



## BRECON BEACONS NATIONAL PARK AUTHORITY

### DELEGATED DECISION REPORT

<b>Application No:</b>	17/15575/FUL	<b>Case Officer:</b>	Lisa Williams
<b>Site Notice Posted:</b>	14 <sup>th</sup> Dec 2017	<b>Consultation Date:</b>	14 <sup>th</sup> Feb 2018
<b>Date Valid:</b>	12 <sup>th</sup> Dec 2017	<b>8 Week Target:</b>	2 <sup>nd</sup> Mar 2018
<b>Decision Type:</b>	Delegated Decision		
<b>Proposal:</b>	Construction of fencing and access gates around area of common adjacent to Tyr Common Cottage.		
<b>Address:</b>	Tyr Common Cottage, Lower Common, Gilwern		

### CONSULTATIONS/COMMENTS

Consultee	Received	Comments
Monmouthshire County Council Highways	28 <sup>th</sup> Feb 2018	<p>Further to our previous highway comments dated 4<sup>th</sup> January 2018 the applicant has submitted further details on the proposed access to the site.</p> <p>Having reviewed the proposed access details we are now satisfied that the proposed access has been designed in accordance with current design standards.</p> <p>In light of the above comments there are no highway grounds to sustain an objection to the application subject to the following conditions being applied to any grant of planning approval:-</p> <ol style="list-style-type: none"><li>1. The access shall be constructed in accordance with the approved plans.</li><li>2. The access between the edge of the existing carriageway and the gate shall be constructed of a hard surface bituminous material so as to prevent any loose material being brought out onto the highway.</li></ol>

## NOTES TO APPLICANT

It should be brought to the attention of the applicant that in the event of a new or altered vehicular access being formed, the requirements of Section 184 of the Highways Act 1980 must be acknowledged and satisfied. In this respect the applicant shall apply for permission pursuant to Section 184 of the Highways Act 1980 prior to commencement of access works via MCC Highways.

Commons Registration Officer 11th Jan 2018

Thank you for your consultation letter dated 8th January received by email.

I note that the applicant is no longer applying for a change of use. However the construction of fences on an area of common land remains unlawful under Section 38 of the Commons Act 2006 without consent from the Welsh Government ministers.

The applicant is welcome to contact Commons Registration to discuss the options and process of applying for consent from the Welsh Government should they wish to.

Llanelly Community Council 15th Jan 2018

Comments  
Thank you for consulting Llanelly Community Council regarding the above planning application. This consultation response is provided by Llanelly Community Council as a Consultee, the observations made are based on the information provided to the Community Council by the Local Planning Authority and information published on the Planning Authority website for consultation purposes. Llanelly Community Council noted that the amendment to the application is no longer a application for change of use of land to residential garden.  
Therefore Llanelly Community Council, wish to offer no objection with the proposed Planning Application submitted.  
If an applicant wishes to create the vehicular access, the applicant shall apply for permission pursuant to Section 184 of the Highways Act 1980 prior to commencement of access works via the Highways Authority.  
Can you please acknowledge receipt of this correspondence

NP Strategy And Policy	22 <sup>nd</sup> Jan 2018	<p>Thank you for re-consulting the Strategy and Policy team regarding the above application.</p> <p>I note that the applicant has removed the proposal to change the use of the land to residential garden.</p> <p>I can confirm that the Strategy and Policy team have no objection to the application.</p>
Health And Safety Executive	14th Dec 2017	Does not cross any consultation zone.
Llanelly Community Council	14th Feb 2018	<p>Thank you for consulting Llanelly Community Council regarding the above planning application. This consultation response is provided by Llanelly Community Council as a Consultee, the observations made are based on the information provided to the Community Council by the Local Planning Authority and information published on the Planning Authority website for consultation purposes. Llanelly Community Council noted that</p> <p>the amendment to the application is no longer a application for change of use of land to residential garden. Therefore Llanelly Community Council, wish to offer no objection with the proposed Planning Application submitted.</p> <p>If an applicant wishes to create the vehicular access, the applicant shall apply for permission pursuant to Section 184 of the Highways Act 1980 prior to commencement of access works via the Highways Authority.</p>
Monmouthshire County Council Highways	4th Jan 2018	<p>Objection - on the grounds set out below</p> <p><b>OBSERVATIONS / COMMENTS</b></p> <p>The application is for the change of use of existing common land into residential use. At present the land is unbounded and as part of the application it is proposed to erect a boundary fence and create a gated entrance.</p> <p>It is not clear from the application whether the gated entrance is pedestrian or vehicular however based on the standard gate detail submitted it would appear to be vehicular as it's shown to be 3m wide.</p> <p>Should the applicant be proposing a new single vehicular access point onto the adjacent public highway then the appropriate access detail shall be submitted for consideration which should include full access dimensions and visibility details in accordance with current design guidance.</p>

In light of the above comments we would object on the grounds of insufficient detail being submitted for consideration.

NP Strategy And Policy 3rd Jan 2018

The development plan for the area is the Brecon Beacons National Park Local Development Plan 2007-2022 (hereafter LDP) which was adopted by resolution of the National Park Authority on the 17th December 2013.

My observations relate to the proposals compliance with the strategy and policy of the LDP.

#### Proposal

The application seeks consent for the change of use of an area of common land to residential garden, including the erection of fencing and gates.

The proposed residential garden would serve Tyr Common Cottage, located adjacent to the common land.

#### Local Development Plan Policy Context

The proposal is located in an area of open countryside as defined by the LDP Proposals Map. The LDP defines countryside locations as areas unsuitable to accommodate future development in accordance with the Environmental Capacity of the National Park. The LDP defines a 15 year vision for the future of the Countryside which emphasizes the importance of supporting the countryside as a living and working landscape, internationally recognised for its outstanding natural beauty and cultural traditions.

As such, in these areas, there is a presumption against development with the exception given to those development forms where there is a defined essential need for a countryside location in order to meet the 15 year vision. Strategy policy CYD LPI sets out the forms of development that are considered acceptable within these parameters.

There is no provision within CYD LPI to enable extensions to residential curtilage. Such development cannot be seen as contributing towards meeting the vision for the countryside set out in the LDP. I therefore have to object to this proposal as being contrary to the provisions of CYD LPI. The LDP sets out that there should be no land in the countryside lost to development which is permitted by way of departure

to Policy CYD LPI (p.175).

I have reviewed the information submitted by the applicant and I can see no justification for the departure, other than to provide additional garden space over and above that which is currently associated with the property. This position is irreconcilable with the policy position of the LDP and therefore Strategy and Policy object.

**Recommendation:**

The proposal is contrary to the requirements of CYD LPI and Strategy and Policy object to the application.

As always if you have any concerns relating to the contents of my observations, or require additional clarification of any point please do not hesitate to get in contact.

Commons Registration Officer      15th Dec 2017

Thank you for your consultation letter dated 14/12/2017 concerning the application numbered 17/15575/FUL.

The Commons Registration Authority can confirm that the application site directly affects Common Land known as Lower Common, Gilwern and is registered under the Commons Registration Act 1965 as register unit CL30 (Brecknockshire). I attach an extract from the Common Land Register Map. The original can be inspected at the Commons Registration office in The Gwalia, Llandrindod Wells.

Commons Registration records show that:

The Common is subject to grazing rights, which include being registered as exercisable over the application site.

All registered Common Land is subject to a public right of access on foot for informal recreation granted under the Countryside & Rights of Way Act 2000.

Please be advised that the change of use of the land to a residential garden is not consistent with the use of common land and the construction of fences is UNLAWFUL under section 38 of the Commons Act 2006 without additional consent from the Welsh Government ministers.

There are two possible avenues for consent from Welsh Government. I recommend the reading of the Welsh Government 'Common Land Consents Guidance' that was published in August 2014 and available on the WG

website at the following link:

<http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/commons-act-2006-section-38-works-on-common-land/?lang=en>

It specifies the Welsh Government's desire to protect common land and their expectation is that applications without public benefit that may restrict public access to common land are more likely to be successful under section 16 of the 2006 Act rather than the alternative application process for consent for 'restrictive works' under Section 38 of the Commons Act 2006.

Application forms and guidance notes about how to apply are available on the Welsh Government website:

<http://gov.wales/topics/environmentcountryside/consmanagement/rights-of-way-and-wider-access/countryside-area/common-land/?skip=1&lang=en>

## **CONTRIBUTORS**

Brian And Jane Kemp, The Willows, Lower Common

## **NEIGHBOUR/THIRD PARTY RESPONSE SUMMARY**

The application has been advertised through the erection of a site notice and through direct neighbour notification. A number of objection letters have been received and include the following points:

- Common land shall remain as common land and access across the land shall not be restricted
- A precedent shall be set if this area is fenced off
- Consent to fence off common land should be dealt with by the Welsh Assembly and not the National Park Authority
- The area of land is a wildlife haven and is frequently enjoyed by local residents and dog walkers
- Vehicular access to neighbouring properties may be compromised as a result of the development
- There are already concerns with the speeds of drivers along the single carriageway, this development could exacerbate this. Warning signs should be put up to warn vehicles.
- Several trees have already been removed on the site

## **RELEVANT POLICIES**

**Policy I:** "Appropriate Development in the National Park" (Local Development Plan 2013)

**Policy 59:** "Impacts on Traffic" (Local Development Plan 2013)

**Policy CYD LPI:** "Enabling Appropriate Development in the Countryside" (Local Development Plan 2013)

**SPI I:** "Sustainable Design" (Local Development Plan 2013)

**Planning Policy Wales 9th Edition** (Nov 2016)

**Technical Advice Note 12:** Design (2016)

## PLANNING HISTORY

App Ref	Description	Decision	Date
---------	-------------	----------	------

## OFFICER'S REPORT

### Introduction

Full planning permission is sought for the construction of fencing and access gates around an area of common land opposite Tyr Common Cottage in Gilwern.

### Policy Context

The application was considered against the adopted policies of the Brecon Beacons National Park Authority Local Development Plan (2013). In making a recommendation on this application, I have taken into consideration the relevant policies of the Development Plan and the comments made by consultees and other interested parties and the following National guidance:

- Planning Policy Wales (PPW, 2016)
- Technical Advice Note 12, Design (2016)

This application is considered against Policies 1, CYD LPI, SPI 1 and 59 of the Local Development Plan 2013 (LDP).

### Site Description

The application site lies in an area defined as countryside immediately adjacent to the Level 3 Settlement boundary of Gilwern as outlined on the proposals maps within the Brecon Beacons National Park Authority Local Development Plan (2013). The site forms part of an area of common land known as Lower Common and registered under the Commons Registration Act 1965 as registered unit CL30 (Brecknockshire). The parcel of common land as a whole is located amongst residential dwellings along the road known as Tyr Common. The application site is a triangular grassed piece of land which features an electricity pole and one tree. At present no part of the common is fenced off.

### Proposed Development

The application seeks to construct post and rail agricultural fencing and access gates to a section of common land. The application originally included the change of use of the land to form residential garden. Further to a consultation with the BBNPA Policy Team, it was considered that the use of the land as a residential garden would be contrary to Policy CYD LPI of the Local Development Plan. The change of use element was subsequently removed from the application and the use of the land would remain as common land/grazing.

It is proposed to construct 1.3 metre timber fencing around the site incorporating a timber field gate and timber style. The timber field gate will be located opposite to the dwelling known as Tyr Common Cottage with the style being location opposite 1 The Gardens along Common Road.

### Consideration

Policy 1 criterion i) states:- All proposals for development or change of use of land or buildings in the National Park must comply with the following criteria, where they are relevant to the proposal: i) the scale, form, design, layout, density, intensity of use and use of materials will be appropriate to the surroundings and will maintain or enhance the quality and character of the Park's Natural Beauty, wildlife,

cultural heritage and built environment.

Policy CYD LPI states:- Proposals for development within countryside locations will be required to contribute positively to their countryside setting and enhance the quality of the landscape without adverse impact on the wildlife, natural beauty, cultural heritage, environmental assets or biodiversity of the area.

The development proposed is considered not to cause an unacceptable impact on the character and appearance of the immediate and surrounding area. The proposed materials for the fencing and access gates are considered acceptable and are of appropriate height to avoid any disadvantage to adjoining properties.

### **Neighbour Amenity**

There have been a number of comments received in relation to the proposed development which have been summarised earlier in the report.

Whilst the majority of the comments received relate to the use of the land as common land and that as common land, the ability for people to walk across it freely should remain, the Local Planning Authority can grant consent for a development without authorisation from the Commons Registration Authority. It is the responsibility of the applicant to make an application to the Commons Registration Authority for consent to carry out development on land designated as common land.

It is considered that the proposed agricultural fencing would not cause harm to the amenity of neighbouring properties or the wider residential area.

### **Highway Safety**

Policy 59 Impacts of Traffic states that:- development will be permitted where there is no detriment to highway safety due to additional traffic or where there is an unacceptable impact on road safety or where these matters cannot be mitigated for.

Monmouthshire County Council were consulted on the application and an objection was raised due to lack of information of the proposed vehicular access arrangements and the visibility details. Further details of the proposed access arrangements were supplied by the Applicant and have subsequently been accepted by the Highways Authority as the access has been designed in accordance with current design standards. Two conditions shall be imposed on the consent to ensure the safety of the adjoining highway.

### **Conclusion**

On the basis of the above report, it is considered that the proposed development would not give rise to a detrimental impact on the character and appearance of the area nor would it have a detrimental impact on neighbouring properties or highway safety. Therefore, it is considered that the development complies with the relevant policies within the Local Development Plan (2013).

### **RECOMMENDATION: Permit**

#### **Conditions and/or Reasons:**

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
- 2 The development shall be carried out in all respects strictly in accordance with the approved plans (drawing nos. Site Location Plan, H21 Timber Field Gate Details, H3 Timber Post and Rail Fence Details, H34 Style Details and Access Details received 07.02.2018), unless otherwise agreed in writing by the Local Planning Authority.

- 3 The access hereby approved shall be constructed in accordance with the approved plans and details.
- 4 The access between the edge of the existing carriageway and the gate shall be constructed of a hard surface bituminous material so as to prevent any loose material being brought out onto the highway.
- 5 The area of land outlined in red on the Site Location Plan received 29.11.2017 shall be used for common land or grazing and for no other purposes.

**Reasons:**

- 1 Required to be imposed by Section 91 of the Town and Country Planning Act 1990.
- 2 To ensure adherence to the approved plans in the interests of a satisfactory form of development.
- 3 In the interests of highway safety.
- 4 In the interests of highway safety.
- 5 The National Park Authority is not prepared to allow the creation of an area of residential garden in this location outside of the settlement boundary.

**Informative Notes:**

- 1 In the event of a new or altered vehicular access being formed, the requirements of Section 184 of the Highways Act 1980 must be acknowledged and satisfied. In this respect the applicant shall apply for permission pursuant to Section 184 of the Highways Act 1980 prior to commencement of access works via MCC Highways.
- 2 It is the responsibility of the Applicant to apply for consent to fence off a section of common land from the Welsh Government. Advice can be found in the Welsh Government 'Common Land Consents Guidance' note.

**Signed (Case Officer):**

Lisa Williams  
Planning Officer (DC)



28.02.2018

**Date:**

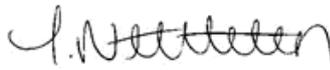
**Checked (Principal Planner):**



28.02.2018

**Date:**

**Signed (National Park  
Authorised Officer):**



28.02.2018

**Date:**

