

Report of the Head of Economic Regeneration and Planning

Planning Committee - 7 June 2016

Planning Application Ref: 2014/0977

Proposed cessation of landfill and other operations enabled by residential development circa 300 dwellings, public open space, associated highway and ancillary work (outline)

Parc Ceirw, Cwmrhydyceirw Quarry and adjoining land, Cwmrhydyceirw, Swansea

1.0 Background

- 1.1 This application was reported to Planning Committee on 10th May 2016 with the recommendation that planning permission be approved subject to conditions. Members 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 members.
- 1.2 In reaching a decision Members will need to consider advice on the award of costs in planning appeals in Welsh Office Circular 23/93 : 'Award of Costs incurred in Planning and other (including Compulsory Purchase Order) Proceedings'. The circular states that 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 bodies or consultees. However, they will be expected to show they had reasonable planning grounds for taking a decision contrary to such advice, and be able to produce relevant evidence to support the decision. If they fail to do so, costs may be awarded against the Authority.
- 1.2 A copy of the report to Planning Committee on 10th May 2016 is attached as Appendix A. The corrections reported on the committee update sheet have been incorporated into the report.

2.0 Main Issues

- 2.1 Members identified the following areas as grounds for refusal of the application: highway safety, no affordable homes, loss of amenity for school pupils due to the reduction in play space, the provision of three classrooms is not sufficient and concerns over the long term pumping arrangements.
- 2.2 The applicant's agent has submitted further information for Committee to consider in response to the discussion at the Planning Committee. The agent has indicated that the issues raised do not provide anything new – with all items having been previously tabled as part of the application and discussed with officers. The response therefore reiterates / repackages the offer, in order to meet the concerns raised by Members.

Furthermore, the additional offer in terms of affordable housing provision aims to channel the monies which would otherwise be spent on any appeal (should the application be refused) into the development, and accordingly to the wider benefit of the locality. Should an appeal need to be pursued, then this offer would not be able to be maintained, due to the significant costs that would be associated with progressing an appeal, and the viability position of the proposal – which has been previously established. It is also reiterated that the Council defined the S106 package and improvement works deemed necessary as proposed at the recent Committee meeting – with reference of course to the established viability position. Affordable housing had initially been part of the applicant S106 offer, but the Council confirmed that their preference was for these monies to go towards education. These current proposals therefore reinstate a contribution towards affordable housing, without diminishing the education contribution (i.e. it will be over and above and not in lieu).

2.3 More detailed comment is provided in each of the sub-headings below.

2.4 Highway Issues

2.5 In terms of highway safety, concerns were raised that the proposal would lead to congestion on Maes-Y-Gwernan Road, particularly in the vicinity of Cwmrhydyceirw Primary School. The application as reported to Committee indicated that no highway objections had been raised to the scheme subject to conditions and a contribution to highway improvements via the Section 106 obligations. Based on the comments of the Planning Committee, it is considered that the following reason reflects the concerns raised:

'The applicant has failed to prove that the additional traffic movements generated by the proposal will not have an adverse effect on local congestion 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)y.'

2.5 The following additional information has been submitted on behalf of the applicant.

'As set out in the original Transport Assessment submitted in support of the application, the development is proposing a number of initiatives to help improve accessibility from the site to local amenities and mitigate the effect of additional traffic generated from the proposed development. Part of this investment is targeted at improving links to Cymrhydyceirw Primary School and also reducing the existing congestion which occurs during peak school times (AM and PM) outside of the school on Maes Y- Gwernen Road. Of course congestion is not uncommon outside schools during peak periods.

As such the following are proposed as Section 106 / Section 278 items in relation to the proposed development;

- *Creating a formal drop off, pick up waiting area within the existing verge on the northern side of Maes Y Gwernen Road); Note that the creation of such a layby will mean that the effective carriageway width on Maes Y Gwernen Road would go from 2.8m to 6m.*
- *Providing a zebra crossing facility of Maes Y Gwernen Road near the junction with Heol Maes Eglwys (see attached);*
- *A Toucan crossing on Heol Maes Eglwys – Secured by Section 106 with location to be determined*

- A Section 106 contribution of £30,000 towards school travel planning at Cwmrhydyceirw Primary School including provision of cycle / scooter storage within the school, walking buses, safe routes to school etc – further details / evidence below.

As part of the overall sustainable strategy of the site, it is important to consider journeys made for education purposes. National Statistics suggest that some 50% of all journeys during the morning peak hour are related to education. Of these education trips, travel by car accounts for 46% and 23% of journeys to primary and secondary schools respectively. Hence it is important to consider this when designing and developing a new site in close proximity to the existing primary school.

The site is immediately adjacent to Cwmrhydyceirw Primary School and the Morryston Comprehensive school and so it could not be better suited to children walking, scooting and cycling to school.

An initial meeting and subsequent discussions have taken place with Head Teacher Darren Casker at the Primary School to understand what issues relating to transport to /from school and access presently exist. The measures proposed as part of this application are a reflection of the requirements of the school and are supported by the Head Teacher as being beneficial to reducing congestion outside of the Primary School at peak school times.

Based on these discussions it would appear that the Primary School has a Travel Plan, but they lack the resources to implement travelling planning measures on a regular basis. Given this and their enthusiasm for encouraging sustainable travel to the school, there are some easy wins to be had by implementing updated or new Travel Plans, with the effects of reducing car borne school movements, improving travel sustainability, improving health and reducing any highway congestion.

Therefore, as part of the development's Travel Plan, the proposal is, with the assistance, support or lead of the Council, to design school specific travel planning, which will benefit the wider community as well as the development proposal. In particular, specific Travel Planning measures were identified and discussed with Cwmrhydyceirw Primary School and included;

- Contributing to a walking bus scheme;
- Contributing to improve their cycle proficiency training;
- Bike/ scoot to school days;
- Providing secure/ sheltered scooter and cycle parking;
- Parents shelter and
- Provision of high visibility gear.

The Section 106 monies could also be used to fund a walking bus leader or responsible adult for walking children to school from the proposed development and also a Living Streets pedestrian / cycle audit – www.livingstreets.co.uk (See attached).

Living Streets' vision is that every child who can walk to school, does so. This links with our sustainable travel approach, and commitment to improving and promoting safe and enjoyable walking routes the local schools. Experience suggests that Living Streets' audits of the local walking network are independent, and the act of bringing them into the project actually helps to ensure that local communities feel involved and not under any pressure from the developer.

Following or in place of an audit, Living Streets' 'Walk to School campaign' can: deliver improved physical and mental health for children, parents and carers; provide cost savings through improved public health, reduced congestion, improved road safety and reduced carbon emissions; and break down the environmental and behavioural barriers to walking to school.

Indeed, the 'Walk once a Week (WoW)' scheme, in just 5 weeks, has seen an increase in walking by up to 26% (Internal monitoring of the LSTF Walk to School Outreach programme. Based on Living Street coordinator supported WoW. Living Street crucially maintain that 'at a stage when children form habits for life, walking to school should be a positive and natural choice for children, families and the wider community'.

There are also lots of other examples attached which seek to improve congestion outside schools by promoting walking, scooting and cycling and engendering health initiatives within young children. These examples have demonstrated many benefits in terms of reducing car usage for school related transport.

In addition, I have also attached a significant appeal decision (2013) on behalf of Harrow Estates at Hartford, Cheshire to fall back on. We were involved in this appeal. This is attached and broadly concludes that whilst adjacent to a congested highway network during peak times sustainable travel offers choice for commuting and educational-based trips and as such development should not be thwarted on the basis of the convenience to the car commuter. '

- 2.7 The Head of Highways and Transportation has raised no highway objection to these proposals.
- 2.8 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. 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.
- 2.9 Affordable Homes
- 2.10 Committee expressed the view that in the absence of any affordable housing within the development, in an area where a demonstrable need exists, the proposal would not create a sustainable community. In the light of this, it is considered the following reason addresses the concerns of Committee:
- 'The proposal fails to provide sufficient affordable housing to contribute towards the demonstrable need within the area, to the detriment of community regeneration and social inclusion. The proposal is therefore contrary the aims of Planning Policy Wales (edition 8) and the Well-being of Future Generations Act 2015'*
- 2.11 As noted in the original committee report, Policy HC3 states that in areas where a demonstrable lack of affordable housing exists, the Council will seek to negotiate an appropriate element of affordable housing where this is not ruled out by exceptional development costs. In this case, the Housing Department requested a contribution of 30% affordable housing within the scheme.

In considering the viability information submitted in support of the application, it was considered that once other necessary S106 contributions had been identified, the provision of an affordable housing contribution was not viable. Consequently, no affordable housing was requested.

- 2.12 With regard to affordable housing provision, the applicant's agent has commented as follows:

'As you will be aware, the scheme will yield much needed housing generally. Accordingly, the proposal will, in itself, make a significant contribution to housing land supply. Bringing the new stock to the market will increase supply in the area, which will meet local demands, and free up stock elsewhere. This increase in supply will also have a positive impact on lowering price levels, by relieving some of the pressure in the market and meeting existing demands.

Furthermore, the vast majority of the units on the site will be in a price band that will enable them to be eligible for the 'Help to Buy' scheme, meaning that they are affordable in general terms / by nature – thereby having a further positive impact on housing needs.

In terms of S106 contributions, as you will be aware, our originally proposed package of contributions provided for a 5% level of affordable housing provision (in addition to other highways contributions), in view of the assessed and established viability of the scheme – this is outlined in our attached email. However, the Authority confirmed, whilst the overall sum of contributions was agreed, that this was preferred to go towards education and highways – something that was agreed to by our clients.

However, having regard to the current position, and on a without prejudice basis, we can now confirm that we will revert to the original offer made of 5% affordable housing provision on site – based on low cost home ownership tenure. This offer is in addition to (rather than in lieu of), the agreed contributions elsewhere (i.e. education and highways etc.).

This offer has been enabled by the clients consideration of the considerable costs that would be associated with an appeal, should we need to challenge a refusal of the application. It is considered that these costs would be better channelled into the scheme itself through the now proposed affordable housing provision, rather than spent on the appeal process. Clearly, having regard to the viability of the scheme, this offer can only be made at this stage on the basis that an appeal wouldn't be required, as the development would not be able to shoulder these costs should an appeal be required.'

- 2.13 The Housing Division has indicated that whilst this percentage does not meet the original provision requested this offer is accepted taking into account the viability issues on this site. The offer is for 5% Affordable Housing, low cost home ownership tenure to be picked up by Registered Social Landlord at 70% of Acceptable Cost Guidance .
- 2.14 The need to provide affordable housing could be a lawful reason for refusing planning permission. As detailed above, Council policy in respect of the provision of affordable housing is that an appropriate element of affordable housing should be provided where this is not excluded by exceptional development costs. Whilst it is recognised that the aims of Planning Policy Wales and the Wellbeing of Future Generations Act seek to support sustainable communities, the evidence submitted in respect of the viability of this site indicates that the site cannot support the level of affordable housing requested when assessed against other S106 requirements.

It is noted that the developer is proposing a 5% contribution in line with their original offer on the basis that money set aside for a possible appeal could be utilised. This is welcomed and on the basis of the viability evidence available, it is not considered that the lack of affordable housing provision could be supported at appeal should the application be refused, particularly when taking into account the material contribution that this development would make to the Council's Housing Land Supply, which is currently below the 5 year supply required under National Planning Policy.

2.15 Issues associated with Cwmrhydyceirw Primary School

2.16 Committee raised concerns that the provision of three classrooms at Cwrhydyceirw Primary School was not sufficient and in any event, the provision of three classrooms would have an unacceptable impact on the amount of play space available at the school. Based on these concerns, the following reason would cover the points raised by Committee:

' The proposed development would generate a demand for English Medium primary school places which cannot be accommodated at the catchment school without overloading the community facility, contrary to the requirements of policies EV2 and HC2 of the City and County of Swansea Unitary Development Plan 2008'

2.17 It is lawful to refuse an application due to the impact on existing community facilities. The issue here is whether it can be evidenced that the proposed development will have an adverse impact on the school. In terms of the provision of three classrooms, the Education Department has confirmed that in line with the calculations set out in the SPG on Planning Obligations, the provision of three classrooms is sufficient to meet the need for additional spaces generated by this proposal. In view of this, it is not considered that this issue can form a reasonable reason for refusal that could be supported at appeal and to refuse the application for this reason would leave the Council open to an application for costs at appeal.

2.18 With regard to the amount of space available within the school grounds to accommodate the three additional classrooms, the Education Department has advised that a site meeting has taken place and it is deemed that there are a few options within the school grounds that could be investigated to extend the school buildings. Adding a potential additional 90 pupils to the site would mean a very small shortfall in the recommendation areas provided by Building Bulletin (0.35acres below recommended levels).

School Name	Capacity	BB99 lower limit recommended site M2	BB recommended Acres - lower limit	Actual Acre	Difference
Cwmrhydyceirw	420	17320	4.28	4.73	0.45
Cwmrhydyceirw	510 (420+90)	20560	5.08	4.73	-0.35

2.19 Building Bulletin provides a recommendation only and some schools in Swansea and other local authorities fall short of this recommendation. The advice given by the Education department is that the proposed three class extension is required and appropriate and can be accommodate satisfactorily within the school. In view of this, it is not considered that a strong case could be argued should an appeal be submitted.

2.20 Long Term Water Pumping

- 2.21 Concerns were raised regarding the long term pumping arrangements to keep the water table at the quarry artificially low and below the existing waste mass. These concerns could be translated into the following reason for refusal:

'The long term need to keep the water table at the site artificially low cannot be adequately secured and as result, any long term failure in the pumping system would lead to increased risk of flooding within the former quarry area, particularly the area that has been subject to landfill, to the detriment of the residential amenity of existing and future occupiers of nearby residential properties. The development would therefore be contrary to polices EV1, EV2 and HC2 of the City and County of Swansea Unitary Development Plan 2008.'

In support of the application, the applicant's agent has submitted a statement prepared by the quarry operator's environmental consultants in relation to water pumping. This is attached as appendix 2. It has been further confirmed that as the attenuation pond forms part of the public open space, it will form part of the Management agreement covered under the proposed Section 106 agreement. The Land Trust, the nominated party to control and manage the site in perpetuity, has confirmed their willingness to operate a pumping regime and provided examples where they currently manage sites where pumping is in place.

- 2.22 The pumping of ground water is not an unusual occurrence and it is considered that it can be effectively managed through the proposed Section 106 agreement. Furthermore, neither the Council's Pollution Control Division nor NRW have raised objection to the proposal. Whilst it is considered that this issue would form a lawful reason for refusing a planning application, based on the evidence available and the lack of objection from the relevant statutory consultees, it is not considered that there are grounds to refuse the application. Should Committee consider this to be a reasonable ground for refusal, they would need to be sure evidence could be produced to defend an appeal or the Council may be liable for a costs application.

3.0 **Conclusion**

- 3.1 My original report to Planning Committee on 10th May 2016 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.

4.0 **Recommendation**

- 4.1 The application be approved in accordance with the recommendation set out in Appendix A, subject to the additional S106 contributions proposed by the applicant.

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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