodiversity enhancement in accordance with Planning Policy Wales, Edition 11, as amended.

- 2) Within 2 months of the date of this decision a report shall be submitted to the Local Planning Authority which verifies that the site has been inspected and tested for any contaminants. The report shall contain measures to deal with any contamination discovered and a timetable to carry out those works. Any remediation works required shall thereafter be carried out in accordance with the approved scheme within 3 months of the date of its approval.

Reason: To protect public health and in accordance with Policy CW2 of the Caerphilly County Borough Local Development Plan up to 2021.

### **Procedural Matter**

2. On 18 October 2023 Welsh Government issued a 'Dear CPO' letter entitled 'Addressing the nature emergency through the planning system: update to Chapter 6 of Planning Policy Wales' and confirmed that the update has immediate effect. As the changes do not affect the matters in dispute in this appeal, I have not sought the views of the parties but will make my decision in accord with its provisions.

### **Ground (a) appeal, the deemed planning application**

3. The ground within the site has been regraded to form a plateau with steeply sloping sides falling towards the north and east. The works includes underground drainage and open drainage ditches that run along the base of the slopes. By the time of my visit the site had been covered in soil with grass and clover established throughout.
4. In February 2022 the Council refused a planning application that sought to regularise the unauthorised works citing concerns over its effect on land drainage and flood risk, and the effect on the amenity of adjacent land in terms of stability. It cited conflict with policies CW5 (Protection of the Water Environment), CW2 (Amenity) and SP10 (Conservation of Natural Heritage) of the Caerphilly County Borough Local Development Plan up to 2021 - Adopted November 2010.
5. Since the refusal of the planning application and the subsequent service of the enforcement notice, the appellant has presented further information which seeks to address the Council's concerns. In response the Council has confirmed that it now considers the principle of development to be acceptable and that permission should be granted subject to conditions.
6. A specialist Drainage Assessment report has been presented on behalf of the appellant. In response the Council explains that it's Land Drainage Officer maintains concerns in relation to sustainable drainage matters. However, it confirms that this is a matter that falls to be considered by its Sustainable Drainage Scheme Approval Board under a process separate to planning control. As such I do not consider that a condition should be imposed to require an application for Sustainable Drainage Approval to be made.
7. The appellant's investigations have confirmed that there is no spring on the land and that pre-existing drainage serving the neighbouring track has not been affected. Any concern regarding the impact of livestock contaminating watercourses is a matter for normal farming practices and separate regulatory controls.

8. Turning to land stability, a Site Investigation Report, informed by a Chartered Geotechnical Engineer and Chartered Geologist concludes that the new landform is stable. It also concludes that the land is not affected by the legacy of any former mining operations. I note that the Council's structural engineers are satisfied that this additional evidence has addressed its concerns.
9. On the basis of this technical evidence, I am satisfied that the works that have been undertaken do not give rise to any unacceptable impacts in relation to the Council's reasons for refusing the planning application.
10. Within the context of the varied and sloping surrounding topography I agree with the Council's Landscape Officer that the grassed finish to the recontoured site does not appear out of character within the landscape, although I agree with the parties that additional landscape planting along the boundary with the track would soften the appearance of the steeply sloping bank from the public right of way. Such planting would also provide the opportunity for biodiversity enhancement in line with the requirements of Planning Policy Wales, Edition 11 as amended.
11. A neighbour has expressed concern that the subject works has caused their access track to be unusable, and that cattle have strayed onto the lane following the removal of fencing. At the time of my visit the track appeared to be clear, but any obstruction to vehicular traffic is a private matter. The Council would have powers to tackle any obstruction to the public right of way using relevant statutory powers.
12. The neighbour is also concerned that waste material has been brought onto the site. The movement and disposal of waste is a matter controlled by other legislation. There is no reason to believe that any inappropriate material has been brought on to the site. A suggested condition would address any potential contamination of the surroundings.
13. Having regard to the advice in Circular WGC 016/2014: The Use of Planning Conditions for Development Management, and for reasons already explained I agree with the Council that conditions to deal with landscaping and potential land contamination are reasonable. I do not consider that a condition requiring adherence to plans and reports to be necessary given that the works the subject of the notice have been completed. As the site has already been seeded a condition to this effect is also not required.
14. Thus, having regard to the additional information provided by the appellant and the Council's response, the matters raised in objection by a neighbour, and the scope to impose conditions, I am satisfied that the subject works do not give rise to any unacceptable impacts on their surroundings. As such I shall grant planning permission for the work; this ground of appeal succeeds.

## **Conclusion**

15. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for an engineering operation involving the importation of materials used for the purpose of raising the land as described in the notice. The appeal on ground (g) does not therefore fall to be considered.
16. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

*H W Jones*

INSPECTOR