

Date: 17th October 2022
Our Ref: BD/DG 20.123

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Dear Sir/Madam,

Town and County Planning Act 1990 (As Amended)
Non-Material Amendment application for the variation of conditions 6, 7, 8, 9 and 10 of planning consent 20/1314/FUL
Land At Brynygroes Farm, Ystradgynlais, SA9 1LF
Planning Portal Ref: PP-11583482

Asbri Planning are acting on behalf of Morgan Construction Wales in respect of the submission of a non-material amendment application to vary conditions 6 (Contamination), 7 (Site Investigation), 8 (Scheme of Remediation), 9 (Coal Mining and Ground Gas Protection Measures) and 10 (Completion of Remediation and Verification Report) of planning permission 20/1314/FUL to allow the partial discharge of each condition, in accordance with the phasing plan, as approved under condition 19.

This non-material amendment application is submitted alongside a discharge of condition submission relating to the conditions 6, 7, 8, 9 and 10 (Ref No. 22/1637/DIS).

A letter prepared by Asbri Planning to accompany the above application expressed David Jones' preference for the whole site to be assessed and monitored for ground gas, but it was made clear in a series of meetings that this was not the intention and it was proposed to only monitor and assess Phase 1 of the development. For the avoidance of any doubt, we reiterate again why it is not appropriate, or possible to approach the ground gas monitoring and assessment and site remediation in a single stage at the outset of the project and why this NMA is necessary to deliver the residential development, as approved:

1. For financial and funding reasons, the site is being purchased in staged payments, so, for example, Morgan Construction will not even own Phase 3 whilst they are developing Phase 1 so it cannot reasonably undertake works on land that it does not yet own.
2. Simple cash flow does not allow the site to be assessed and remediated in one go. Development economics dictate that future phases are funded by sales in early phases.
3. Remediation could potentially require the site to be stripped, but this would mean that the site would be exposed to the elements for two to three years whilst the construction of the houses caught up and this is dependant on sales rates. An exposed site would cause soil run-off and surface water drainage issues.

Furthermore, we have asked EPG Ltd to consider the latest comments and they remain absolutely clear that there is no good reason why the ground gas monitoring cannot be approached in a phased manner and indeed it is the norm for larger sites like this to be approached on a phase-by-phase basis.

It has been pointed out that the conditions in question are written in such a way that a phased discharge is not currently possible. We therefore propose that the conditions are amended via a simple Non-Material Amendment (NMA) application to allow a phased discharge. Accordingly, it is suggested that the conditions be varied as follows:

Condition	Relating to	Existing wording	Proposed wording
6	Contamination	<p>No development, other than the works to form the initial 100 metres of the site access, replacement of the culvert and the construction of the toucan crossing, shall commence until a preliminary investigation and assessment of the nature and extent of contamination affecting the application site area has been submitted to and approved in writing by the local planning authority. This investigation and assessment must be carried out by or under the direction of a suitably qualified competent person, in accordance with current guidance and best practice, and shall assess any contamination on the site, whether or not it originates on the site.</p> <p>The report of the findings shall include:</p> <ul style="list-style-type: none"> - A desk study - A site reconnaissance - Formulation of an initial conceptual model - A preliminary risk assessment <p>If the preliminary risk assessment identifies there are potentially unacceptable risks a detailed scope of works for an intrusive investigation, including details of the risk assessment methodologies, must be prepared by a suitably qualified competent person. The contents of the scheme and scope of works are subject to the approval in writing of the local planning authority.</p> <p>All work and submissions carried out for</p>	<p>No development, other than the works to form the initial 100 metres of the site access, replacement of the culvert and the construction of the toucan crossing, shall commence until a preliminary investigation and assessment of the nature and extent of contamination affecting the application site area has been submitted to and approved in writing by the local planning authority. This investigation and assessment must be carried out by or under the direction of a suitably qualified competent person, in accordance with current guidance and best practice, and shall assess any contamination on the site, whether or not it originates on the site.</p> <p>The report of the findings for each respective phase shall include:</p> <ul style="list-style-type: none"> - A desk study - A site reconnaissance - Formulation of an initial conceptual model - A preliminary risk assessment <p>If the preliminary risk assessment identifies there are potentially unacceptable risks a detailed scope of works for an intrusive investigation, including details of the risk assessment methodologies, must be prepared by a suitably qualified competent person. The contents of the scheme and scope of works are subject to the approval in writing of the local planning authority.</p> <p>All work and submissions carried out for the purposes of this condition must be</p>

		<p>the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Land Contamination Risk Management (LCRM)' guidance and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2017)</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>	<p>conducted in accordance with DEFRA and the Environment Agency's 'Land Contamination Risk Management (LCRM)' guidance and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2017)</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>
7	Site Investigation	<p>No development, other than the works to form the initial 100 metres of the site access, replacement of the culvert and the construction of the toucan crossing, shall take place until a site investigation of the nature and extent of contamination has been carried out, by a suitably qualified competent person, in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. A written report of the findings of the site investigation shall be made available to the local planning authority before any development begins. The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of the local planning authority.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>	<p>Prior to the commencement of each phase of development, as defined by Condition 19, and except for the works to form the initial 100m of the site access, replacement of the culvert and the construction of the Toucan Crossing, a site investigation of the nature and extent of contamination shall be carried out by a suitably qualified competent person, in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. A written report of the findings of the site investigation shall be made available to the local planning authority before any development begins on the relevant phase of development. The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of the local planning authority.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>
8	Scheme of Remediation	<p>No development, other than the works to form the initial 100m of the site access, replacement of the culvert and the construction of the Toucan Crossing, shall take place until a detailed</p>	<p>Prior to the commencement of each phase of development, as defined by Condition 19, and except for the works to form the initial 100m of the site access, replacement of the culvert and the</p>

		<p>remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>	<p>construction of the Toucan Crossing, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures for each respective phase.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>
9	Coal Mining and Ground Gas Protection Measures	<p>The subject site is located in a former coal mining area and ground gas protection measures which meet, as a minimum, Characteristic Situation 2 (CS2) specifications, as prescribed in BS8485:2015+A1:2019 'Code of Practice for the Design of Protective Measures for Methane and Carbon Dioxide Ground Gases for New Buildings', must be installed.</p> <p>Appropriately qualified personnel as described in Ciria C735 must verify the installation and qualify the installer. The specification and verification methodologies, for the installation of the ground gas protection measures, must be provided in a Verification Plan (as described in Ciria C735) that is part of the Remediation Strategy and must be approved in writing, by the local planning authority following completion of construction works to form the initial 100 metres of the site access, replacement of the culvert and the construction of the toucan crossing and prior to commencement of any further</p>	<p>The subject site is located in a former coal mining area and ground gas protection measures which meet, as a minimum, Characteristic Situation 2 (CS2) specifications, as prescribed in BS8485:2015+A1:2019 'Code of Practice for the Design of Protective Measures for Methane and Carbon Dioxide Ground Gases for New Buildings', must be installed for each respective phase.</p> <p>Appropriately qualified personnel as described in Ciria C735 must verify the installation and qualify the installer. The specification and verification methodologies, for the installation of the ground gas protection measures, must be provided in a Verification Plan (as described in Ciria C735) that is part of the Remediation Strategy and must be approved in writing, by the local planning authority, for each phase of development, as defined by Condition 19, following completion of construction works to form the initial 100 metres of the site access, replacement of the culvert and the construction of the toucan crossing and</p>

		<p>development.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>	<p>prior to the commencement of any further development.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>
10	Completion of Remediation and Verification Report	<p>The approved remediation scheme must be carried out in accordance with its terms following the construction works to form the first 100m of the site access, replacement of the culvert and the construction of the Toucan Crossing, and prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.</p> <p>If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>	<p>The approved remediation scheme must be carried out in accordance with its terms for each phase of development, as defined by Condition 19, and following the construction works to form the first 100m of the site access, replacement of the culvert and the construction of the Toucan Crossing, and prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.</p> <p>If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied.</p> <p>Reason: In the interests of land contamination and in order to accord with Local Development Plan policy DM 10.</p>

Section 96a of the Town & Country Planning Act 1990 allows non-material amendments to be made to an existing planning permission. This was brought into effect on the 1st September 2014. The Welsh Government has produced a guidance note entitled 'Approving Non-material Amendments to an Existing Planning Permission' which sets out four tests to be considered in determining whether an application qualifies as a non-material amendment.

It is, therefore, necessary to assess the proposed amendments against the four tests in turn:

(a)(i) is the scale of the proposed change great enough to cause an impact different to that caused by the original approved development scheme; and,

(a)(ii) would the proposed change result in a detrimental impact either visually or in terms of local amenity?

(b) would the interests of any third party or body be disadvantaged in planning terms; or,

(c) would the proposed change conflict with national or development plan policies?

(a)(i) is the scale of the proposed change great enough to cause an impact different to that caused by the original approved development scheme?

The scale of the proposed change is not great enough to cause an impact different to that caused by the original approved development scheme as merely relates to the rewording of conditions to allow the development to progress in a phased manner, in accordance with the information approved under condition 19 of planning permission 20/1314/FUL.

(a)(ii) would the proposed change result in a detrimental impact either visually or in terms of local amenity?

The proposal will not result in a detrimental impact either visually or in terms of local amenity. Given that the proposal merely involves the rewording of conditions to allow the development to be brought forwards in a phased manner.

(b) would the interests of any third party or body be disadvantaged in planning terms;

Similar to the points discussed under point (a), the proposed amendments will not increase overlooking and only relate to the rewording of conditions. Therefore, no third-party bodies, statutory or otherwise, who maintain an interest in this application, would be disadvantaged by the amendments in planning terms.

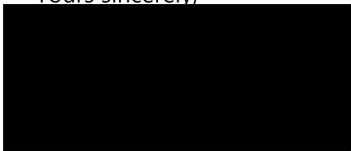
(c) would the proposed change conflict with national or development plan policies?

Given the minor nature of the proposed amendment, there is unquestionably no conflict with planning policy on any scale.

It is for these reasons that Powys County Council's Local Planning Authority is respectfully requested to grant approval of the non-material amendment for the variation of conditions 6 (Contamination), 7 (Site Investigation), 8 (Scheme of Remediation), 9 (Coal Mining and Ground Gas Protection Measures) and 10 (Completion of Remediation and Verification Report) of planning consent 20/1314/FUL to allow rewording of condition triggers.

The fee of £115.00 to support the application will be paid online or by phone. I trust this, and the enclosed is satisfactory in order to approve the application. If you require any further information, please don't hesitate to contact.

Yours sincerely,



Dylan Green

Principal Planner

Asbri Planning