

Planning Committee – 4th October 2022

Item 1

Application Number:

2022/0794/S73

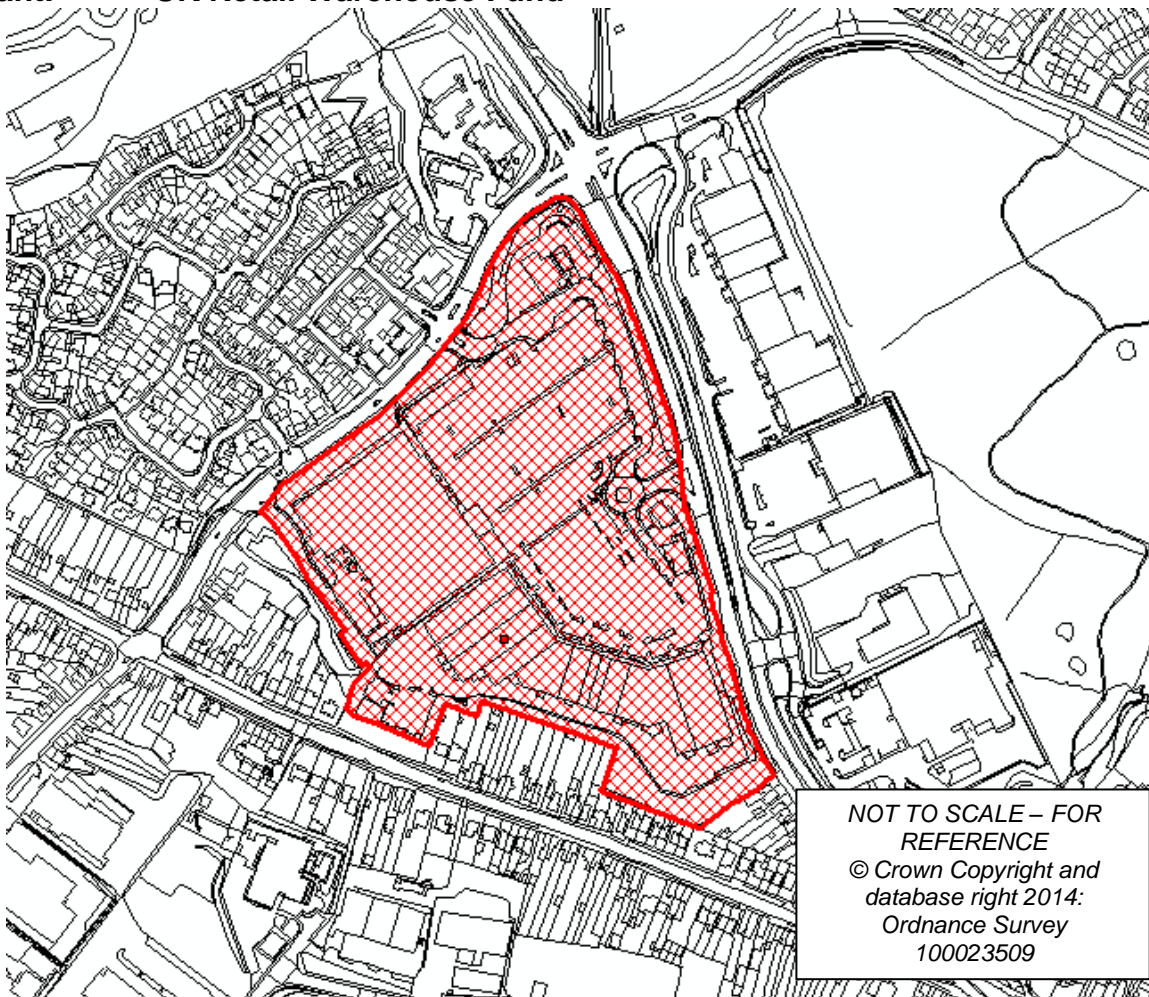
Ward:

Cockett - Bay Area

Location: Unit 13 , Parc Fforestfach, Cadle, Swansea, SA5 4BB

Proposal: Redevelopment of existing district shopping centre comprising new Tesco Superstore (10,100 square metres gross floor space), petrol filling station and 8 No. linked retail units (11,670 square metres gross floor space) with associated service yards and staff car parking areas, alterations to existing access off Pontaddulais Road, closure of existing access off Carmarthen Road, construction of two new accesses off Ffordd Cynore, offsite highway works to Ffordd Cynore and the Pontarddulais Road junction, provision of 1,275 space customer carpark, site landscaping and accommodation works - Variation of condition 9 of planning permission A00/0366 granted 1st August 2000 to allow for amendment to the operating hours for the gates, from being locked between 21.00hrs to 08.00hrs to locked between 22.00hrs to 07.00hrs to allow for deliveries to units 12 and 13 (Aldi), on the service access road from Ffordd Cynore to the delivery area to the rear of retail units 12 & 13

Applicant: UK Retail Warehouse Fund



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Background

This application is referred to Committee as the original development meets the alternate development threshold set out in the Council's Constitution.

It should be noted that the amendment proposed originally was for the gates to be locked from 22.00hrs to 06.00hrs, however after discussions with the Local Authority Pollution Control team, the application was amended to reduce the opening hours.

Description of Development

This is a Section 73 application for the variation of condition 9 of planning permission A00/0366 granted 1st August 2000 to allow for amendment to the operating hours for the gates, from being locked between 21.00hrs to 08.00hrs to locked between 22.00hrs to 07.00hrs, on the service access road from Ffordd Cynore to the delivery area to the rear of retail units 12 & 13.

The aforementioned gates to the service area are located to the rear of the retail units and are accessed from Ffordd Cynore via a dedicated access road serving Tesco and the other linked retail units. It has been stated that due to the operational requirements of Aldi access is required earlier in the morning and later in the evening.

Planning application 2021/2106/FUL granted permission for the re-configuration of two existing retail units to provide one large unit and one smaller unit, with front canopy, external trolley area, alterations to access and street furniture, and rear extension to form loading bay, rear staircase and associated external alterations on 19th November 2021. This application will create one large unit to be occupied by Aldi (Units 12-13) and one smaller unit known as Unit 13a.

Planning History

Planning application A00/0366 granted permission for the redevelopment of the existing district shopping centre comprising of a new Tesco Superstore (10,100 square metres gross floor space), petrol filling station and 8 No. linked retail units (11,670 square metres gross floor space) with associated service yards and staff car parking areas, alterations to existing access off Pontarddulais Road, closure of existing access off Carmarthen Road, construction of two new accesses off Ffordd Cynore, offsite highway works to Ffordd Cynore and the Pontarddulais Road junction, provision of 1,275 space customer carpark, site landscaping and accommodation works.

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Section 73 Procedure

This Section 73 application relates to planning permission A00/0366.

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Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73.

Planning Policy

The National Development Framework: Future Wales - the National Plan 2040

Future Wales sets out the Welsh Government's land use priorities and provides a national land use framework for SDPs and LDPs. Future Wales concentrates on development and land use issues of national significance, indicating areas of major opportunities and change, highlighting areas that need protecting and enhancing and helping to co-ordinate the delivery of Welsh Government policies to maximise positive outcomes.

Policy 1 - Where Wales Will Grow

Policy 2 - Shaping urban growth and regeneration - Strategic placemaking

Planning Policy Wales (11th Edition) 2021

Air Quality and Soundscape

6.7.3 Certain sounds, such as those created by trees, birds or water features, can contribute to a sense of tranquillity whilst others can be reassuring as a consequence of their association with the normality of everyday activities. Problematic forms of sound are generally experienced as noise pollution and can affect amenity and be prejudicial to health or a nuisance. Noise action plans drawn up by public bodies aim to prevent and reduce noise levels where necessary and preserve soundscape quality where it is good. Noise levels used to identify priority areas contained in noise action plans are usually set quite high in order to focus resources on the most polluted areas and noise must meet a number of tests before it qualifies as a statutory nuisance. Lower levels of noise, however, can still be annoying or disruptive and impact on amenity and as such should be protected through the planning process wherever necessary. The planning system must protect amenity and it is not acceptable to rely on statutory nuisance under the Environmental Protection Act 1990 to do so.

6.7.4 The planning system should maximise its contribution to achieving the well-being goals, and in particular a healthier Wales, by aiming to reduce average population exposure to air and noise pollution alongside action to tackle high pollution hotspots. In doing so, it should consider the long-term effects of current and predicted levels of air and noise pollution on individuals, society and the environment and identify and pursue any opportunities to reduce, or at least, minimise population exposure to air and noise pollution, and improve soundscapes, where it is practical and feasible to do so.

6.7.5 In taking forward these broad objectives the key planning policy principle is to consider the effects which proposed developments may have on air or soundscape quality and the effects which existing air or soundscape quality may have on proposed developments.

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Air Quality and soundscape influence choice of location and distribution of development and it will be important to consider the relationship of proposed development to existing development and its surrounding area and its potential to exacerbate or create poor air quality or inappropriate soundscapes. The agent of change principle says that a business or person responsible for introducing a change is responsible for managing that change. In practice, for example, this means a developer would have to ensure that solutions to address air quality or noise from nearby pre-existing infrastructure, businesses or venues can be found and implemented as part of ensuring development is acceptable.

6.7.6 In proposing new development, planning authorities and developers must, therefore:

- address any implication arising as a result of its association with, or location within, air quality management areas, noise action planning priority areas or areas where there are sensitive receptors.
- not create areas of poor air quality or inappropriate soundscape; and
- seek to incorporate measures which reduce overall exposure to air and noise pollution and create appropriate soundscapes.

6.7.7 To assist decision making it will be important that the most appropriate level of information is provided and it may be necessary for a technical air quality and noise assessment to be undertaken by a suitably qualified and competent person on behalf of the developer.

Understanding and Identifying the Sources of Airborne (Air and Noise) Pollution

6.7.11 Air and noise pollution are often, but not exclusively, emitted from the same sources, notably road transport, commercial and industrial activities. Consequently, areas of poor air quality often coincide or overlap with areas subject to high noise levels. Even where they do not, poor air quality at one location and high levels of noise at a neighbouring location may be related to one another, depending on the characteristics of the place in question, including the way in which people use and occupy places and the way in which traffic is managed in the wider area. Where air and noise pollution are generated from the same source they should be considered and addressed together and links should be made with active travel and other strategies for reducing vehicular use so as to reduce or minimise, pollution and to ensure an appropriate soundscape.

6.7.13 When developing strategies, proposing or assessing development proposals it will be essential to understand the implications of the transport demand associated with the proposal and the effect this may have now and in the foreseeable future. When proposing to introduce a development activity into an area the impacts which existing pollution sources (including roads, railways and industrial or commercial operations) have in terms of air and noise pollution should be carefully considered, particularly taking into account any increases in pollution levels which may be reasonably expected in the foreseeable future as a result of increased transport activity.

6.7.14 Proposed development should be designed wherever possible to prevent adverse effects to amenity, health and the environment but as a minimum to limit or constrain any effects that do occur. In circumstances where impacts are unacceptable, for example where adequate mitigation is unlikely to be sufficient to safeguard local amenity in terms of air quality and the acoustic environment it will be appropriate to refuse permission.

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Location of Commercial, Industrial and other Potentially Polluting Development

6.7.15 For the purposes of this section, potentially polluting development includes commercial, industrial, energy and agricultural or transport infrastructure. Such development should be located in areas where there is low potential for public exposure, or where its impact can be minimised. Novel or new development types may potentially cause pollution and should be carefully considered, and where appropriate, decisions should be based on the precautionary principle.

6.7.16 Relevant considerations in making planning decisions for potentially polluting development are likely to include:

- location, including the reasons for selecting the chosen site itself;
- impact on health and amenity;
- effect of pollution on the natural and built environment and the enjoyment of areas of landscape and historic and cultural value;
- impact on groundwater and surface water quality;
- effect on biodiversity and ecosystem resilience, including where there may be cumulative impacts on air or water quality which may have adverse consequences for biodiversity and ecosystem resilience;
- the risk and impact of potential pollution from the development, insofar as this might lead to the creation of, or worsen the situation in, an air quality management area, a noise action planning priority area or an area where there are sensitive receptors; and
- impact on the road and other transport networks, and in particular on traffic generation, particularly where the proposed development is not transport infrastructure itself.

6.7.17 The location of potentially polluting development adjacent to sensitive receptors will be unacceptable where health and amenity impacts cannot be minimised through appropriate design and mitigation measures. It is the overall expectation that levels of pollution should be reduced as far as possible and for this reason the location of potentially polluting development should be taken into account as part of overall strategies in development plans to ensure it can be appropriately located and maximum environmental benefits can be gained through measures such as green infrastructure.

6.7.18 Early consideration is required to ascertain whether the location and design of proposed development is acceptable where air pollution or noisegenerating development is likely to affect a protected species, or is proposed in an area likely to affect a statutorily designated site (such as Natura 2000 sites or SSSIs) or a tranquil urban green space (including but not limited to formally designated 'quiet areas') valued for the restorative respite and contact with nature that they offer to residents of busy towns and cities.

Adopted Swansea Local Development Plan (2010-2025)

PS 2 Placemaking and Place Management - development should enhance the quality of places and spaces and should accord with relevant placemaking principles.

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RP 2 Noise Pollution - Where development could lead to exposure to a source of noise pollution it must be demonstrated that appropriate mitigation measures will be implemented, and incorporated into the design of the development to minimise the effects on existing and future occupants. Noise sensitive development will not be permitted unless effective mitigation will prevent exposure to existing noise generating uses. Development that would lead to an increase in environmental noise at a NAPPA or would have an unacceptable impact on a Quiet Area will not be permitted

RP 3 Air and Light Pollution - Where development could lead to exposure to a source of air or light pollution it must be demonstrated that appropriate mitigation measures will be implemented, and incorporated into the design of the development to minimise the effects on existing and future occupants.

Supplementary Planning Guidance (SPG)

There are no SPG that are relevant to the consideration of this application.

Consultations:

Local Highway Authority:

There are no highway objections to the extension to the opening times for the delivery area.

Pollution Control:

For the amended hours and an enforced delivery plan for Aldi I would have no further grounds for objection. If other companies using the route becomes an issue then we will have to address via other legislation.

Public Consultation:

The application was advertised by a site notice.

Eight letters of objection have been received which are summarised below:

- Additional noise to surrounding properties
- The original opening times should be retained at the weekends.
- Was a noise survey carried out for the opening and closing of the unloading bay doors
- This is a residential neighbourhood and the businesses should be mindful of their neighbours
- The current gate times are sufficient for any business to trade
- The noise from engines and refrigeration units is very intrusive
- There is more than sufficient parking within the area for deliveries

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APPRAISAL

Main Issues

The main issues to consider in the determination of this application relate to the impacts upon existing neighbouring occupiers and the impacts upon highway safety, having regard to the prevailing provisions of the relevant LDP Policies and National Policy guidance. The proposals would not result in any changes to the external appearance of the development as such there are no impacts in relation to the character and appearance of the area. There are considered to be no additional issues arising from the provisions of the Human Rights Act.

Residential Amenity

Condition 9 of the original planning application A00/0366 states that "the gates on the proposed service access road shall be locked between 21.00 hours and 0800 hours and the service road/area to the rear of the non food retail units made secure in accordance with details to be agreed under condition 03 of this permission".

This application seeks consent for the extension of the opening hours of these gates by one hour in the evening and one hour in the morning, locking the gates between 22.00hrs to 07.00hrs.

Policy RP2 of the LDP states that "where development could lead to exposure to a source of noise pollution it must be demonstrated that appropriate mitigation measures will be implemented, and incorporated into the design of the development to minimise the effects on existing and future occupants".

The applicant has submitted a noise assessment in support of the application and delivery management plan in support of this application. This noise assessment concludes that the predicted noise levels from delivery activity during the proposed extended opening hours would not give rise to significant adverse impacts. The increase in the opening hours of the access gates by only two hours is considered reasonable and would likely not cause undue harm upon the amenity of neighbouring residents. In addition, the applicant has also submitted a delivery management plan which outlines how deliveries will be undertaken by Aldi to mitigate noise impacts. It is considered reasonable to condition that deliveries be undertaken in accordance with this delivery management plan in order to protect the residential amenity of nearby residential properties. It is noted that the access gates serve other units and the potential impact of noise from extended delivery times to those units has not been considered within the applicant's noise assessment. Therefore it will be necessary to impose a condition with the effect that the extended delivery hours relate to units 12&13 (Aldi) only. The Council's Pollution Control team raise no objections to the proposals and note that powers could be used under environmental health legislation should noise impacts occur. Therefore having regard to the above it is considered that the proposals would not conflict with LDP Policies PS2 and RP2.

Access and Highway Safety

The Local Highway Authority have been consulted and raise no objections to the proposed development.

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The proposals would not give rise to any highway safety or car parking concerns.

Other Matters

Given this is a Section 73 application and involves the re-issuing of the original decision, the conditions associated with A00/0366 will need to be carefully considered as to whether they need to be re-imposed or re-worded depending on their content. However, it is worth noting that the original consent is over 22 years old with conditions that have been discharged and subsequently no longer necessary and/or have timeframes which are no longer applicable.

It is also noted that the original development was subject to a Section 106 Agreement. This S.106 referred to shuttle bus services being made available for at least 5 years, £90,000 being paid to the Council for traffic calming along Ystrad Road and bus service improvements and the installation of speed cameras at the Pontarddulais Road junction. Given the nature of the S.106 and that there is nothing outstanding, it is not considered necessary to request a Deed of Variation to the S.106 in this particular instance.

Conclusion

In conclusion it is considered that the proposal would not have an adverse impact upon the residential amenity of the neighbouring occupiers. The development would not, therefore, conflict with Policies PS2 and RP2 of the Swansea Local Development Plan. Approval is recommended.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

RECOMMENDATION

APPROVE, subject to the following conditions

1 The development hereby permitted shall begin not later than five years from the date of this decision.
Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.

2 The development shall be carried out in accordance with the following approved plans and documents:

001 REV C site location plan, received 31st March 2022.

Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

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- 3 The service access gates shall remain locked between the hours of 21:00 and 08:00 other than to allow for deliveries to units 12 and 13 (Aldi), whereby the gates may be opened to allow deliveries to those units only, and no other units, between the hours of 07:00 and 22:00. All deliveries to units 12 and 13 shall be undertaken in strict accordance with the Delivery Noise Management Plan produced by Sharps Redmore dated 10th August 2022 for the lifetime of the development.
Reason: In the interest of protecting the residential amenity of neighbouring properties along Carmarthen Road.
- 4 No cages shall be handled or manoeuvred within the Tesco service yard between the hours of 21:00 and 08:00.
Reason: In the interest of protecting the residential amenity of neighbouring properties along Carmarthen Road.

Informatives

- 1 The national development plan is Future Wales: The National Plan 2040. The following policies were relevant to the consideration of the application:
- Policy 1 - Where Wales Will Grow
Policy 2 - Shaping urban growth and regeneration - Strategic Placemaking
- The development plan covering the City and County of Swansea is the Swansea Local Development Plan. The following policies were relevant to the consideration of the application: PS2, RP2 and RP3.
- 2 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
-