

PROPOSED REVOCATION OF PLANNING PERMISSION DM/2020/00817 LAND AT SEVERN TUNNEL JUNCTION, STATION ROAD, CALDICOT FOR STATION CAR PARK ON LAND SOUTH OF SEVERN TUNNEL JUNCTION

Application Number: DM/2020/00817

Proposed Development: A new car park on land to the south of Severn Tunnel Junction station.

Address: Station Road Rogiet Caldicot Monmouthshire NP26 3WF

Applicant: Monmouthshire County Council

RECOMMENDATION: TO REVOKE PLANNING PERMISSION DM/2020/00187

Purpose of Report: To seek approval from committee to enable the Council, as the relevant Planning Authority to make an order to revoke planning permission DM/2020/00817 for Station Car Park at Land South of Severn Tunnel Junction.

1.0 Summary

The above application was submitted to the Local Planning Authority on 24th June 2020 and made valid on the 3rd July 2020. The application was subsequently registered and the appropriate consultation exercise was carried out. The application was presented to Delegated Panel for consideration on the 27th October 2021 with an officer recommendation for approval. Delegated Panel subsequently agreed with the officer recommendation and the application was approved on the 28th October 2021 subject to conditions.

Following the issuing of the decision it has become apparent that the application was incorrectly presented to the Delegated Panel. In line with the Council's Constitution the application was required to be presented to Planning Committee for resolution given the council was the applicant and there were material planning objections to the proposals.

This report now seeks Committee's approval to serve a Revocation Order to legally revoke the decision.

If the decision is revoked the application will be presented and fully considered at a future Planning Committee meeting for committee to determine the application in the normal way.

As the Council is the landowner and applicant, it is unlikely that there will be an objection to this revocation order which will lead to a referral to the Welsh Ministers for determination. In addition there will not be any compensation payable for the same reasons.

2.0 Constitution

We have consulted with members of the legal department to confirm the correct process for issuing a revocation order. Having examined the scheme of delegation within the constitution they have confirmed that although this was a decision made by officers, there is no power conferred to officers by the constitution to issue a revocation order.

Furthermore, if the decision had been made by the Committee then the decision to revoke or amend that decision would also have been referred to the Committee. As such the legal department has

advised that the correct process under the Council's Constitution would be to refer this decision to revoke the planning permission to the Planning Committee.

3.0 Procedure for Revocation

As it is unusual for a revocation order to be made, we have set out below the statutory procedure for members to consider, in order to ensure that members are fully aware of the relevant legislation and process which we must follow.

The process for revoking a Planning Permission is set out within the Town and Country Planning Act 1990 ("the Act"). Section 97(1) of the Act allows a Local Authority by order to revoke or modify a permission to such extent as they consider it expedient.

97 Power to revoke or modify planning permission [F1 or permission in principle].

(1) If it appears to the local planning authority that it is expedient to revoke or [F2 modify—

- (a) any permission (including permission in principle) to develop land granted on an application made under this Part, or
- (b) any permission in principle granted by a development order,

the authority] may by order revoke or modify the permission to such extent as they consider expedient.

When making this decision the authority must have regard to the development plan and to any other material considerations. Such an order cannot be made once the operations authorised by the permission have been completed, or in the case of a change of the use of any land once that change of use has taken place. Neither of these circumstances are applicable in this case.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised—

- (a) [F3 in the case of planning permission that] relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) [F3 in the case of planning permission that] relates to a change of the use of any land, at any time before the change has taken place.

The building operations have not yet been completed and as such we are within the time limit allowed by the Act.

Section 99 of the Act states that where the order is unopposed, it will come into effect on the expiration of the relevant notice period. The authority must serve a notice on the owner, occupier and all persons who in the authority's opinion will be affected by the order.

99 Procedure for s. 97 orders: unopposed cases.

(1) This section applies where—

- (a) the local planning authority have made an order under section 97; and
- (b) the owner and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to it.

(2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify—

- (a) the period within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and
- (b) the period at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section without being confirmed by the Secretary of State.

In order to comply with this provision, we will need the authorisation of this Committee to ensure that we have the permission of the landowner and applicant. We will also write to Rogiet Community Council and ask that they confirm that they do not wish to oppose the order. Rogiet Community

Council have indicated they may issue proceedings in relation to this permission and as such, officers consider that they are an interested party.

The Act also requires us to serve a notice on the persons mentioned in subsection 1(b), which we have set out above. That notice must not be less than 28 days from the date the advertisement first appears. In order to comply with this requirement, as well as writing to the Community Council, officers propose putting a notice on site for a period of 28 days to publicise the order to residents and wider community to provide them with the opportunity to object if they are so minded.

Where an order is opposed the decision must be referred to the Welsh Ministers for confirmation. In the case of an opposed order, where the authority has served a notice and the order is opposed by an interested party, Welsh Ministers must give an opportunity for both the objector and the authority to appear before them before making a determination in relation to the order.

98 Procedure for s. 97 orders: opposed cases.

- (1) Except as provided in section 99, an order under section 97 shall not take effect unless it is confirmed by the Secretary of State.
- (2) Where a local planning authority submit such an order to the Secretary of State for confirmation, they shall serve notice on—
 - (a) the owner of the land affected,
 - (b) the occupier of the land affected, and
 - (c) any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, before the Secretary of State confirms the order he shall give such an opportunity both to him and to the local planning authority.
- (5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.
- (6) The Secretary of State may confirm an order submitted to him under this section either without modification or subject to such modifications as he considers expedient.

As Monmouthshire County Council is the landowner and applicant, and the Community Council have written to us to request that we revoke the order, officers are of the opinion that the order is likely to be unopposed. If that is correct, following the making of the order and publishing of the relevant notices, the order will come into effect on the expiration of the notice periods set out above.

4.0 Expediency to Revoke and Material Considerations.

The Council received a pre-action protocol letter from Rogiet Community Council in relation to this permission on 12th November 2021. This is a material consideration in making this decision.

While the scheme of delegation was not one of the grounds raised as part of the Judicial Review proceedings, a Judicial Review considers the lawfulness of a decision or action made by a public body. It exams the way in which a decision has been made and considers whether it has been made lawfully, rather than assessing the merits of the decision. Having identified this procedural incorrectness during the review it is considered expedient in light of the potential legal action to remedy it at this stage.

It is not often expedient for the Council to revoke a planning permission once granted. As has been identified above, it cannot be done unilaterally. The consent of the land owner, applicant, Council and any other interested parties are required. If any of these were to object then the revocation order must be referred to the Welsh Ministers for determination. As such it is not always within our power to do so and is not always an expedient option. In this instance Monmouthshire County Council are the landowner and developer and it is therefore possible for us to make this decision without reference to a third party.

Where a Local Planning Authority makes an order to amend or revoke a planning permission there can follow an obligation to pay compensation to the landowner or developer for any costs incurred before the point at which the revocation order is made. These costs can be quite substantial. Again, as the Council is the landowner and developer there are no compensation implications to this

decision. This is a material factor in considering the expediency of the proposed course of action to revoke the planning permission.

As such, officers consider that as the order is unlikely to be opposed, that there will be no adverse financial implications for making this order, alongside the potential need to defend this decision following a possible Judicial Review, officers consider it expedient to revoke the permission to allow it to be re-presented to a future full meeting of the Committee for determination.

5.0 Officer Report DM/2020/00817

In accordance with Sec 97 of the Town and Country Planning Act 1990, 'In exercising their [Local Planning Authority] functions under subsection (1) the Authority shall have regard to the development plan and to any other material considerations'.

It is not considered necessary to repeat the policy and material considerations of the application in this report. The full consideration of the application can be found in the officer's report here:

https://planningonline.monmouthshire.gov.uk/online-applications/files/2C2028A10E99677A5D0CFBA2C4F6B621/pdf/DM_2020_00817-OFFICER_REPORT-945656.pdf

The relevant Local Development Plan policies can be found at Appendix A to this report.

6.0 Well-Being of Future Generations (Wales) Act 2015

The duty to improve the economic, social, environmental and cultural well-being of Wales has been considered, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching this recommendation, the ways of working set out at section 5 of the WBFG Act have been taken into account and it is considered that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.

7.0 Recommendation

That Committee resolves to authorise:

- (a) The making of a revocation order under Section 97 of the Town and Country Planning Act 1990 to revoke planning application DM/2020/00817.
- (b) Confirmation of the order in the event of no objections being received from any interested party.

3.0 LOCAL DEVELOPMENT PLAN POLICIES

Strategic Policies

S14 LDP Waste
S12 LDP Efficient Resource Use and Flood Risk
S16 LDP Transport
S17 LDP Place Making and Design

Development Management Policies

SD3 LDP Flood Risk
SD4 LDP Sustainable Drainage
LC1 LDP New Built Development in the Open Countryside
LC5 LDP Protection and Enhancement of Landscape Character
GI1 LDP Green Infrastructure
NE1 LDP Nature Conservation and Development
EP1 LDP Amenity and Environmental Protection
EP2 LDP Protection of Water Sources and the Water Environment
EP3 LDP Lighting
EP5 LDP Foul Sewage Disposal
MV1 LDP Proposed Developments and Highway Considerations
MV2 LDP Sustainable Transport Access
MV5 LDP Improvements to Public Transport Interchanges and Facilities
DES1 LDP General Design Considerations
DES2 LDP Areas of Amenity Importance

4.0 NATIONAL PLANNING POLICY

Future Wales - the national plan 2040

Future Wales is the national development framework, setting the direction for development in Wales to 2040. It is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities. Future Wales - the national plan 2040 is the national development framework and it is the highest tier plan, setting the direction for development in Wales to 2040. It is a framework which will be built on by Strategic Development Plans at a regional level and Local Development Plans. Planning decisions at every level of the planning system in Wales must be taken in accordance with the development plan as a whole.

Planning Policy Wales (PPW) Edition 11

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by the Planning (Wales) Act 2015, the Well-being of Future Generations (Wales) Act 2015 and other key legislation and resultant duties such as the Socio-economic Duty.

A well functioning planning system is fundamental for sustainable development and achieving sustainable places. PPW promotes action at all levels of the planning process which is conducive to maximising its contribution to the well-being of Wales and its communities.

Technical advice note (TAN) 5: nature conservation and planning
Technical advice note (TAN) 15: development and flood risk (2004)
Technical advice note (TAN) 18: transport

