

8th April 2014

Our Ref: 12.259/LHS/JW

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Dear Geraint

Town and Country Planning Permission Act 1990
Full Planning Application for the development of 248no., dwellings and associated works
Land South of Glan Usk School, Herbert Road, Newport
Planning Reference Number: 13/1279

I refer to the above application submitted on the 13th December 2013.

Following ongoing discussions with you as well as internal and external consultations and with particular regard to the meeting held on 30th January 2014 please find enclosed a comprehensive revised application package to supplement/supersede the original supporting information. For ease of reference I set out below a comprehensive list of submitted information as well as a break-down of relevant information with regard each topic area.

Please note that the revised scheme provides for 2 no. additional dwellings, reflected within the amended application forms. A cheque to the value of £168 is enclosed to cover the application fee for these additional dwellings. I would request that the description of development be amended in line with the revised forms to read:

“Full Planning Application for the development of 250no., dwellings and associated works”

Copies of the following documents which accompany the planning application have been issued electronically with CD and hard copies to follow:

Prepared by Asbri Planning Ltd.

- Amended application forms to reflect changes to scheme
- Environmental Statement Addendum. The Addendum has been produced to provide an update to the Environmental Statement submitted with the original application. The main changes are as follows:
 - Volume 1
 - Non-Technical Summary
 - Volume 2
 - Chapter 2A and individual Chapters: Cumulative Impact (additional assessment)
 - Chapter 8: Ground Conditions (additional information)
 - Chapter 9: Hydrology (amended)
 - Chapter 10: Drainage (amended)
 - Chapter 11: Transport, Traffic and Movement (additional information)

- Chapter 12: Noise and Vibration (additional information)
- Chapter 15: Summary and Conclusions
- Volume 3
 - Appendices

Prepared by Greenhill Construction Ltd.

- Full suite of revised plans

Prepared by Asbri Transport Ltd.

- Travel Plan

Prepared by Terra Firma.

- Remediation Strategy

Prepared by White Young Green.

- Revised Landscaping Layout

A cheque to the value of £168 is enclosed to cover the fee for an additional 2 no. dwellings.

Highways

Further to our meeting of 30th January there has been significant liaison between Asbri Transport, Greenhill Construction and your Highways Department in respect of off-site highways works and the preparation of a Travel Plan.

The following documents are submitted for the formal consideration of the Highways Department:

- Environmental Statement Addendum Chapter 11: Transport, Traffic and Movement
- Environmental Statement Addendum Appendices to Chapter 11 (including plan of off-site highways works prepared by Greenhill Construction)
- Travel Plan prepared by Asbri Transport
- Revised layout plan (including provision of emergency access through school and revisions to parking provision) prepared by Greenhill Construction

Flooding

Further to Natural Resources Wales' consultation response and the Welsh Minister's letter of 9th January 2014, Waterman have undertaken additional flood modelling for the site which is presented in a revised Flood Consequences Assessment and ES Chapter.

The following documents are submitted for the formal consideration of Natural Resources Wales:

- Environmental Statement Addendum Chapter 9: Hydrology
- Environmental Statement Addendum Appendices to Chapter 9 (including revised Flood Consequences Assessment prepared by Waterman)

Ground Conditions

Since our meeting of 30th January Terra Firma have been in direct discussions with your Environmental Health Department as well as Natural Resources Wales (NRW) in respect of ground conditions. It is understood that previous concerns expressed by your Environmental Health Officer (Contamination) have now been addressed and that the remediation strategy prepared by Terra Firma has been accepted in-principle by the EHO (Contamination) and NRW.

The following documents are submitted for the formal consideration of the EHO (Contamination) and Natural Resources Wales:

- Environmental Statement Addendum Chapter 8: Ground Conditions

- Environmental Statement Addendum Appendices to Chapter 8
- Remediation Strategy prepared by Terra Firma

Ecology

Amendments to the landscaping plan (including the preparation of more detailed cross-sections of the bund, more comprehensive landscaping and the provision of an otter/dog-proof fence) have now been completed following comments made by the County Ecologist. I can also confirm that Newport highways department have been appointed to prepare a lighting scheme for the site which reflects the site's sensitive location on the bank of the River Usk SAC and SSSI. This lighting scheme has not yet been finalised however, as I'm sure you are aware, the highways department have completed similar lighting schemes for equally sensitive locations along the banks of the River Usk, including at Taylor Wimpey's City Vizion development on Rodney Road. At these other locations the lighting scheme has been designed so as to minimise light spill onto the River Usk through the careful consideration of siting and the use of cowling – it is anticipated that a similar approach will be undertaken in this instance. Both the County Ecologist and Natural Resources Wales can therefore be confident that a suitable lighting solution of the site does exist and that the lighting scheme is being developed by a party with considerable experience in preparing similarly sensitive schemes. There is no reason, therefore, why this matter cannot be suitably considered within the appropriate assessment and addressed through the imposition of a planning condition.

The following documents are submitted for the formal consideration of the County Ecologist and Natural Resources Wales:

- Environmental Statement Addendum Chapter 7: Ecology
- Environmental Statement Addendum Appendices to Chapter 7
- Revised Landscaping Layout (to include Cross-Sections of Bund and Otter/Dog-Proof Fence) prepared by White Young Green
- This covering letter

It is further understood that Natural Resources Wales had not been provided with a copy of the Environmental Statement and Appendices as part of their consultation on the original application. I would therefore be grateful if you could formally issue this document to them as part of this reconsultation.

Landscaping

The landscaping layout has been updated to include a revised mix of species as requested by your Landscape Officer.

The following documents are submitted for the formal consideration of your Landscape Officer:

- Revised Landscaping Layout prepared by White Young Green

Foul Drainage

As you are aware we met recently with Dwr Cymru Welsh Water. On the back of this we understand that the concerns raised within their consultation response relate not to sewer capacity but a recent localised problem within the system. Responsibility for the resolution of this problem falls entirely to DCWW and as such their objection has no sound planning basis. I understand that DCWW will be confirming the removal of their objection imminently.

Surface Water Drainage

A revised surface drainage scheme has been prepared following comments made by your Highways Department.

The following documents are submitted for the formal consideration of your Highways Department and EHO (Contamination):

- Environmental Statement Addendum Chapter 10: Drainage
- Environmental Statement Addendum Appendices to Chapter 10 (including revised Drainage Strategy prepared by Greenhill)

Cumulative Impacts

The Environmental Statement has been updated to make more explicit reference to Cumulative Impacts as requested. This, I understand, will be a matter for the consideration of the LPA.

Noise

Noise Assessment: It is understood from our discussions that the relationship between the proposed development and the adjacent industrial site formerly occupied by JS Payne is now considered acceptable from a noise perspective. It is further understood, however, that the EHO continues to have concerns with regard to the relationship between the proposed development and the neighbouring area of vacant land formerly in industrial use on the basis that this land could be reinstated to industrial use at any time. On the back of this, and in line with the EHO's requirements, further noise modelling to assess the potential noise impact in such a scenario has been undertaken by Acoustics and Noise Limited. This concludes that, even if the vacant land were to be reinstated to industrial use, it would not result in unacceptable living conditions for the occupiers of the proposed residential units.

Abandonment: Notwithstanding the likely acceptability of the relationship between the two uses it is the applicant's firm assertion that the vacant land referenced above could not be reinstated to industrial use as its former use for industrial purposes has clearly been abandoned.

Trustees of Castell-y-Mynach Estate v SoS 10/7/84 set out criteria to be considered when determining whether a use or building has been abandoned which were then accepted in subsequent cases. The four criteria are:

- 1) Physical condition;
- 2) Period of non-use;
- 3) Use for any other purposes; and
- 4) Owner's intentions.

Dealing with each of these in turn:

Period of Non-Use: We understand that the site has not been for industrial purposes since prior to the demolition of the former industrial building on the site, a fact supported by evidence from aerial photography. The aerial photograph appended to this letter (????) show that, by ??? June 2000, the building on the site had been cleared and that the site had already become overgrown with vegetation. Subsequent aerial photographs show and no change in the use or condition of the land other than a gradual deterioration as a result of the continued growth of vegetation. The site has therefore not been used for a period of at least 14 years, quite probably longer.

Physical Condition: As identified above, the site previously housed an industrial building. When the industrial use of the site ceased this building was demolished and the site cleared of any structures associated with its former industrial use other than the hard-standing. In the subsequent years (at least 14) there has been no apparent effort to maintain the site and the hard-standing has slowly deteriorated whilst the vegetation cover has become more established (as evidenced by the current state of the site and the attached aerial photographs).

Use for Other Purposes: A small part of the site, we understand, was used as a car park for a period of time. Other than this the site has not been used for any purpose since the cessation of the industrial use.

Owner's Intentions: Evidence of intent in respect of this site is as follows:

- The site was cleared of all industrial structures and paraphernalia when the previous industrial use of the site ceased.
- The site is now owned by a company called 'C Front Trading LLP', a boat accessory company based in Brighton, as opposed to an industrial operation.
- The site has been successfully promoted by its owner for residential purposes as part of the Local Development Plan process.
- The owner has approached Greenhill Construction Limited with a view to selling the site for residential development.

There is no quantifiable evidence to suggest that the owner intends to reinstate the former industrial use of the site.

Relevant Case Law: The following case, taken from DCP Online, has strong parallels with the above site:

"An enforcement notice directed against the change of use of a former concrete batching plant to use for the recycling of construction and demolition materials was upheld. A reporter found that it was not immune from enforcement action. Using the four factors to determine if abandonment had occurred the reporter found that prior to the appellants occupation of the site in January 2006, the site was described as being disused and derelict by a reporter in another appeal in 2003 and by the owners in 2005, the site had not been used for any industrial activity for a period of more than six years, it had been used intermittently for another use, ownership of the site had changed and the new owners had investigated alternative uses for the site. Taking all this into account the reporter found that industrial use of the site had been abandoned in 1998 and that planning permission was therefore required for the present use, see Edinburgh 27/03/2007"

It is our firm opinion, in the face of relevant case-law and the evidence presented above, that the industrial use of the site has unequivocally been abandoned. Were we to submit a Certificate of Lawfulness to confirm a nil-use of the site on the basis of this evidence it is difficult to see how, on the balance of probabilities, the LPA could possibly reach a different conclusion. It is therefore asserted that the LPA can confidently progress with our current application for residential redevelopment without fear of future conflict with a possible unrestricted industrial use being re-instated on the adjacent land.

Nuisance Legislation: Even if the adjacent land were to be reinstated to industrial use and the noise generated from that use was so great as to have a significant detrimental impact on the amenity of future residents, the local authority have the ability, under existing nuisance legislation, to curtail any noise at source. Any potential industrial occupier would be fully aware of this, as well as the proposed residential development, and would undoubtedly give this due consideration before taking occupancy of the land. It is fully understood that nuisance legislation should be used as a last resort only and that potential conflict should be designed out in the first instance however, given the circumstances identified above, the likelihood in this instance of a scenario arising which would give rise to the need for the use of nuisance legislation is so remote as to be practically non-existent.

In summary with regard to noise the evidence set out above identifies that:

- There is no intention for the land in question to be reinstated for industrial purposes;
- The former industrial use of the adjacent land has been abandoned and so it could not be in any instance;
- If the adjacent land were reinstated to industrial use there would be no unacceptable impact on the residents of the proposed dwellings.

- Existing nuisance legislation could be utilised to mitigate any detrimental impact on residential occupiers in the highly unlikely event that the industrial use were to be reinstated to the detriment of residential occupiers.

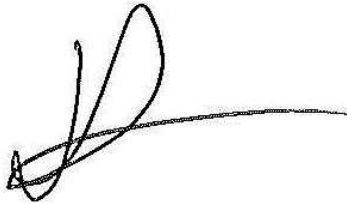
The application scheme clearly therefore represents an acceptable form of development in respect of noise. Any attempt to resist the development on noise grounds would be wholly unreasonable.

The following documents are submitted for the formal consideration of the Environmental Health Officer (Noise):

- Environmental Statement Addendum Chapter 12: Noise and Vibration
- Environmental Statement Addendum Appendices to Chapter 12 (including additional Noise Impact Assessment prepared by Acoustics and Noise Ltd)
- This covering letter

I trust this is satisfactory in order to address all outstanding matters and enable the application to be reported to Planning Committee in May with a positive recommendation.

Yours Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'L' followed by a horizontal line extending to the right.

Lowri Hughson-Smith
Planner
Asbri Planning Ltd.