



PLANNING, ACCESS AND RIGHTS OF WAY COMMITTEE

Application Number: 19/17324/CON **Date Validated:** 1 May 2019

Site Address: Black Mountain Cycle
Centre
Great Llwygy Farm
Tre-Fedw Road
Crucorney
Sir Fynwy
NP7 7PE

Grid Ref: E: 332055 N:221535 **Proposal:** Variation of
Condition 11 relating
to opening times
pursuant to
Application
16/13649/FUL **Date
of Decision:**
20/12/2016

Case Officer: Matthew Griffiths **Community:** Crucorney

**Reason(s) Application
Reported to
Committee:** The application is reported to Committee at the request of the
Planning and Heritage Manager. It relates to the variation of conditions
on a permission recently determined by the Planning Access and Rights
of Way Committee.

RECOMMENDATION: Permit

1. Description of Development

1.1 The application seeks permission to vary condition 11 of planning permission 16/13649/FUL which was granted planning permission on the 20 December 2016 by the Planning Access and Rights of Way Committee.

Planning condition 11 states the following:

“The Mountain Bike tracks shall not be open to customers between the hours of 6pm and 10am daily.”

The reason for its imposition is:

“In the interests of the amenities of existing residential property in the locality in accordance with policy 1 of the Brecon Beacons National Park Authority Local Development Plan 2007 - 2022 (2013).”

1.2 The application initially proposed extending opening hours until 21:00 on a Wednesday and Thursday. The applicant proposed that this would be for the period of 1st April until the 30th September in a calendar year; outside of this period the site would revert back to its standard operating hours of 10:00 to 18:00.

1.3 Officers of the Authority wrote to the applicant and advised that they were concerned that extending operation until 21:00 would have a detrimental impact on amenity in the locality. The Authority suggested that extending hours two nights a week until 19:00 maybe more acceptable to the Authority.

1.4 The applicant responded to this suggestion by offering a compromise of opening on a Thursday for two additional hours until 20:00. In their view this would allow for them to offer riding to visitors after work and school, while not extending riding into the later evening or for the majority of evenings in a week. They stated that extending to 19:00 would not be sufficient to make it worthwhile for visitors to travel to and use the site.

2. Site and Context

2.1 The site takes in a series of parcels of land to the north, west and south of the farm house within the holding known as Great Llwygy Farm. The site is made up of semi-improved grassland and scrub, through areas of established woodland, young planted woodland and open improved grassland. The topography of the site varies and slopes steeply down from a high point in the north of the site to the south. The southern boundary of the site is formed by the Afon Honddu and the Abergavenny to Hereford Railway Line.

2.2 Three trails have been constructed at the site and are operational. In general the tracks start in the northern area of the site and run down through the established woodland and end along the farm track at the southern area of the site that leads back to the car park. Each of the tracks is approximately 1600m in length and they cross each other in places. There are some additional loops formed from the main tracks which allow for routes of varying challenges and for riders to "drop in and out" of features if they choose. There are some small directional signs within the site which direct cyclists onto specific named routes. A small parking area has been provided in a field adjacent to the lower end of the route. A portaloo is located adjacent to an existing telecommunications mast located next to the railway line. Cyclists are transported by tractor and trailer using the existing farm tracks.

2.3 The purpose built Mountain Bike tracks are generally 1m wide, but can be up to 3m wide in places. Some of the routes use previously developed farm/forestry tracks. A bridge has been constructed over a bridleway that runs from the farm house to the north west and the tracks occasionally cross other public rights of way. A public footpath runs past the farm house.

2.4 There are a group of larger scale features in the southern area of the site. These include the construction of a trail feature to allow for one trail to pass under another, the excavation of tracks, jumps, raised platforms and other works to form tracks. The works to allow the tracks to cross in this area have led to a particularly large trail feature between 3-4m in height and included a pipe with a diameter of around 3m.

2.5 The applicant indicates that the woodland at the site was planted with 19,000 native species trees in 1998 - 1999. They also state that many of the tracks through the woodland were created during the planting of the woodland and these have been used as part of the mountain bike tracks.

2.6 To the west of the site is the Strawberry Wood Site of Special Scientific Interest (SSSI), Part of this has been included in the site of development. Part of the land remains within the application site and would therefore be subject to a change of use.

3. Planning History

App Ref	Description	Decision	Date
16/13649/FUL	Retention of a mountain bike track and associated engineering works	Application Permitted	20th Dec 2016
15/12513/FUL	Retrospective planning permission for retention of mountain bike tracks (3 No.), associated engineering works and ancillary works.	Application Withdrawn	17th May 2016

4. Relevant Local and National Planning Policy

4.1 Brecon Beacons National Park Authority Local Development Plan and Supplementary Planning Guidance

Policy no.	Policy
SPI	National Park Policy

4.2 National Planning Policy and Guidance

Document
Planning Policy Wales: 10 th Edition (November 2018)
Technical Advice Note 11: Noise (1997)

5. Summary of Consultation responses

Consultee	Comments
Crucorney Community Council	Re Planning Application 19/17324/CON Black Mountain Cycle Centre, Great Llwygy Farm, Tre-Fedw Road, Crucorney , Monmouthshire. With regard to the above planning application re Variation of Condition 11 relating to opening times pursuant to Application 16/13649/FUL .(Date of

	<p>Decision 20/12/2016) the following comments apply:</p> <p>Crucorney Community Council wishes to object strongly to the above application. Community Councillors feel that the application to vary condition 11 would impinge on privacy and the right of close residents to enjoy peaceful evenings in their garden. To our best knowledge, over 30 complaints have been made directly to the owners over the last two years re noise which borders on anti-social behaviour. The latter has now escalated to a formal complaint to the Principal Officer at Environmental Health, Monmouthshire County Council, this April.</p> <p>Councillors also raised concerns about the extension of opening hours as they are aware that the Ambulance Service and the Air Ambulance have been in attendance on many occasions since the track opened. Given the difficulty of access to the track for the emergency services, extended hours into the late evening would exacerbate such situations and put injured cyclists at risk as darkness descends.</p> <p>Another concern of councillors is the possibility that the 30-vehicle limit now in force will be breached by increased activity at the track especially in the evenings if this planning application re the variation of Condition 11 is permitted.</p> <p>Councillors consider that the current opening hours are sufficient and are in line, if not longer, than other cycle tracks in Wales.</p> <p>Councillors would be grateful if you could acknowledge their response to this application.</p> <p>Thanking you,</p>
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<p>Monmouthshire County Council Environmental Health</p>	<p>I have carefully considered this application for the variation of opening times.</p> <p>Use of the cycle track during the proposed Wednesday and Thursday evening hours from 1st April to 31st September will have the potential for noise from the cyclists, particularly raised voices during the use of the cycle track obstacles to the south of the site, being audible at the residential properties in the area.</p> <p>I have appraised the Centre's updated Noise Management Plan (April 19) and note that further attention is given to: Increased awareness of noise policy, Increase 'on trail' rider awareness, Increased stewarding during busy times.</p> <p>It is reasonable to assume though that even with a comprehensive noise management plan there will still be raised voices from riders and such noise may be considered a disturbance by nearby residents in view of its contrast with the soundscape typically expected in the rural location.</p>
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	<p>However I am not in a position to substantiate a level of noise impact from use of the Cycle Centre during the extended evening hours proposed on which I could base an objection. I therefore do not object to the proposed amended condition:</p> <p>o The Mountain Bike tracks shall not be open to customers between the hours of 6pm and 10am in the months of October through to March. In the Months of April through to September the Mountain Bike tracks shall not be open to customers between the hours of 6pm and 10am on Monday, Friday, Saturday and Sunday and 9pm and 10am on Wednesday and Thursday; and shall be closed to customers on a Tuesday.</p> <p>Please note the local authority has a remit for investigating complaints of noise under the statutory nuisance provisions of the Environmental Protection Act 1990. I do not anticipate these provisions providing a legal resolution to any complaints of noise from raised voices if the noise management plan is fully employed. Trade and business premises have a defence under the provisions of the Act if they can prove that the best practicable means are used to prevent or counteract the nuisance</p>
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<p>National Park Planning Ecologist</p>	<p>I understand that the proposed extension to the hours of operation is until 8pm on one day per week (not until 9pm on two days per week as stated by GWT).</p> <p>Sunset times in Abergavenny are approximately: 1st April - 19:45pm 15th September - 19:30pm</p> <p>There is usually still some light for up to an hour after sunset, depending on cloud cover. Therefore, in order to avoid impacts on nocturnal or crepuscular fauna, it would be advisable to limit the extension of the hours of operation to 8pm on one day per week between 1st April and 15th September in any calendar year.</p>
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Copies of the full consultation responses can be found on our website at: <https://planningonline.beacons-npa.gov.uk/online-applications/?lang=EN>

6. Third Party Representations

6.1 The application was advertised by site notice and direct neighbour notification.

6.2 Two representations were received in relation to the application: one letter in support and one letter objecting.

6.3 The letter objecting was sent by the owner / occupier of Trout Cottage, which is a neighbour to the site of development and raised the following issues: loss of privacy, noise and disturbance to their property. The representation summarises its objection as follows:

“We understand that BMCC is a popular attraction and brings benefit to many people, both within the Llanvihangel Crucorney community and from outside the area. Our objection to this application is on the basis that we have a right to enjoy the peace and quiet of our garden and land with some degree of privacy, particularly during evening hours when it is surely reasonable to expect a lower level of noise generally. The BMCC bike track is preventing that, but at least the opening hours are currently limited. The existing limits were imposed for good reason, and still allow the track owners to run a very profitable business and compete with other tracks in Wales. If this application is approved the peace and tranquillity of this hillside will be even more spoiled than it is currently. We believe passionately that the special qualities of this National Park need protection and that if approved this will set a dangerous precedent for any future such enterprise in the National Park. And we fear for the future; how long before an application is made to remove some of the other conditions eg. the capacity limit of thirty vehicles? Economic gain must surely not win out against the need to protect this special place.”

6.4 Detailed comments including identifying on going issues with noise including 30 incidents where they have been disturbed by noise from the track and complained to the operator and that the matter had been reported to the environmental protection officer at Monmouthshire County Council. They note their concern that an extension into the evening would be harmful to their amenity. Note that they own land in very close proximity to the site and that in this area, where they have an apiary there had been a loss of privacy. Concerns that the applicants supporting statement contains inaccuracies and misleading statements. Note that the bike park has longer operating hours than other bike parks across Wales. The air ambulance has been called to the site on numerous occasions and this causes considerable disturbance.

6.5 The letter supporting from the owner /occupier of the neighbouring property known as Rosannon noted:

6.6 The mountain bike centre's downhill course runs along the hillside behind our property. They support the track opening later in the summer and consider it good for local businesses. They consider there to be little visual impact and that visitors do not add greatly to traffic. They note that voices can be heard sometimes but they do not find it persistent or a nuisance.

6.7 An email was received from Gwent Wildlife Trust objecting to the application, due to insufficient evidence on the ecological impact such a variation in opening times may have on nocturnal species. No ecological impact assessment or survey has been submitted with the application, and the previously submitted Biodiversity Plan (condition discharged April 2017: 17/14523/DISCON) does not make reference to times of day of activity nor does it contain a survey of the species known to occupy the woodland. Although the extension to 21:00 is only for two days a week, it extends for a six months. We are concerned about the period of dusk/twilight at either end of this period (likely from 20:00 during April/May and end of Aug/Sept), as this is when nocturnal species could be most affected by disturbance. We trust that the original Condition 6 of Application 16/13649/FUL, that ‘no external lighting shall be installed’ still remains with no variation. We would advise the applicant to consider undertaking an ecological survey of the site, particularly in relation to nocturnally active species such as

badgers, dormice, bats and otters, in order to be able to properly assess the possible impact of the extended opening hours. We would also suggest reducing the period that tracks remain open until 21:00, to avoid dusk/twilight times, thus being open until 21:00 for two days a week during June, July and early August only.

7. Well Being and Future Generations (Wales) Act 2015

7.1 The well-being of Future Generations (Wales) Act places a duty on public bodies to carry out sustainable development to improve the way in which we achieve the social, economic, environmental and cultural well-being of Wales. The National Park must act in accordance with the sustainable development principle and seek to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. As part of this duty public bodies must set and publish objectives which are designed to maximise its contribution to achieving each of the well-being goals. The 7 goals are:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

7.2 The primary objective of Planning Policy Wales Edition 10 (2018) 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 Well-being of Future Generations (Wales) Act 2015.

7.3 The recommendations in this report are made in line with the Strategic and individual policies within the adopted Local Development Plan. It is considered that the Local Development Plan has been prepared to ensure the sustainable development of the National Park, particularly in relation to Environmental protection, sustainable distribution of development, housing, economic well-being, sustainable tourism, sustainable communities, sustainable infrastructure and various other considerations.

8. Planning Obligations:

8.1 No requirements identified.

9. Assessment:

9.1 Sections 73(2) and (4) of the 1990 Act restrict the Local Planning Authority (LPA) in its determination of applications to vary conditions on planning permissions. The effect of the provisions is to limit the LPA to considering the question of whether the conditions identified in the section 73 application should apply as originally stated, would be acceptable if modified or it would be acceptable to remove them. The LPA cannot revisit the original permission and reconsider whether it should have been granted in the first place. As a section 73 application is a planning application in its own right, it is necessary to assess what material changes there may have been in terms of policy since the original permission was granted in order to ensure that all relevant material considerations have been assessed. There have been some changes to the policy context in particular the publication of Planning Policy Wales (Edition 10, November 2018), but this has not changed the policy position in relation to this specific planning condition.

9.2 Welsh Government Circular 016/2014 The Use of Planning Conditions for Development

Management identifies six “tests” to consider when determining if a condition is valid. These are as follows: i. is the condition necessary?; ii. is it relevant to planning?; iii. is it relevant to the development permitted?; iv. is it enforceable? v. is it precise?; and vi. is it reasonable in all other respects?

9.3 The condition relates to controlling the use of the site in the interests of amenity. It is considered that the condition is relevant to planning, relates to the development permitted, could be enforced and is precise. The applicant argues that it is not necessary to word the condition as imposed on 16/13649/FUL and that it could be re-worded and continue to serve its purpose.

9.4 It is noted that third party representations and the Community Council have raised concerns regarding opening into evening hours and outline on-going concerns regarding the use of the track and its impact on amenity. This impact on amenity results from users of the track generating noise shouting, whooping and clapping and similar noise. Neighbouring properties have also claimed that the proposal reduces privacy where the track runs close to third party land.

9.5 Officers have indicated to the applicant, that an extension of hours until 9pm two nights a week (with seasonal use and closing for a day) would not on balance be acceptable to the Authority. This was due to the impact on amenity that would result from noise and disturbance into the later evening. The applicants have now indicated that they would accept a condition for opening hours to be longer for one night a week (they suggest Thursday) until 8pm.

9.6 The application was referred to the Environmental Protection Officer at Monmouthshire County Council who has visited a neighbouring property while the track was in operation. His report does agree that raised voices are audible, but that based on the evidence available would not amount to a nuisance. It is reasonable to assume there will be raised voices, notwithstanding mitigation through a noise management plan. The EPO that such noise may be considered a disturbance by nearby residents in view of its contrast with the soundscape typically expected in the rural location. A level of noise has not been substantiated that would result in the EPO recommending a refusal of planning permission. The EPO has clarified that he visited a neighbouring property on two occasions (in May and June).

9.7 As noted above the reason for the imposition of the condition was the impact of users of the track on amenity. No requirement to mitigate the impact on biodiversity was identified. Gwent Wildlife Trust commented on the application and expressed concerns regarding the potential impact of the proposal on wildlife and requested that alternative hours of operation were imposed. This was referred to the National Park Planning Ecologist who advised that conditions can be imposed to restrict hours of opening seasonally with later opening allowed only between the 1 April and 15 September in each calendar year this would allow for the avoidance of impact on nocturnal or crepuscular fauna.

10. Conclusion

10.1 The Authority imposed conditions to close the tracks to customers after 6pm to protect amenity and it is considered to be reasonably justified to continue to restrict opening hours for this reason.

10.2 The noise appears to be intermittent and to result from some users of the track who are

shouting and whooping. The operator does attempt to mitigate this impact through a noise management plan; but this has not been successful in fully eliminating noise. It is apparent that when the track is in operation it is unlikely that noise generation could be entirely prevented. In this situation it is considered that some period in the day should be protected from the potential for a noise impact. Condition 11 does this by preventing the track being open to users past 6pm.

10.3 The applicants are now proposing a modest extension of time by two hours on a Thursday until 20:00. This will continue to leave the majority of evenings a week free from customers using the track and will prevent later evening use and disturbance. On balance, this is viewed to continue to reasonably protect amenity. Assessing this issue is a matter of planning judgement, but it is considered that the relatively minor change to operating hours would continue to be in line with Policy 1 of the Local Development Plan.

10.4 The potential for later evening use of the track to impact on protected species has been raised, this fairly relates to the planning condition, which currently mitigates against this impact by restricting hours until 18:00. No information has been submitted to demonstrate that later evening would be acceptable. This further supports a restriction until 20:00 and it is considered that the extended hours should only be available seasonally to ensure protection of wildlife in accordance with the advice of the National Park Authority Planning Ecologist.

10.6 In accordance with good practice conditions are re-imposed on the planning permission. The amended wording of condition 11 is provided below.

11. Recommendation: Permit

Conditions and/or Reasons:

- 1 This permission being retrospective as prescribed by Section 63 of the Town and Country Planning Act 1990(as amended) shall be deemed to take effect from 20 July 2016.
- 2 The development shall be carried out strictly in accordance with the plans stamped as approved. (drawings received under planning permission reference planning permission reference 16/13649/FUL: untitled location plan dated received 19 September 2016 (NP1v2); TRAIL/01/B (NP2v1); TF Figure 6 (NP3v1); TF Figure 7 (NP4v1); untitled trail feature drawing dated received 28 July 2016 (NP5v1); elevational drawing of bridge (NP6v1))
- 3 The development shall be implemented in accordance with the recommendations in the document "Outline of remedial measures proposed in response to the recommendations made in BBNPA Planning Ecologists Report dated 18th February 2016" and Section 7 of the Environmental Statement dated July 2015, received under planning permission reference planning permission reference 16/13649/FUL.
- 4 Notwithstanding the requirements of condition 3, within 3 months of the date of this planning permission, a Landscape and Biodiversity Enhancement and Management Plan shall be submitted to and approved in writing by the Local Planning Authority (the plan shall include details of implementation and maintenance) and shall be implemented as approved and maintained thereafter. The Plan shall include:
 - a. Grassland restoration of bare slopes adjacent to the tracks
 - b. The use of native species and details of the planting specifications for new woodland areas - the species, sizes and planting densities
 - c. Landscaping around the car parking area

d. A timetable for implementation and future management to ensure good establishment
e. Provision for monitoring of the site and mechanisms for remediation where appropriate
f. Enhancement measures for Strawberry Cottage Wood SSSI that can be accommodated.

A Landscape and Biodiversity Enhancement and Management Plan was submitted to the local planning authority on the 28 March 2017 and approved under discharge of condition reference 17/14523/DISCON on the 10 April 2017.

5 Within 3 months of the date of this decision a detailed surface water management plan and method statement based on the recommendations in Section B of the document "Outline of remedial measures proposed in response to the recommendations made in BBNPA Planning Ecologists Report dated 18th February 2016" shall be submitted to the Local Planning Authority and shall be implemented as approved. **A surface water management plan and method statement was submitted to the local planning authority on the 28 March 2017 and approved under discharge of condition reference 17/14523/DISCON on the 10 April 2017.**

6 No external lighting shall be installed in association with the development hereby approved.

7 One portable toilet only shall be located within the site of development within the location identified on drawing TRAIL/01/B (NP2v1), received under planning permission reference 16/13649/FUL.

8 Users of the mountain bike track shall park motor vehicles within the area identified for car parking on drawing TRAIL/01/B (NP2v1), received under planning permission reference 16/13649/FUL only and no more than thirty vehicles shall be parked within the car park at any one time.

9 Within 3 months of the date of this decision a scheme for noise management shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The noise management measures shall be implemented as approved. **A noise management plan was submitted to the local planning authority on the 28 March 2017 and approved under discharge of condition reference 17/14523/DISCON on the 10 April 2017.**

10 Within 3 months of the date of this decision a scheme to mitigate the impact of the proposal on public rights of way (to include appropriate signage where mountain bike tracks cross rights of way) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The noise management measures shall be implemented as approved. **A scheme to mitigate the impact of the proposal on public rights of way was submitted to the local planning authority on the 16 February 2017 and approved under discharge of condition reference 17/14523/DISCON on the 10 April 2017.**

AMMENDED WORDING FOR CONDITION 11:

“11 The Mountain Bike tracks shall only be open to customers between the following hours:

Between 1st April and 15th September in any calendar year:

10am - 6pm Saturday, Sunday, Monday, Tuesday, Wednesday and Friday; and

10am - 8pm Thursday

Between 16th September and 31st March in any calendar year:

10am - 6pm

Outside of these hours the track shall not be used by customers.”

Reasons:

- 1 To comply with Section 63 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 To comply with Section 5 of Planning Policy Wales (2016), Technical Advice Note 5 and Policies SP3, 6 and 7 of the adopted Local Development Plan for the BBNP. To comply with the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 (as amended) and the Environment (Wales) Act 2016.
- 4 To comply with Section 5 of Planning Policy Wales (2016), Technical Advice Note 5 and Policies SP3, 6 and 7 of the adopted Local Development Plan for the BBNP. To comply with the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 (as amended) and the Environment (Wales) Act 2016. To ensure that the development is appropriately landscaped to ensure that the development at the site is integrated into the wider landscape in accordance with Policies SPI and I of the adopted Local Development Plan for the BBNP.
- 5 To comply with Section 5 of Planning Policy Wales (2016), Technical Advice Note 5 and Policies SP3, 6 and 7 of the adopted Local Development Plan for the BBNP. To comply with the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 (as amended) and the Environment (Wales) Act 2016.
- 6 To comply with Section 5 of Planning Policy Wales (2016), Technical Advice Note 5 and Policies SP3, 6 and 7 of the adopted Local Development Plan for the BBNP. To comply with the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 (as amended) and the Environment (Wales) Act 2016.
- 7 To define the nature of the development.
- 8 To ensure that the development has an acceptable landscape and visual impact in accordance with Policies SPI and I of the adopted Local Development Plan for the BBNP.
- 9 In the interests of the residential amenity of nearby residents in accordance with National Planning Policy within Planning Policy Wales (Edition 8, 2016)
- 10 In the interests of users of public rights of way which cross the site.
- 11 In the interests of the amenities of existing residential property in the locality in accordance with policy I of the Brecon Beacons National Park Authority Local Development Plan 2007 - 2022 (2013). To comply with Section 5 of Planning Policy Wales (2016), Technical Advice Note 5 and Policies SP3, 6 and 7 of the adopted Local Development Plan for the BBNP. To comply with the Wildlife & Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 (as amended) and the Environment (Wales) Act 2016.

Informatives

1. This planning permission is a variation of condition 11 of planning permission 16/13649/FUL and should be read in association with planning permission, associated documents referred to above and associated discharge of condition.