

Planning Application Reference 2017/2677/FUL

Mixed-use development comprising 23 residential dwellings and Coffee Shop with Drive Through Facility and associated works – Land at Heol Ddu Farm, Birchgrove Road, Birchgrove. Swansea. SA7 9NS

Purpose:	This report provides advice to Committee on possible reasons for refusal of the above planning application following the decision to defer consideration of the application under the two stage voting process at the Planning Committee held on 1 st May 2018.
Recommendation:	1) That planning permission be granted subject to conditions as outlined in the report to Planning Committee on 1 st May 2018 and subject to the amendments to conditions 2, 21 and 26 detailed below.
For Decision	

1.0 Introduction:

- 1.1 This application was reported to Planning Committee on 1st May 2018 with the recommendation that planning permission be approved subject to conditions. Committee did not accept the recommendation but resolved that the application be deferred under the two stage voting process so that further advice could be provided on reasons for refusal. The application will not be deemed to be refused unless and until reasons for refusal have been recorded and approved by Committee.
- 1.2 In reaching a decision, Committee will need to consider advice on the award of costs in planning appeals in Section 12 Annex: Award of Costs of the Development Management Manual. This states that all parties involved in appeal proceedings are expected to behave reasonably to support an efficient and timely process. Parties must normally meet their own expenses. However, where it is deemed that one party has behaved unreasonably, either directly or indirectly, and this has caused another party to incur 'unnecessary or wasted expense' in the appeal or application process, they may be subject to an award of costs.
- 1.3 Local Planning Authorities are at risk of an award of costs being made against them if they behave unreasonably with respect to the substance of the matter under appeal or subject to a call-in or application directly to the Welsh Ministers. Examples of this include:

Failure to produce evidence to substantiate the impact of the proposal, or each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without there being reasonable planning grounds to do so);

- 1.4 Local planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers or received from statutory consultees. However, they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they are able to produce relevant evidence to support their decision. If they fail to do so, costs may be awarded against the authority. Following a change in legislation, costs can now be claimed when an appeal is considered by way of written representation in addition to appeals considered by Hearings and Inquiries.
- 1.5 A copy of the report to Planning Committee on 1st May 2018 is attached as Appendix A.

2.0 Update to the Scheme

- 2.1 Since last Committee, the Applicant has submitted a supporting statement in respect of the application. The statement is re-produced below:

'Applicant's Supporting Statement

The applicants attended Planning Committee on the 1st May 2018 and have subsequently sought to take on board the concerns that were raised by Members. Significantly we observed that the two principal concerns were in respect of traffic impact and residential amenity impact associated with the commercial use on the site. The applicant wishes to respond positively to these concerns by proposing the following.

1. *Right Hand turn lane – We observed that Members were concerned about the potential for vehicles waiting to enter the commercial facility to cause queuing onto the Motorway roundabout. Through discussions with their highway consultant the applicant wishes to propose a new dedicated right hand turn lane into the commercial facility, thereby removing the risk of such queues from developing. This would be done via a S278 works package at the applicant expense as indicated on the attached plan. Whilst we understand that this is not a technical requirement of the scheme, given the specific concerns raised by Committee the applicant is prepared to make such an undertaking.*

2. *Hours of Operation – The hours of operation proposed within the application are 5.00 am until 11pm. We observed that Members were concerned about the impact of these hours on residential amenity. In light of this the applicant has been back to the operator to relay the concerns who have since advised us that they would be prepared to propose a reduction in hours from 6am until 10pm in order to respond to the residential amenity concerns.*

We also observed that some concern was expressed about the site's allocation for 10 dwellings in the UDP and that the commercial element was contrary to this. We trust that officers will clarify that this figure stemmed from a previous

outline consent for 10 executive homes, which didn't materialise for obvious reasons. The proposals for 23 units makes efficient use of a brownfield site in the urban area, whilst the commercial element is proposed to ensure the site can be economically developed to support the delivery of the 23 much needed affordable homes.

In addition to the above proposals we would also like to bring to Members attention about the likely additional job creation that would be brought about by this development. A typical Costa Drive Thru outlet will provide for 18 full/part time jobs with flexible shifts. This is typically the equivalent of 11 full time jobs.

In terms of the residential element the project will be delivered by Coastal Housing Association adopting the Welsh Governments Targeted Recruitment and Training Toolkit. This will ensure that the maximum number of training and employment opportunities will be directed towards the residents of Swansea. We believe that this will result in circa 12 new apprenticeships in construction skills (an area of significant need) across a wide range of trades, resulting in reduced dependency of social support and improved levels of wellbeing. The development is therefore anticipated to create 23 new jobs within the local area, and we feel that due weight should also be given to this important material consideration in the planning balance.

- 2.2 A copy of the amended plan will be displayed for Members to view at Committee.

3.0 Main Issues

- 3.1 Members of Committee identified the following areas as grounds for refusal of the application: highway safety and over-intensive commercial development which is contrary to the development plan allocation.

3.2 Highway Issues

- 3.3 In terms of highway safety issues, concerns were raised that the proposal would lead to congestion on Heol Ddu when vehicles were waiting to turn right into the site. As a consequence of this, vehicles would tail back towards the roundabout at junction 44 of the M4, thereby impacting on the free flow of traffic on the roundabout. Further concerns were raised that the speed at which vehicles exit the roundabout onto Heol Ddu would increase the risk of collisions as a result of stationary vehicles waiting to turn right into the site.

- 3.4 The Transport Assessment submitted with the application indicates that the number of vehicles trips generated by the drive-thru will be as follows:

3.5 AM Peak (8am – 9am)	Vehicle arrivals:	20
	Vehicle Departures:	<u>19</u>
	Total Vehicles:	39
PM Peak (5pm- 6pm)	Vehicle Arrivals:	15
	Vehicle Departures:	<u>15</u>
	Total Vehicles:	30

This data indicates that one vehicle will enter or leave the drive-thru every one and a half minutes during the morning peak hour. During the afternoon peak hour, one vehicle will enter or leave the site every two minutes. Vehicle numbers would be lower outside of peak hours.

3.6 As indicated in my report to Committee on 1st May 2018, the Head of Highways and Transportation raised no objection to the application. Notwithstanding this, the applicant has submitted an amended plan indicating the creation of a right turning lane into the site to alleviate any risk of tailbacks created by vehicles waiting to turn right into the site.

In addition, Committee is advised that the scheme has been designed to ensure that once vehicles intending to use the drive-thru element of the development enter the site, there is sufficient space within the site for vehicles to enter the drive-thru without causing queuing on Heol Ddu. Approximately 12 vehicles can be accommodated within the site without affecting circulation, on-site parking or vehicle movements on the highway. The Head of Highways and Transportation has provided the following comments on the proposed right hand turning lane:

'I have reviewed the recently submitted amendment to the drive through access junction entitled 'Figure 7'. This has include the provision of a ghost island right turn lane, and has been provided in response to Member concerns regarding the risk of vehicles queuing back towards junction 44

The application was submitted with a Transport Statement which considered the likely trip rates and effects of the proposals on the surrounding highway network. This contained Picady models of the access junction, the results of the analysis showed an average right turn queue of less than 1 vehicle. It should be noted that this is the average over the modelled period.

As such it was demonstrated that the access junction operated well within capacity and the risk of a vehicle waiting to turn right blocking straight ahead movements was small.

The amended proposal contains a ghost island right turn arrangement, with straight ahead lanes of 3.25m width East and West, and a right turn bay 3.0m wide with a length of approximately 16m. This is sufficient to hold 3 vehicles.

Given the results of the junction testing, the length of the right turn bay is sufficient to accommodate the anticipated demand for the right turn, without affecting straight ahead movements, and consequently remove the risk of blocking. All works can be carried out within the boundary of the adopted highway.

As such Highways has no objections to the proposals.

All works will be subject to a section 278 agreement'

3.7 It is considered that it is lawful to refuse an application on the grounds of highway safety, but Committee will need to consider whether sufficient evidence can be provided to demonstrate that the proposal will have an unacceptable impact on highway safety. Recent appeal decisions have clearly indicated that in the absence of any evidence to prove a proposal will be detrimental to highway safety, an appeal will be allowed. The Head of Highways and Transportation has indicated that he considers it will be difficult to produce any evidence to support a reason for refusal on highway grounds. Members will need to be satisfied that relevant evidence to support the decision can be provided. Failure to do so may result in costs being awarded against the Authority.

3.8 Based on the comments of the Planning Committee, it is considered that the following reason reflects the concerns raised:

'The proposed development, by virtue of the additional traffic movements generated by the proposal will have an adverse effect on local congestion on the nearby highway network to the detriment of the safe and free flow of vehicles and pedestrians, contrary to the provisions of policies EV1, AS2 and HC2 of the City and County of Swansea Unitary Development Plan (2008).'

3.9 Over-intensive Use

- 3.10 In terms of the use of the site, Members of Committee expressed concern that the introduction of a commercial use onto a site allocated in the UDP for residential use amounted to an over-intensive use of the site. The site is allocated in the UDP under policy HC1 (6) for residential development with the anticipated number units identified in the UDP as 10. It appears that this figure has been obtained from a planning permission for 10 dwellings that was extant at the time of the preparation of the UDP and the amplification to the UDP policy states that the number of dwellings identified in the policy may increase or decrease depending on the nature of the scheme.
- 3.11 It is not unusual for residential development to be accompanied by commercial development. Indeed, one of the key components of the LDP strategy is place-making which will see more mixed use developments being brought forward. It is noted that the applicant has indicated that in order to bring forward the residential element of this scheme, the commercial element is needed to support its delivery. Committee will also note that outline planning permission for this site was first granted in 1998. The fact that the site has not been developed since the grant of planning permission suggests that there may be issues with the viability of the site solely for residential development.
- 3.12 It is considered that it is lawful to refuse an application on the grounds of over-intensive development, but in doing so, Committee will need to demonstrate in any reason for refusal how the development is over-intensive and indicate the harm that is caused as a result of this over-intensive development. Failure to do so, may result in costs being awarded against the Authority. In terms of the proposed development, it is not considered that the proposal has an unacceptable visual or residential amenity impact and does not create a development that appears cramped or contrived. The density complies with the approved Residential Design Guide SPG and it is the view of your officers that the development is not over-intensive and would not warrant a reason for refusal. If however, Committee is minded to refuse the application for this reason, the reason could be worded as follows, with the relevant reason(s) and identified harm being inserted by Committee:

'The proposed development, by virtue of <insert reason>, constitutes over-development of the site which would have an adverse impact on <insert harm> contrary to the provisions of policies <insert policies> of the City and County of Swansea Unitary Development Plan (2008).'

4.0 **Conclusion**

- 4.1 My original report to Planning Committee on 1st May 2018 recommended approval of the application and I have received no evidence to change this recommendation. However, it is recognised that Committee may not accept my recommendation and should this be the case, any decision to refuse the application will need to take into account my advice given above in relation to each possible reason for refusal Committee identified previously.

5.0 Recommendation

The application be approved in accordance with the recommendation set out in Appendix A, and subject to amendments to conditions 2 and 21 to reflect the new Drawing Number. 'Figure 7 REV B' which details the revised highway works including the right turning lane and an amendment to condition 26 to reflect the proposed revisions to the operating hours.

If, however, Committee does not consider that the application should be approved, the reason(s) for refusal should take into account the advice given above.

BACKGROUND PAPERS

Local Government Act 1972 (Section 100) (As Amended)

The following documents were used in the preparation of this report:

Application file, together with the files and documents referred to in the background information section of the appended Development Control committee report.

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