



Appeal Decision

by H Davies BSc (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 10/10/2024

Appeal references: CAS-03076-T1S2G2 and CAS-03099-Z9D3D1

Site address: Land North West Of Holly Lodge (also known as Land at High Mass Cottage and Land at Church View), Five Lanes North, Five Lanes, Caerwent, Monmouthshire NP26 5PG

Appeal A reference: CAS-03076-T1S2G2

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act).
 - The appeal is made by Ms S Connolly against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice, numbered E21/064, was issued on 28 September 2023.
 - The breach of planning control as alleged in the notice is, unauthorised operational development, including the provision of sheds, outbuildings, freight container, stable block, timber gates/fencing, hard surfacing and installation of septic tank.
 - The requirements of the notice are to:
 - i. Remove all sheds (labelled A, C, D & E in Appendix B) from the site.
 - ii. Remove the outbuilding (labelled B in Appendix B) from the site.
 - iii. Remove the freight container from the site (labelled I in Appendix B) from the site.
 - iv. Remove the stable block (labelled F in Appendix B) from the site.
 - v. Remove all hard surfacing materials deposited on the site within the area edged in yellow in Appendix A and specifically labelled H in Appendix B (this extent of the hard surfacing is marked via yellow line in Appendix B). Return the land to grassland as evidenced in Appendix C.
 - vi. Reduce the height of all fencing/gates adjacent to the highway (labelled G in Appendix B and extend shown in purple in Appendix A) to 1m or under or remove in their entirety.
 - vii. Remove the septic tank (within the area edged in green in Appendix A) from the site and return the land to grassland as evidenced in Appendix C.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Act.
 - A site visit was made on 24 September 2024.
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Appeal B reference: CAS-03099-Z9D3D1

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act), against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms S Connolly against Monmouthshire County Council.
 - The application reference DM/2023/01042 is dated 24 July 2023.
 - The development proposed is a change of use from agriculture to land for the keeping of horses (retrospective), proposed erection of stable block for 5 horses, erection of ancillary storage building, construction of manege.
 - A site visit was made on 24 September 2024.
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Decision - Appeal A

1. It is directed that the notice is corrected as follows:
 - In schedule 1, remove the words ‘attached plan’ and replace them with ‘plan attached in Corrected Appendix A’
 - In schedule 2 (allegation), remove the word ‘provision’ and replace it with ‘erection’;
 - Remove ‘Appendix A’ attached to the notice and substitute it with the ‘Corrected Appendix A’ which is attached to this decision letter.
 2. It is also directed that the notice is varied, to reflect the partial success of the appeal on grounds (c) and (g), by removing the content of schedule 4 (what you are required to do) in its entirety and replacing it with the following text:
 - i. ‘Remove all sheds (labelled A, C, D & E in Appendix B) from the site.
 - ii. Remove the outbuilding (labelled B in Appendix B) from the site.
 - iii. Remove the stable block (labelled F in Appendix B) from the site.
 - iv. Remove all hard surfacing materials deposited on the site within the area edged in yellow in Corrected Appendix A and specifically labelled H in Appendix B (this extent of the hard surfacing is marked via yellow line in Appendix B). Return the land to grassland as evidenced in Appendix C.
 - v. Reduce the height of all fencing/gates adjacent to the highway (labelled G in Appendix B and extent shown in purple in Corrected Appendix A) to 1 meter or under or remove in their entirety.
 - vi. Remove the septic tank (within the area edged in green in Corrected Appendix A) from the site and return the land to grassland as evidenced in Appendix C.
- Time for compliance:
- The period for compliance with requirements i, ii, v and vi (sheds, outbuildings, gate/fence and septic tank) is 3 months from the date of this decision.
 - The period for compliance with requirements iii and iv (stables and surfacing) is 6 months from the date of this decision.’
3. Subject to the above corrections and variation, appeal A is dismissed and the enforcement notice is upheld.

Decision - Appeal B

4. The appeal is allowed and planning permission is granted for change of use from agriculture to land for the keeping of horses (retrospective), proposed erection of stable block for 5 horses, erection of ancillary storage building, construction of manege, at Land North West Of Holly Lodge (also known as Land at High Mass Cottage and Land at Church View), Five Lanes North, Five Lanes, Caerwent, Monmouthshire NP26 5PG, in accordance with the terms of the application, reference DM/2023/01042, dated 24 July 2023, subject to the conditions set out in the schedule attached to this decision letter.

Applications for costs

5. Under both appeals, an application for a full award of costs has been made by Ms S Connolly against Monmouthshire County Council. These applications are the subject of separate decisions.

Background

6. The application for planning permission referred to the site as Land North-West of Holly Lodge. The enforcement notice referred to the site as Land at High Mass Cottage. In the appeal forms the site is referred to as Land at Church View, which is also on the site gate. Despite these different names for the site, the location is the same and is identified with sufficient clarity in plans.
7. There is a range of unauthorised operational development at the site which is subject to the enforcement notice considered under Appeal A. The planning application subject to Appeal B seeks permission for new development at the site and does not seek permission to retain the existing unauthorised development.

Appeal A (s174 appeal)

The Notice

8. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council.
9. The term 'provision' is not listed in the Act as being an act of operational development. However, the breach is clearly defined as being unauthorised operational development as well as stating which items it relates to. It is clear from the appeal submissions that the appellant understood what the notice related to. Notwithstanding this, the breach would be more precisely worded if 'provision' were replaced with 'erection'.
10. The plan originally submitted as Appendix A of the notice was a poor reproduction. A corrected version has since been provided. While the quality is still quite poor, it is sufficient to identify the site edged red as well as the areas indicated by the other colours. In combination with Appendix B and C this is sufficient to identify the site and the items referred to in the notice requirements. Despite this issue, it is clear from the submissions that parties understood the area and the matters which the notice related to. I attach the corrected plan to this decision as 'Corrected Appendix A'. I am satisfied that I can make the above corrections without causing injustice.

Preliminary Matter

11. No appeal has been made on ground (a), which is that planning permission ought to be granted for the matters stated in the notice. Consequently, under this appeal, the planning merits of the existing unauthorised operational development is not for consideration and planning permission cannot be granted for it.

The Appeal on Ground (c)

12. An appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. The appellant raises ground (c) only in relation to the container and the fence and gates.
13. As established by case law, size, permanence and attachment need to be considered to determine if something is a building. The container is a modest size. I saw no evidence of it having been moved regularly. However, it could be moved relatively easily as it is a single, solid, unit which is not attached to the ground. On this basis, I do not consider it to be a building. The container is used to store tools and equipment for the maintenance of the land. As such, I consider the container to be a portable storage unit, part and parcel of the lawful use of the land and not a breach of planning control.
14. A close boarded fence and gates has been erected at the site entrance, where there was previously hedging and typical field gates. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as Amended in Wales) (the GPDO) relates to the erection of a gate or fence. To be permitted development, the height of a new gate or fence cannot exceed one metre above ground level where adjacent to a highway used by vehicular traffic, or 2 metres elsewhere.
15. The gate/fence clearly exceed 1 metre, but do not exceed 2 metres. The matter for consideration is therefore whether the gate/fence are adjacent to a highway used by vehicular traffic. The road from which the access is formed is narrow and quiet, but is a highway used by vehicular traffic. I acknowledge that the gates/fence are set back from the road and are erected on private land. Notwithstanding this, the area between the road and the gate/fence is not extensive and seems designed only to allow vehicles to pull off the road while the gates are used. There is no intervening different use of the land, the setback is modest and the gate/fence forms the boundary between the highway and the site. Both functionally and visually I consider the gate/fence to be adjacent to the highway. Therefore, the gate and fence have been erected adjacent to a highway used by vehicular traffic and exceed 1 metre in height. Consequently, they do not benefit from permitted development rights so are a breach of planning control.
16. I conclude that the container is not a breach of planning control and the appeal on ground (c) succeeds to this extent. I will vary the requirements of the notice so that the container does not have to be removed. However, the gate and fence do constitute a breach of planning control and the appeal on ground (c) fails in this regard.

The Appeal on Ground (g)

17. An appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of 3 months after the notice takes effect. The appellant raises ground (g) only in relation to the stables, shed and outbuildings, as well as the removal of hard surfacing materials and land remediation.
18. At the time of my site visit, there was one horse and two donkeys at the site. I acknowledge that for the welfare of these animals, suitable arrangements will need to be made to ensure they have shelter and can continue to be cared for, which may take some time to arrange. It is therefore reasonable to allow 6 months for the removal of the stables. However, given the small number of animals, and the retention of the container (as set out above) which can provide some storage in addition to the stables, I see no need to retain the sheds and outbuildings for longer than 3 months.

19. I acknowledge that removing hard surfacing and undertaking grass restoration could be difficult during the winter months. Given the timing of this decision, it is reasonable to allow 6 months, which takes the period for compliance into the spring when conditions are likely to be more conducive to such works.
20. I conclude that the appeal on ground (g) succeeds in relation to the stables and surfacing but fails in relation to the shed and outbuildings. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice accordingly, by extending the time for compliance to 6 months for the relevant elements, as set out in the decision.

Conclusion on Appeal A

21. I shall uphold the notice, but with variations to reflect the partial success of the appeal on grounds (c) and (g).

Appeal B (s78 appeal)

Preliminary Matters

22. I have determined Appeal B on the basis of the Council's failure to determine the planning application within the statutory timescale. The Council did consider the application at planning committee and resolved to refuse it, but an appeal against non-determination had already been made and the period for dual jurisdiction under the appeals process had ended. Notwithstanding this, the Council provided a copy of their officer report, along with their committee report which sets out the reasons why planning permission would have been refused, had the jurisdiction to determine the application remained with the Council. I have had regard to these in setting out the main issues.
23. I note that a previous application for equestrian use of the land, with a manege, stables and store was refused and a subsequent appeal dismissed. However, the appeal was dismissed on the basis that the plans lacked the necessary clarity and details to allow the inspector to conclude whether there would be any material conflict with policy. The plans provided with the application subject to this appeal provide the necessary detail to allow an assessment of the planning merits to be made.

Main Issues

24. The main issues are:
- Whether the development is acceptable in a countryside location;
 - The effect of the development on the character and appearance of the site and the surrounding area;
 - The effect of the development on Highway safety; and
 - The effect of the development on biodiversity.

Reasons – Countryside Location

25. The site is a field, outside of the settlement boundaries as defined by the Monmouthshire Local Development Plan (LDP) so is within the countryside. LDP Policies LC1 and RE6 allow for the provision of leisure facilities in the countryside, including equestrian uses, provided certain criteria are met. As set out in the following sections, the proposed development is small scale; has a form and layout which safeguards the character and appearance of the area; assimilates satisfactorily into the landscape; and has no unacceptable adverse impact on the landscape or biodiversity. Consequently, it meets the requirements of LDP policies LC1 and RE6 so, in principle, can be considered acceptable development in the countryside.

Reasons – Character and Appearance

26. The majority of the site boundary is defined by hedgerow. A public right of way (footpath) (PROW) crosses the site. The site slopes down from the road and the access, which is in the south, towards the woodland, in the north. Fields to either side of the site are open and appear to be in use for the keeping of horses. The field to the west contains a stables and small barn located along the hedge boundary with the road. They are of a similar scale and location to those proposed under this appeal. In the surrounding area there are a number of other examples of modest wooden or wooden clad structures located close to the road.
27. There are a number of individual dwellings along the road, with a small cluster to the southeast of the site. The dwellings and any associated development sit relatively close to the road, forming a dispersed but primarily linear pattern of development.
28. The proposed stable building is modest in scale, and appropriate for the proposed number of horses and the size of the site. The storage building is commensurate in size to its proposed functions. The structures are of a simple design and finish that is common in a rural setting such as this. I note concerns regarding the structures being constructed in blockwork clad in wood. I do not consider this to be an issue in terms of character and appearance, provided the cladding is installed, which can be secured by condition. The stables and storage building would be located close to the hedge line with the road, reflecting the linear development form and layout of the area.
29. The manege/equestrian area is a modest size, commensurate with a small-scale private use. Its design and finish are appropriate to its context and function. Visibility of it from outside the site would be limited.
30. The boundary hedgerow would provide significant screening for much of the development, especially when viewed from the road. However, the proposal would be highly visible from the PROW which crosses the site as well as being seen above the hedge from the road. Notwithstanding this, as outlined above, the proposal is in keeping with the surroundings so this visibility does not result in harm.
31. Overall, the scale, finish and location of the proposed stables and storage building are in keeping with the surroundings. I therefore conclude that the development would not cause unacceptable harm to the character and appearance of the site or the surrounding area. As such, the development complies with LDP Policies DES1 and LC5. Together, amongst other things, these policies seek to ensure that development is well designed, respects the local character and distinctiveness and protects landscape character.

Reasons – Highway safety

32. The vehicle access to the site is from an unclassified highway known as Five Lanes. The road is narrow but on the evidence of my site visit, it is also quiet. The access is suitable to serve the needs of the proposed use without impacting on the surrounding roads.
33. The equestrian use of the site is proposed as being private use only, which can be secured by condition. On this basis, the proposal would not generate traffic movements significantly different in frequency or vehicle type to that which would be expected of its established agricultural use.
34. I conclude that the development would not cause harm to highway safety. As such, the development complies with LDP Policy MV1. Amongst other things, this policy seeks to prevent development which would significantly and unacceptably increase traffic or fail to provide safe access for road users.

Reasons – Biodiversity

35. I acknowledge that a section of hedgerow has previously been removed near the access, but that matter does not form part of this appeal. The proposal subject to this appeal includes significant new hedgerow planting within the site, which can be secured by condition. Once established, the new planting will enhance the biodiversity of the site and improve the connectivity of the surrounding green infrastructure.
36. The woodland to the north is a Site of Importance for Nature Conservation (SINC). However, it is outside of the site and well away from the area of the proposed development. The proposed development is small scale and I have no reason to believe it would have any detrimental impact on the SINC, subject to controlling lighting, which can be secured by condition.
37. I conclude that the development would not have a detrimental impact on ecology and once the new hedgerow is established it would result in biodiversity net gain. As such, the development complies with LDP Policy S13 which, amongst other things, seeks to maintain the character and quality of the landscape and enhance biodiversity and the connectivity of green infrastructure.

Other Matters

38. I have had regard to the matters raised by third parties, most of which have been considered in the main issues. The existing unauthorised structures are not the subject of Appeal B, so their impact has not been part of my consideration of the proposed development. Sufficient detail has been submitted to allow assessment of the impact of the proposal.
39. Concerns have been raised regarding the planning committee process. Such matters are not for consideration under this appeal. Moreover, this appeal was made on the basis of the Council's failure to determine the planning application within the statutory timescale. Therefore, the jurisdiction to determine the application transferred to the inspector.
40. The proposal necessitates diverting the PROW so it runs around the edge of the site, which requires the granting of a separate Order. Covenants are subject to separate legislation. Neither of these matters fall to be considered under this appeal.
41. Given that the horses will be fed supplementary feed rather than relying purely on the site for grazing, I have no reason to conclude that the site is insufficient in size to support the proposed 5 horses.

Conditions

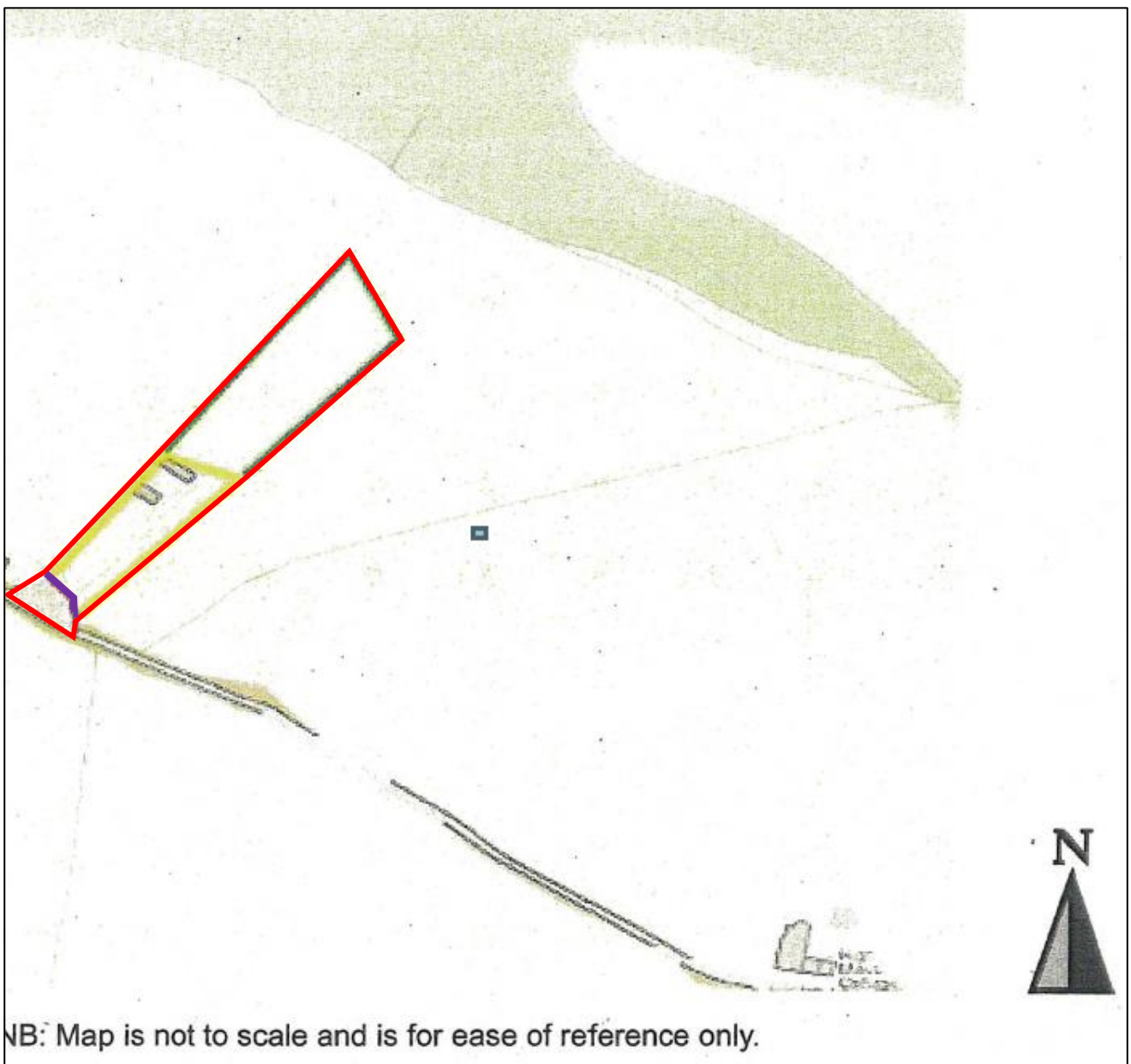
42. I have considered the need for conditions in light of the advice in Welsh Government Circular 016/2014 "The Use of Planning Conditions for Development Management". Both parties have had the opportunity to make representations on suggested conditions. I have amended some of the suggested conditions in the interests of clarity and precision, while retaining their purpose.
43. The council proposed a hedge planting condition as well as soft landscaping implementation and maintenance conditions. In the interest of brevity I have combined these conditions into one. I have imposed a separate condition for hard landscaping.
44. Sustainable Drainage Systems (SuDS) on new developments, where applicable, must be designed and built in accordance with the Statutory SuDS Standards published by the Welsh Ministers. SuDS Schemes must be approved by the local authority acting in its SuDS Approval Body (SAB) role before construction work begins. Therefore, imposition of a SuDS condition is unnecessary as it would duplicate other legislation.

Conclusion on Appeal B

45. For the reasons given above and having regard to all other matters raised, I conclude that Appeal A should be allowed.
46. 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 Davies
INSPECTOR

CORRECTED APPENDIX A – APPEAL A



SCHEDULE OF CONDITIONS – APPEAL B

- 1) The development shall begin not later than five 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:

- Site location plan
- Site Plan as Existing and Proposed – PLN-02
- Proposed plans (barn) – PLN-03
- Proposed plans (stables) – PLN-01
- Supporting Planning Statement
- Design and Access Statement
- Riding Area Construction Guide
- Preliminary Ecological Appraisal
- Waste Management Strategy – 25/10/23
- Soakaway drainage destination and manege details – 14/11/23
- Green Infrastructure Statement

Reason: To ensure the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.

- 3) No development shall take place until a scheme for biodiversity enhancement has been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of maintaining and enhancing biodiversity, in accordance with Future Wales Policy 9 and LDP Policy S13.

- 4) Prior to their implementation on site, details of any hard landscaping shall be submitted to and approved in writing by the local planning authority. Any hard landscaping / surfacing shall be carried out in accordance with the approved details and maintained as such thereafter.

Reason: In the interests of visual amenity and to safeguard the special character of the countryside, in accordance with LDP Policies RE6, LC5 and DES1.

- 5) The development hereby approved shall not come into beneficial use until the wooden cladding, as shown on the approved plans, has been applied and completed. The cladding shall be retained thereafter.

Reason: In the interests of visual amenity and to safeguard the special character of the countryside, in accordance with LDP Policies RE6, LC5 and DES1.

- 6) The development shall be operated in accordance with the approved waste management plan dated 25.10.23 and in line with the DEFRA codes of good agricultural practice at all times that the site is in beneficial use.

Reason: To protect the living conditions of neighbouring occupiers, in accordance with LDP Policy EP1.

- 7) The hedge planting shown on the approved proposed site plan shall be planted during the first planting season immediately following first beneficial use of any part of the development hereby approved. The hedge planting shall consist of hawthorn 50%, blackthorn 25%, field maple 10%, hazel 10% and holly 5%. Plants shall be 450-600mm height Br (bareroot) in a double staggered row 300mm between rows. The plants shall be suitably protected (biodegradable spirals, fencing, mulch). Any hedge plants that, within a period of five years after planting, are removed, die or become, in the opinion of the local planning authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.

Reason: In the interests of ensuring the provision, establishment and maintenance of a reasonable standard of landscaping and green infrastructure, in accordance with LDP Policies LC5, DES1 and S13.

- 8) No surface water shall be permitted to drain from the site onto the adjoining highway or into the highway drainage system.

Reason: To ensure no surface water drains onto the highway and impacts on highway safety, in accordance with LDP Policy MV1.

- 9) Notwithstanding the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) no lighting or lighting fixtures shall be installed within the site until an appropriate lighting plan has been submitted to and agreed in writing by the Local Planning Authority. Any such plan would need to include the detail of lighting type, positioning and specification for low level PIR lighting, which ensures that foraging/commuting habitat for bats is protected from light spill. Any lighting installed shall be in full accordance with the approved details and retained as such thereafter.

Reason: To safeguard foraging/commuting habitat of Species of Conservation Concern in accordance with Section 6 of the Environment Act (Wales) 2016 and LDP Policies EP3 and NE1.

- 10) The development hereby approved shall be for personal use only and shall not be used for commercial purposes, including livery use.

Reason: In the interests of highway safety and to protect the living conditions of neighbouring residents in accordance with LDP Policies MV1 and EP1.

END OF SCHEDULE