



Eich cyf/ Your ref: 1162.08.GF  
Ein cyf/ Our ref: qA1382743

Mr Graham Frecknall  
Graham Frecknall Architecture and Design  
9 Agincourt Street  
Monmouth  
Monmouthshire  
NP25 3DZ

[gf@gfarchitects.co.uk](mailto:gf@gfarchitects.co.uk)

6 June 2019

Dear Mr Frecknall

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
CONVERSION OF PRE-1700 BUILDING INTO 19 APARTMENTS, DEMOLITION OF  
POST 1900 STRUCTURES AND BUILDING OF 31 NEW APARTMENTS AND  
GATEHOUSE AT TROY HOUSE, MITCHEL TROY, MONMOUTH, NP25 4HX  
PLANNING APPLICATION NO: DC/2008/00723  
FILE REF: APP/E6840/V/18/3205588**

1. Consideration has been given to the report of the Inspector, Kay Sheffield BA (Hons) DipTP MRTPI, who held a Hearing on 22 January 2019 in respect of your client's planning application, Local Planning Authority reference: DC/2008/00723.
2. On 14 June 2018, in accordance with Section 77 of the Town and Country Planning Act 1990 ("the 1990 Act"), the planning application was called in for decision by the Welsh Ministers. Under the provisions of the Government of Wales Act 2006, the power to determine applications under Section 77 of the 1990 Act has been transferred to the Welsh Ministers. These functions are within the portfolio of the Minister for Housing and Local Government and have been exercised by me as Minister.
3. In exercising their functions as part of carrying out Sustainable Development in accordance with the Well-Being of Future Generations (Wales) Act 2015 ("the WFG Act"), section 2 of the Planning (Wales) Act 2015 requires the Welsh Ministers, as a public body, to ensure the development and use of land contributes towards improving the economic, social, environmental and cultural well-being of Wales. In

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@gov.Wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

order to act in this manner, the Welsh Ministers have taken into account the ways of working set out in section 4 of 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance' on the WFG Act through examination of the appeal by way of a Hearing in accordance with the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003.

4. The Inspector held a Hearing on 22 January 2019 and a site visit was carried out on the same date. The Inspector recommends planning permission be refused. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, relate to the IR.

### **Main Considerations**

5. In the Inspector's view, the main considerations in this appeal are (IR88):
  - whether the location of the proposed development would be appropriate having regard to flooding;
  - whether the location of the proposed development would be appropriate having regard to the open countryside; and
  - whether any harm in these respects would be outweighed by the long-term preservation of the Grade II\* listed building.

### Flood Risk

6. The Inspector outlines the relevant local and national planning policy framework and notes specific guidance is provided in Technical Advice Note 15, "Development and Flood Risk" (TAN 15). TAN 15 defines all residential premises as highly vulnerable development. The framework guiding planning decisions is precautionary and its first preference is to direct new development away from areas at high risk from flooding. The Inspector notes that highly vulnerable development should not be permitted in flood zone C2. There is no provision in TAN 15 whereby this unequivocal position can be offset by mitigation or the benefits which might accrue from a development (IR91).
7. Consequently, the Inspector states, as the proposed development is classed as highly vulnerable and would be located within flood zone C2, consideration of the scheme should end here. However, neither the Council nor Natural Resources Wales (NRW) has taken this approach. Instead they both pursue the course of justification and mitigation (IR92).
8. The Inspector considers the justification tests in TAN 15 (IR 93 – 97) and concludes the location of the proposed development within flood zone C has not been justified.
9. However, I consider applying the justification tests in paragraph 6.2 of TAN 15 is not required in the determination of this appeal. As the Inspector notes, "as the proposed development is classed as highly vulnerable and would be located within flood zone C2, consideration of the scheme should end here" (IR 92). The development comprises highly vulnerable development as defined by TAN 15 and is located in Zone C2 on the Development Advice Map which supplements TAN 15. Therefore, in accordance with PPW and TAN 15, the development should not be permitted. The justification tests in paragraph 6.2 of TAN15 do not apply to highly vulnerable development in Zone C2.

10. The Inspector accepts that the previous school use also constitutes a highly vulnerable development. However, that use started in the early 1990's and although such a use could be re-commenced, the Inspector notes the application has to be determined in the light of current planning policy and guidance (IR98).
11. Based on the evidence, the Inspector concludes that the proposed location of a highly vulnerable development in flood zone C2 would be contrary to PPW, TAN 15 and Policies S12 and SD3 of the Monmouthshire Council Local Development Plan (LDP) (IR99). I agree with the Inspector's conclusion on this issue.

#### Development in the Open Countryside

12. The proposed conversion of Troy House into apartments is supported by Policy H4 of the LDP provided certain criteria are met. The Inspector is of the view that there is no dispute the scheme would respect the character and design of the building and be in scale and sympathy with the surrounding landscape. The building has previously been in residential use and it is eminently suitable for conversion into apartments. Although the implementation of the conversion would involve significant work, the Inspector considers the scheme would provide adequate living space within the structure without the need for substantial reconstruction (IR101).
13. Limited consideration has been given to alternative uses for the site other than residential and the Inspector acknowledges less vulnerable developments may not be appropriate in this location or could harm the historic asset. Furthermore, she states that to return the listed building to beneficial use would require substantial funds which are more likely to be forthcoming from a residential rather than a business use. On balance, the Inspector is satisfied the proposed conversion of Troy House would accord with Policy H4 of the LDP (IR102).
14. Nevertheless, the Inspector states the proposal is reliant on a significant amount of new build on a site which lies within open countryside. There is a presumption in national and local planning policy against new development in the open countryside except in certain circumstances, none of which apply to the development proposed. The Inspector concludes there is no dispute the development would be contrary to PPW and Policy LC1 of the LDP (IR103).

#### Preservation of the Listed Building

15. The Inspector recognises that Troy House is an important listed building. Due to its composition and extraordinary retention of historic fabric, the house is architecturally important. It is also historically important because of its association with the Beaufort family. The Inspector considers the building has significant evidential, aesthetic and historical value (IR104).
16. The Inspector notes that Troy House is deteriorating. As a result, the building is classed as 'At Risk' with an elevated chance of decline (IR105).
17. The Inspector states the primary consideration for any development affecting a listed building or its setting is the statutory requirement to have special regard to the desirability of preserving the building, its setting or any features of special architectural or historic interest which it possesses. The Inspector is of the view that the architectural and historical importance of Troy House justifies an overriding need to save the building. The main objective of the application is to facilitate a new use in order to secure a sustainable future for the heritage asset and ensure its future

preservation. If no action is taken the asset will continue to deteriorate and potentially be lost (IR106).

18. The Inspector accepts that whilst in preserving a listed building the reinstatement of its original use should generally be the first option, in this instance Troy House is too large and the works required to restore it would be financially prohibitive. To return the property to its original use as a single residential dwelling is not a viable option. The Inspector is of the view that to secure the survival of Troy House and provide a sound economic future it is therefore necessary and appropriate to adopt a flexible approach when considering a new use. As evidenced by the viability report enabling development is required to fund the work necessary to restore Troy House and effectively sustain it into the future (IR107).
19. The Inspector states there is no dispute that the proposed development meets the definition of enabling development. However, for it to be appropriate, the public benefit of rescuing, enhancing or even endowing an important heritage asset must decisively outweigh the harm to other material interests. The Inspector is of the view that to ascertain if the enabling development would be acceptable regard has to be given to the tests in the Conservation Principles (IR108). The tests, as noted in PPW, are set out in the Cadw guidance, "Conservation Principles for the sustainable management of the historic environment in Wales".
20. The Inspector accepts that the proposed development would not materially harm the heritage values of the listed building. She considers that it would be a sympathetic use which would resolve the problems arising from the inherent needs of the listed building and secure its long-term future. Overall the Inspector considers the development would secure the restoration of an important historic asset which is capable of restoration and which would be beneficial to the asset and would fulfil the policy objective of preserving its special character. However, the Inspector notes this could only be achieved through significant funding which would not be available from public sources. Furthermore, a substantial income would be required to achieve a sustainable long-term future use (IR109).
21. The Inspector states that the viability report is several years old and has not been updated to reflect the present economic situation. She considers the report would need to be the subject of on-going review as more information becomes available, as the market place changes and as costs become better defined. It is therefore understandable that in recognising the extreme sensitivity of the proposals, the report concluded that to secure a viable option a larger scheme comparable to the current proposals would be required (IR110).
22. The Inspector acknowledges that there is no certainty regarding the scale of the development required to ensure the restoration of the listed building would be financially viable. There is also a distinct possibility that the scheme would need to be amended in the light of updated costings. The Inspector states for the purposes of this application a development of the scale proposed would be the minimum necessary to secure the restoration of the listed building (IR111).
23. The final test is whether the public benefit of securing the future of the historic asset through the enabling development decisively outweighs the disbenefits of breaching other public policies. The Inspector is highly aware of the condition of the building and the need to secure an alternative viable use if it is to be saved, however, the statutory requirement to have special regard to the desirability of preserving the building must be balanced against the disbenefits of breaching national and local policies in respect of flooding and development in the open countryside. Furthermore,

it is an expectation of PPW that enabling development should not give rise to significant risks, for example residential development in the floodplain. Given the Inspector's conclusions in respect of flooding and development in the open countryside she does not consider these tests are met (IR112).

24. The Inspector is aware the Council has approved an urgent works notice and work is ongoing with the owner of the building with a view to serving formal notices if necessary. She states that although to proceed along this route may secure the urgent works required to halt or slow down the deterioration of the building, it may not result in the positive action required to ensure it is restored, in line with the Welsh Government's objective to protect, conserve, promote and enhance the historic environment as a resource for the general well-being of present and future generations (IR113).
25. The Inspector states both Cadw and Glamorgan Gwent Archaeological Trust (GGAT) concluded the proposal would be likely to cause significant harm to the registered historic garden, particularly to the north and east of the house and including potential impacts on garden archaeology. Cadw and GGAT both consider an archaeological evaluation is needed prior to the determination of the application in order to establish the extent and importance of any archaeological remains and allow an appropriate programme of mitigation for the archaeological resource (IR114-115).
26. Whilst the need for further investigation is acknowledged by the Council, it does not consider it necessary for such works to be undertaken prior to the determination of the application. This may be appropriate when there is a chance that unforeseen remains might be discovered during a development. However, in the current circumstances where the potential for archaeological remains has been accepted, the Inspector does not consider this course of action would be appropriate (IR116).
27. The Inspector is not satisfied the information submitted is sufficient to fully assess the presence or otherwise of any significant archaeological remains. She considers that further archaeological evaluation is required which would enable a mitigation strategy appropriate to the significance of any archaeological assets identified to be evolved and any implications it may have for the design of the scheme to be addressed. The Inspector recognises that in the light of further investigation there is the potential that amendments may be required which could have significant implications for the financial viability of the scheme. She is of the view this is a further reason why the matter should be resolved prior to the determination of the application (IR117).
28. The Inspector acknowledges that in cases involving less significant archaeological remains it is necessary to weigh the relative importance of the archaeological remains and their settings against other factors, including the needs of the development. She accepts that the walled gardens may be of greater archaeological importance than the garden terraces affected by the proposals. However, the gardens are an integral part of Troy House and any archaeological remains could be equally important to its status as a listed building. It is acknowledged the survival of Troy House is in the balance. Nevertheless, the Inspector is not satisfied that sufficient information has been submitted to allow a full understanding of the impact of the proposals on the historic significance of the registered historic garden (IR118).

## **Other Material Considerations**

29. In addition to the matters already addressed concerns were raised by interested parties regarding the access lane and its junction with the highway network, the effect on the economic viability of Troy farm, and water supply (IR119).

### Access

30. The Inspector acknowledges that the lane is in the ownership of Troy Farm and that the occupants of Troy House only have a right of access. Whilst any improvements to the junction together with any alterations to the lane could only be carried out with the agreement of the landowners, it is a separate legal matter with no bearing on the planning application. The Inspector had no definitive evidence regarding the accuracy of the drawings or the inability of the two bridges to carry any additional traffic. Notwithstanding this, any works in this respect would form part of the carriageway construction details (IR120).
31. Concerns were raised regarding the accuracy of the Transport Statement in respect of the assessment of the likely impact of the development on traffic flows. The Inspector acknowledges that the traffic generated by the site in recent years has been significantly below the proposed use, however, the last use as a school could be re-commenced. The Inspector is therefore satisfied the Transport Assessment was correct in taking account of this use in assessing traffic flows (IR121).
32. The Inspector is satisfied that the gate across the access lane is adequate distance from the junction to give drivers enough warning that it is closed. There would also be the opportunity for drivers to pass through the gate, opening and closing it behind them. The Inspector acknowledges that whilst it may not be an ideal situation, the occupiers of Troy House have a right of access over the lane and any hindrance of that right is a legal issue separate from the planning application (IR122).

### Viability of Troy Farm

33. The Inspector acknowledges that a development of the size proposed would result in a significant increase in the number of residents living near a working farm. However, she is not persuaded by the evidence this would have a significant detrimental impact on the economic viability and operational ability of Troy Farm to maintain and grow the existing farm enterprise (IR123).

### Water Supply

34. Concerns were also raised in respect of water supply. The Inspector states that whilst the application form states that either a private or a mains supply is available, some residents served by the borehole have found it necessary to install mains water in order to ensure a reliable supply. The Inspector accepts the scale of the development would give rise to a significant demand for water. However, she is satisfied there is no evidence the development would be without a supply and separate legislation will demand it prior to occupation. Although further details of the proposed private plant for the disposal of foul drainage are required, the Inspector confirms there is no evidence that this method would be unacceptable (IR124).

## **Inspector's Overall Conclusions**

35. The Inspector confirms the application site is almost entirely within flood zone C2 and the residential development proposed is classed as highly vulnerable. Although the development could be designed to satisfy section A1.14 of TAN 15, it would not completely satisfy section A1.15. Notwithstanding this, the Inspector states TAN 15 is unambiguous that highly vulnerable development should not be located within flood zone C2. Furthermore, the Inspector states policies S12 and SD3 of the LDP respectively seek to avoid inappropriate development in areas at risk of flooding and place strict control on highly vulnerable development in areas which may be liable to flooding (IR130).
36. The Inspector concludes the proposal is reliant on a significant amount of new build on a site which lies within open countryside where there is a presumption in national and local planning policy against new development except in certain circumstances, none of which apply to the development proposed (IR131).
37. Whilst the Inspector concludes the development would secure the preservation of the listed building and return it to an appropriate use, she also notes that, to do so would entail a significant amount of new build which would not meet the tests regarding enabling development. The presence of archaeological remains has not been discounted and the Inspector considers there is insufficient information to fully assess its presence or the effect of the development on it. The Inspector concludes that the proposal would therefore be likely to cause harm to the registered historic garden (IR132).
38. On balance the Inspector concludes the statutory requirement to have special regard to the desirability of preserving the listed building is outweighed by the identified harm in respect of flooding and the location of the development in the open countryside. The potential harm to the registered historic garden adds further weight against the proposal. The Inspector therefore considers that the planning application should be refused.
39. In reaching this decision the Inspector has taken account of the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. The Inspector considers the decision is in accordance with the Act's sustainable development principle, through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.
40. Subject to my comments in paragraphs 6 – 39, I agree with the Inspector's conclusion's and recommendation, for the reasons given by her, to refuse planning permission.

## **FORMAL DECISION**

41. For the reasons given, in exercise of the power referred to in paragraph 2 of this decision letter, I hereby refuse planning permission for outline planning application DC/2008/00723.
42. In reaching this decision, I have considered the duty to carry out sustainable development under section 2 of the Planning (Wales) Act 2015. The decision made accords with the sustainable development principle set out in the WFG Act 2015 and the well-being objectives of the Welsh Ministers in that it contributes to the objectives

to 'drive sustainable growth and combat climate change' and 'supporting safe, cohesive and resilient communities'.

43. A copy of this letter has been sent to Monmouthshire County Council and to those persons and organisations who appeared at the Hearing.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The script is cursive and fluid, with the first name "Julie" and the last name "James" clearly distinguishable.

**Julie James AC/AM**

Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government