

Adran yr Economi a'r Seilwaith
Department for Economy and Infrastructure



Llywodraeth Cymru
Welsh Government

**APPLICATION FOR LISTED BUILDING CONSENT UNDER SECTION 10 OF THE
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
REFERRED TO WELSH MINISTERS BY DIRECTION UNDER SECTION 12**

APPLICATION BY: WELSH MINISTERS

**SITE: WOODLAND HOUSE (KNOWN LOCALLY AS THE MAGOR VICARAGE),
NEWPORT ROAD, MAGOR, MONMOUTHSHIRE, NP26 3BZ**

Proof of Evidence

John Davies MBE, BSc, MRTPI

Planning and Sustainable Development

Document Reference: WG 1.23.4

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Personal Details

1. My name is John Davies. I currently work as a self-employed planning consultant under the title 'John Davies Planning' as a sole trader.
2. I have a BSc Honours degree in Applied Mathematics from Swansea University. I have been a Member of the Royal Town Planning Institute since 1982, having passed the Institute's External Examinations.
3. I joined Cardiff City Council in 1975, working in regeneration, local planning and development management until 1990 when I joined the Planning Inspectorate.
4. In the Planning Inspectorate I dealt with a wide variety of appeal casework and undertook several development plan examinations. I was part of a team recruiting and training Inspectors for 2 years, during which I advised Inspectors on new Government policy, on policy issues related to casework and on the implications of High Court judgements.
5. In July 2002 I became a Principal Inspector, conducting major casework and managing a group of Inspectors in Wales and in 2006 I was appointed the first Director of the Planning Inspectorate to be given sole responsibility for Wales.
6. A significant part of my role as Director was to advise Inspectors on casework issues, particularly in relation to the interpretation and the handling of Welsh Government policy. I worked closely with the Welsh Government's Planning Division when new policy was being prepared in view of the Inspectorate's experience in applying statements of policy to appeal casework.
7. As Director for Wales I spoke at conferences and seminars, and gave training to Planning Committees and local authority officers. I also attended meetings with Welsh Ministers and appeared before Welsh Assembly Committees to answer questions on the work of the Planning Inspectorate in Wales. I retired from the Inspectorate in 2011 and was awarded the MBE in the same year for my work as Director of the Planning Inspectorate Wales.

8. In October 2011 I was asked by John Griffiths, the then Welsh Government Minister for Environment and Sustainable Development, to Chair the Independent Advisory Group (IAG) to advise on options for future delivery of the planning system in Wales. The IAG report 'Towards a Welsh Planning Act' was delivered to the Minister in June 2012. Many of its recommendations were included in the Planning (Wales) Act 2015; others are being taken forward in secondary legislation or administrative change.
9. As a Member of the RTPI I must abide by the Institute's Code of Professional Conduct, which sets out the standards, ethics and professional behaviour expected of Members.
10. I am part of the team responsible for the delivery of the M4 Corridor around Newport Project (subsequently described in my evidence as 'the Project' or 'the Scheme') and I am acting as an expert witness at this inquiry. The evidence which I have prepared and provide in this proof is true and has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions.

Scope of Evidence

11. My Proof of Evidence deals with the policies relevant to the Scheme and to the application for Listed Building Consent; the justification and reasons for granting Consent; the issue of relocation; and the conditions that should be attached to any Consent granted.
12. I rely on and refer to the evidence of the following witnesses:
 - 1) Mr Matthew Jones (Scheme Overview & Development);
 - 2) Mr Mick Rawlings (Cultural Heritage); and
 - 3) Mr Richard Green (Bats).

The Application

13. Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act) provides that no person shall execute or cause to be executed any works for the demolition of a listed building unless the works are authorised under section 8.
14. The application seeks listed building consent (LBC) for the total demolition of the building known as Woodland House (also referred to locally as Magor Vicarage). Details of the LBC application, its history, the decision by the Monmouthshire County Council, and its call-in by the Welsh Government are set out in the evidence of Mr Matthew Jones (WG 1.1.6).
15. As explained by Mr Jones, the reason for the LBC application is the need to deliver the Scheme to construct a new section of motorway in order to address the problems associated with the M4 around Newport.

Policy Background to the Scheme

16. I set out the policy context for the Scheme in detail in my proof of evidence (WG 1.23.1) for the public inquiry into the Orders under the Highways Acts. The need to address the problems on the existing M4 motorway around Newport is referred to in the Wales Spatial Plan 2008; the Wales Transport Strategy 2008, *One Wales: Connecting the Nation*; the National Transport Plan 2010; and the Wales Infrastructure Investment Plan 2012. The National Transport Finance Plan, July 2015, identifies new road schemes and under the heading 'New Road Infrastructure – Schemes to be Constructed' R8 is described as:

Improvements to the M4 Corridor around Newport - a new section of motorway south of Newport and complementary measures including; reclassification of the existing M4 between Magor and Castleton, a M48-B4245 link and cycling and walking friendly infrastructure.

17. The Plan for the M4 Corridor around Newport is thus identified as a strategic priority scheme forming part of the Welsh Government's current infrastructure investment plans. It is also relevant that the Welsh Government's programme for government for the next 5 years, *Taking Wales Forward 2016-21*, states a commitment to "*Deliver an M4 relief road*" as part of the 'United and Connected' strategy.

Legislation and Policy Relevant to the Application

18. Planning Policy Wales (PPW), Edition 9, November 2016, Chapter 6: Conserving the Historic Environment contains the relevant policies of the Welsh Government. Paragraph 6.2 sets out the Welsh Government's objectives in respect of the historic environment, which include:

- to conserve and enhance the historic environment, which is a finite and non-renewable resource and a vital and integral part of the historical and cultural identity of Wales; and
- to safeguard the character of historic buildings and manage change so that their special architectural and historic interest is preserved.

19. PPW paragraph 6.5.11 states that there should be a general presumption in favour of the preservation of a listed building and its setting, which might extend beyond its curtilage. It also emphasises the importance of the statutory duty under Section 66 of the LBCA Act to have special regard to the desirability of preserving a listed building when dealing with an application for planning permission. In relation to an application for LBC, the statutory duty as is set out in S16(2) of the LBCA Act

"In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

20. The Historic Environment (Wales) Act 2016 contains provisions in relation to listed buildings but does not change the statutory duty set out in S16(2) of the LBCA Act 1990.

21. Reflecting this statutory duty, PPW paragraph 6.5.13 states that applicants for listed building consent must be able to justify their proposals and show why the alteration or demolition of a listed building is desirable or necessary. Paragraph 6.5.14 states that the demolition of any listed building should be considered as exceptional and requires the strongest justification. It also states that where an application proposes total demolition of a listed building the adequacy of efforts to retain it should be taken into account. Consent should not be granted without robust evidence from the applicant that all reasonable efforts to sustain existing uses or to find viable new uses have failed.
22. Welsh Office Circular 61/96 Planning and the Historic Environment: Historic Buildings and Conservation Areas also provides advice on listed buildings, stating in paragraph 69 that applicants for LBC must be able to justify their proposals. Paragraph 70 sets out the following four issues that are generally relevant to the consideration of listed building applications:
- i) The importance of the building, its intrinsic interest and rarity;
 - ii) The particular physical features of the building;
 - iii) The building's setting and its contribution to the local scene; and
 - iv) The extent to which the proposed works would bring substantial benefits for the community, in particular by contributing to the economic regeneration of the area or the enhancement of its environment.
23. The Welsh Government consulted in 2016 on a draft Technical Advice Note (TAN) 24: The Historic Environment to replace several Welsh Office Circulars including WO C.61/96. Although the final version of the draft TAN24 has not been published I have referred to its advice where relevant, but acknowledging that it may change. For that reason I have considered the application for LBC primarily against the policies and advice in PPW and Circular 61/96.
24. Following the advice in PPW paragraph 6.5.10 that there is no statutory requirement to have regard to the provisions of the development plan when considering applications for listed building consent, the Monmouthshire Local Development Plan 2011-21 (Doc 5.3.2) does not contain separate policies on listed buildings but refers to Chapter 6 of PPW.

25. Surveys have indicated that Woodland House and its original coach house have been used as a roosting site by bats. Bats are a protected species under United Kingdom and European legislation. Paragraph 5.1.1 of PPW sets out the Welsh Government's policies for natural heritage, which include safeguarding protected species. TAN 5: Nature Conservation and Planning (TAN5) refers to Section 40(1) of the Natural Environment and Rural Communities Act 2006 (NERC), which places a duty on every public authority, in exercising its functions, to "*have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*". TAN5 sets out the manner in which planning authorities should comply with this duty. Section 6 deals with protected species, stressing the importance of establishing their presence and the extent to which they may be affected by proposed development. Mr Richard Green deals in detail with the effect that the demolition of Woodland House would have on bats in his proof of evidence (WG 1.20.3). He evaluates the impact of demolition together with the residual effect after mitigation measures have been implemented, including the provision of buildings as roosting sites and bat boxes. If LBC were to be granted, in view of the presence of a protected species a derogation licence under the Conservation of Habitats and Species Regulations 2010 would need to be granted by Natural Resources Wales (NRW) before demolition could take place.
26. TAN5 contains relevant Welsh Government policy guidance and gives advice on the relationship between a grant of planning permission and a licence. However, TAN5 was published in 2009 and its advice must be read in the light of the subsequent decision of the Supreme Court in *Morge (FC) v Hampshire County Council* [2011] UKSC 2. In the Court of Appeal it was held that if it is uncertain whether a licence would be granted, planning permission would have to be refused. However, the Supreme Court disagreed and decided this went too far. The Court held that there was no reason why planning permission should be withheld unless the local planning authority was satisfied, first, that the proposed development would be likely to offend Art 12 of the Habitats Directive and, second, that it was unlikely to be licensed. Although this appeal is not concerned with an application for planning permission, the requirement for a licence still applies and the principles laid down in *Morge* are therefore relevant.

27. The duty in respect of biodiversity under the NERC Act 2006 has been updated in respect of public bodies in Wales by the Environment (Wales) Act 2016. Section 6(1) of that Act states that a public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.

Reasons in Support of the Application

28. The circumstances leading to the application to demolish this listed building are exceptional and are entirely in line with Welsh Government policy and advice in PPW and Circular 61/96. It is necessary to demolish Woodland House in order to construct the new section of motorway, so as to address the problems associated with the existing M4 around Newport. The Welsh Government has presented evidence to the public inquiry into the Scheme to build the new section of motorway that demonstrates it is the best option for addressing those problems and achieving the objectives set. In his evidence regarding the LBC application Mr Matthew Jones explains the physical constraints that have dictated the route of the new section of motorway around Magor, as a consequence of which it would not be possible to retain Woodland House if the proposed Scheme proceeds. Whilst every effort has been made to design the Scheme so as to retain the listed building, as required by PPW, because of the physical constraints this has not proved possible.

29. Turning to the four tests in Circular 61/96, Mr Mick Rawlings (WG 1.9.4) deals with the first three by considering the history of the building; its physical features; and its setting and contribution to the locality. He assesses its significance as a heritage asset.

30. The fourth test seeks evidence regarding the benefits for the community, in particular economic regeneration or enhancement of its environment. I note that draft TAN24 states that changes in the historic environment are inevitable and can be the result of, amongst other things, the need to respond to social, cultural, economic and technological changes. The evidence¹ submitted to the public inquiry into the Scheme demonstrates that it is needed specifically to address such changes, which have caused current and worsening problems on the M4 around Newport, affecting not just South East Wales but spreading much wider.
31. As explained in my proof of evidence (WG 1.23.1), traffic congestion on the M4 around Newport causes delays and disruption, imposing costs on individuals and businesses with a negative impact on the economy. The Bryn Glas Tunnels were described by the former Prime Minister, David Cameron, as a ‘foot on the windpipe of the Welsh economy’. The CBI and leading Welsh business leaders have pointed to the damage to the Welsh economy and the negative impact on Wales’ standing as a business location. The revised December 2016 Wider Economic Impact Assessment points out that growing traffic demand will exacerbate these problems, reinforcing the negative perception of Wales as a place to visit and do business.
32. The benefits of the Scheme to the wider economy include better access to employment opportunities; reduced business costs; improved productivity; stimulating investment; and improving perceptions (see Mr Stephen Bussell: WG 1.3.1). The new motorway junctions south of Newport (Docks Way and Glan Llyn) would improve access and encourage investment in existing employment sites and LDP allocations in Newport and Monmouthshire. The economic benefits of the Scheme would spread over a wide area of South and South West Wales. Only some of these benefits can be quantified; disruption and delays caused by traffic incidents also impose costs. The additional capacity and resilience due to the Scheme would reduce the costs of unreliable journeys and delays from such incidents. Some 88% of firms surveyed by the Confederation of British Industry in 2014 described the quality and reliability of transport infrastructure as a significant influence on business investment decisions.

¹ WG 1.1.1 and others

33. There would also be environmental benefits in respect of air quality and noise around the existing M4 (WG 1.23.1) and the Scheme would remove traffic on local roads, particularly the B4245, but also on the reclassified M4. I acknowledge that there would be adverse environmental effects as set out in my proof (WG 1.23.1) and the evidence of other expert witnesses, as a result of the impact on the Sites of Special Scientific Interest (SSSI) and ecology, and the long term effect on the landscape. However, there would be environmental benefits together with major economic and social benefits that merit great weight.
34. Turning to the effect on protected species, Mr Richard Green describes the survey evidence relating to bats. He acknowledges that a low value common pipistrelle bat day roost in Woodland House and a low value lesser horseshoe bat roost in the original coach house would be lost if the demolition were to proceed. However, he describes the mitigation measures to provide bat house(s) and bat boxes as replacement roosts, concluding that bats currently roosting at Woodland House would continue to have access to existing foraging habitats and commuting routes. His overall conclusion is that in the light of proposed mitigation measures, the demolition of Woodland House and its coach house would not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
35. No contrary evidence has been presented. Monmouthshire County Council has withdrawn its initial objection in relation to the impact on bats and NRW is not presenting evidence in relation to the effect of the proposed demolition on bats. Furthermore, on Day 31 of the inquiry into the Orders relating to the Scheme for the construction of M4 Corridor around Newport, Counsel for NRW confirmed that it did not hold the view that an application for a derogation licence in relation to bats would be unlikely to be granted.

36. The central argument for the Welsh Government, therefore, is that it would not be possible to retain Woodland House if the new section of motorway is constructed. The need to deliver the Scheme to address the problems associated with the M4, and the economic, social and environmental benefits that would result from the construction of the new section of motorway, constitute the exceptional circumstances that PPW requires must be demonstrated in order to justify the demolition of Woodland House. The evidence in relation to protected species confirms that the proposed mitigation measures would avoid any adverse impact on bat populations that have been shown by surveys to use the property for roosting. There is therefore no reason to conclude that a derogation licence would not be granted.

The Potential for Relocation

37. The St Fagans National History Museum, Cardiff advised in November 2016 that the museum was not interested in taking Woodland House. However, Monmouthshire County Council has suggested a condition seeking the relocation and reuse of the building, or the re-use of its fabric to repair and restore listed buildings in the locality.

38. The Welsh Government's Statement of Case indicated that the building is not of a level of significance that would justify the expense of rebuilding at a new location out of public funds. The Welsh Government's view at the time was that in light of the National History Museum not wishing to add the building to its collection, architectural salvage as opposed to rebuilding of Woodland House appeared to be the only feasible post-demolition mitigation.

39. However, the Welsh Government has subsequently written to the County Council (PID-19) to further investigate the possibility of relocation and to seek the Council's assistance in finding a suitable site. A meeting is to be held with the County Council on 23 May 2017 to discuss possible sites and any progress will be reported at the inquiry on 20 June 2017. I must point out that whilst the Welsh Government is actively investigating the re-erection of Woodland House on another site following demolition, a site has yet to be identified and the feasibility of re-erection remains unproven.

Conditions

40. The local planning authority (LPA) suggested six conditions, which I deal with in turn below.

41. LPA Condition 1

The works shall be carried out strictly in accordance with the approved drawings
REASON: To ensure compliance with the approved drawings.

Welsh Government view: Since the application proposes total demolition LPA Condition 1 is not necessary or appropriate.

42. LPA Condition 2

The works to which this consent relates must be commenced no later than the expiration of 5 years beginning with the date on which this consent is granted.
REASON: To comply with the requirements of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Welsh Government view: LPA Condition 2 is acceptable.

43. LPA Condition 3

No development shall take place until the applicant, or their agents or successors in title, has secured an agreement for a written scheme of historic environment mitigation which has first been submitted by the applicant and approved in writing by the local planning authority. Thereafter, the programme of work will be fully carried out in accordance with the requirements and standards of the written scheme.

REASON: To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.

Welsh Government view: LPA Condition 3 is vague and does not meet the tests in circular WGC 16/2014: 'The Use of Planning Conditions for Development Management'; the phrase 'historic environment mitigation' is not defined.

44. LPA Condition 4

No site works shall be undertaken until the implementation of an appropriate programme of building recording and analysis has been submitted to and agreed in writing by the Local Planning Authority. This is to be carried out by a specialist acceptable to the Local Planning Authority and in accordance with an agreed written brief and specification including a written and drawn record. The resulting record should be deposited with the RCHMW, Tel No. 01970 621 211.

REASON: To ensure that adequate records are made of the building prior to its demolition.

Welsh Government view: In respect of LPA Condition 4, the Welsh Government has committed to offer the Royal Commission on Ancient and Historical Monuments of Wales the opportunity to record all buildings to be demolished if the Scheme were to proceed (Register of Environmental Commitments (Dec 2016 ES Supplement, App SR18.1: Ref 114 (Doc 2.4.14)). Ref. No. 112 of the same Register provides a commitment to undertake pre-demolition recording of historic buildings in line with the methodologies set out in the CHMP (Appendix 8.10 of the March 2016 ES (Document 2.3.2)). The Welsh Government considers model condition 73 from WGC 16/2014 more appropriate and simpler than Condition 4 suggested by the LPA; this is set out below.

Welsh Government suggested condition: *No works to which this consent relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.*

45. LPA Condition 5

The building shall not be demolished before –

(a) A contract for the carrying out of works to the M4 relief road (black route) has been made; and

(b) Planning permission or the equivalent consent has been granted for the M4 relief road (black route) for which the contract provides.

REASON- The only justification for the demolition of this Listed Building would be the overriding regional and national importance of the M4 relief road. Should that road scheme not be approved or not proceed, demolition of the Listed Building would be unjustified and unacceptable.

Welsh Government view: With regard to LPA Condition 5, the Welsh Government accepts the principle, but in view of the fact that the construction of the proposed Scheme is governed by Highways rather than Town and Country Planning legislation the following condition is considered more appropriate.

Welsh Government suggested condition: *The listed building subject of this application shall not be demolished until the Orders under the Highways Acts necessary for the construction of the proposed M4 Corridor around Newport Scheme have been approved.*

46. LPA Condition 6

The building shall not be demolished before proposals, including timescales, for either the relocation and reuse of the building, or for the re-use of its fabric to repair and restore listed buildings within the locality, have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented within the agreed timescales.

REASON- The only justification for the demolition of this Listed Building would be the overriding regional and national importance of the M4 relief road. Should that road scheme not be approved or not proceed, demolition of the Listed Building would be unjustified and unacceptable.

Welsh Government view: LPA Condition 6 is neither necessary, enforceable nor reasonable and hence fails the tests in Circular 16/2014. It is not necessary since Woodland House, whilst attractive and of historic merit, is not of such merit as to warrant making re-erection a precondition of demolition. It is not enforceable since a site for relocation has yet to be identified and the Welsh Government may have no control over the relocation site. It is unreasonable since the re-erection of Woodland House would require the grant of planning permission by the local planning authority; the re-erection of the building would hence not be under the control of the Welsh Government. As stated above, whilst the Welsh Government is investigating re-erection of the building, a site has yet to be found and the re-erection of the building may not prove to be possible.

47. Additional condition: The Welsh Government would also suggest that Model Condition 79 of Circular 16/2014 is attached to the LBC; this is set out below.

Welsh Government suggested condition: *The works of demolition shall not be carried out before details of the method of demolition have been submitted to and approved in writing by the local planning authority. The demolition of the building shall be carried out in accordance with the approved details.*

48. In the event that it does not prove possible to re-erect Woodland House, for example because a suitable alternative site cannot be found, Ref No 111 of the Register of Environmental Commitments states that the Welsh Government would offer the Brooking National Collection the opportunity to acquire fixtures and fittings from Woodland House and curtilage structures prior to demolition. The Brooking National Collection of Architectural Detail provides a teaching and reference resource for conservation professionals, architects, designers and craft apprentices. Model Condition 79 would enable the building to be demolished in a way that ensured the fixtures and fittings were preserved, if necessary and appropriate. Whether that is the case will depend upon the position of the Brooking Collection and the outcome of discussions with Monmouthshire County Council regarding re-erection, but the condition has sufficient flexibility in the event that is not achievable.

Conclusions

49. This is an attractive historic building, which should only be demolished in exceptional circumstances, as PPW makes clear. Under S16(2) of the LBCA Act 1990 the Welsh Government is under a statutory duty to have special regard to the desirability of preserving the building, a duty it does not take lightly. The Welsh Government would not be seeking LBC to demolish the building were it not for the need to address the problems on the M4 around Newport and the fact that it has not proved possible to find a feasible highway route for the new section of motorway around Magor that avoided the need for demolition. The evidence submitted on behalf of the Welsh Government demonstrates why it would not be possible to retain Woodland House if the proposed Scheme is approved and the new section of motorway constructed.

50. There would be significant environmental impacts from the Scheme but also benefits in respect of air quality and noise and the removal of traffic from local roads, particularly the B4245. However, the Scheme would bring major economic and social benefits to the wider economy from better access to employment opportunities; reduced business costs; improved productivity; stimulation of investment; and improved perceptions of South Wales as a place to do business. In respect of protected species, the evidence of Mr Richard Green demonstrates that the proposed mitigation measures would avoid any adverse impact on bats using the property for roosting. Therefore, applying the test as set out in *Morge*, there is no reason to conclude that a derogation licence would not be granted. Furthermore, in the light of the evidence demonstrating that adverse impact on bats would be avoided I conclude that the LBC sought in this appeal would comply with the duties in respect of biodiversity under both the NERC Act and the Environment (Wales) Act 2016.
51. For the reasons set out above I therefore consider the need to deliver the Scheme to address the problems associated with the M4 constitutes the exceptional circumstances necessary to justify the demolition of Woodland House. I attach great weight to the major economic and social benefits of the Scheme, which in my view provide a compelling case in favour of demolition. I have had special regard to the desirability of preserving Woodland House but on balance I conclude that the exceptional circumstances necessary to justify its demolition exist in this particular case and that listed building consent should be granted subject to the conditions discussed above.
52. The Welsh Government will continue to investigate the potential for re-location of Woodland House but does not consider that listed building consent should be conditional on re-location since a suitable site has yet to be identified; the grant of planning permission for re-erection would be outside the control of the Welsh Government; and the feasibility of re-location requires further investigation.