

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE : **4 NOVEMBER, 2020**

REPORT OF THE HEAD OF REGENERATION AND PLANNING

PLANNING APPLICATIONS

Background Papers

The following reports are based upon the contents of the Planning Application files up to the date of dispatch of the agenda and reports.

2020/00257/FUL Received on 6 March 2020

APPLICANT : Mr. Kassam c/o Agent

AGENT : Mr. D. Thomas DTB Design, Temple Court, 13a, Cathedral Road, Cardiff, CF11 9HA

4, Arcot Street, Penarth

Conversion of ground floor and lower ground floor to 4 duplex apartments

REASON FOR COMMITTEE

The application is required to be determined by Planning Committee under the Council's approved scheme of delegation because the application has been called in for determination by Cllr Neil Thomas due to concerns regarding the size of the units, amenity space and parking.

EXECUTIVE SUMMARY

The application site relates to a three storey corner building in Penarth, on the corner of Arcot Street and Ludlow Street. The first floor is one self-contained flat not included within this application. The application relates to a former Community facility occupying the ground floor and lower ground floor which is currently vacant.

The proposal is to convert the ground floor and lower ground floor into 4 duplex flats, including 3 x 2 bed units and 1 x 1 bed unit.

Concerns have been raised by Cllr Thomas regarding amenity space, size of proposed units and parking. One letter of representation was received from neighbours, which questioned the impact upon the water supply to their unit.

The proposal is considered acceptable having regard to the level of amenity space and subject to conditions is not considered to cause harm to amenities of nearby residential occupiers. Based on the parking provision that would have been required to serve the former Community facility, despite there being no provision for off-street parking, the proposed conversion to four flats would result in a lower demand than the former use.

The application is recommended for approval.

SITE AND CONTEXT

The application site is 4, Arcot Street, Penarth located within Penarth on the corner with Ludlow Street, within the Penarth settlement boundary.



The application relates to the lower ground and ground floor levels of a three storey building last used as a Community facility. The first floor of the property is an existing flat which falls outside of the application.

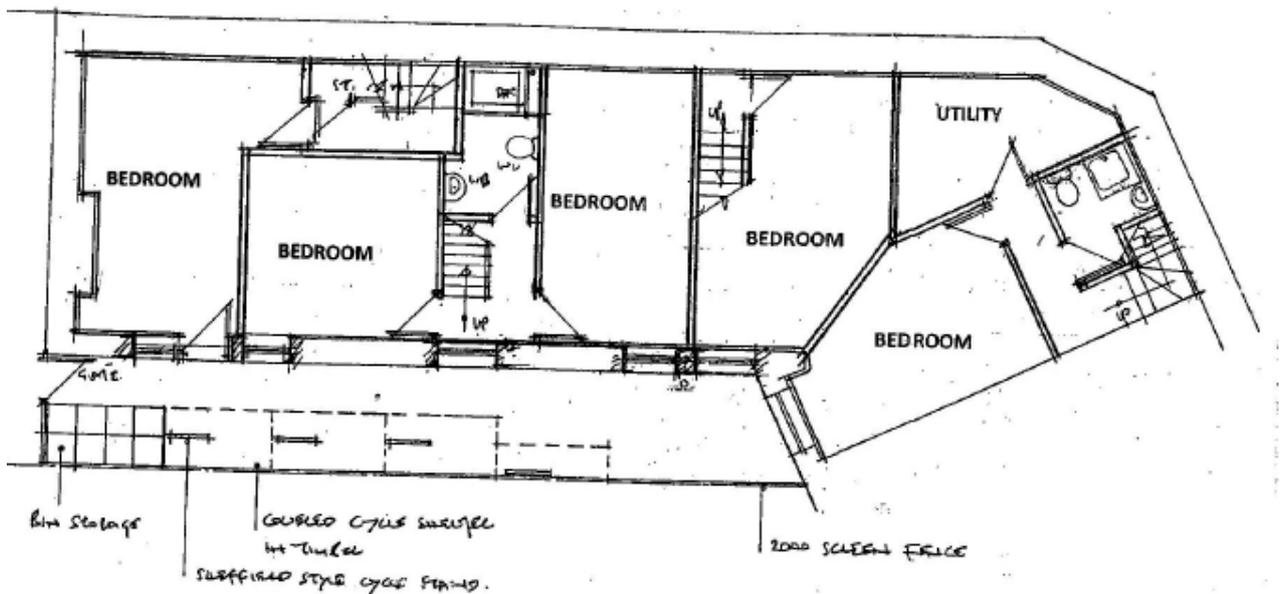
The existing building is accessed directly from Arcot Street with additional pedestrian access to the rear. The frontage is characterised with a number of windows at ground floor. The street-scene is characterised with terrace properties and on road parking.

DESCRIPTION OF DEVELOPMENT

The application seeks consent to convert the Community facility into four duplex flats, comprising of 3 x 2 bed units and 1 x 1 bed unit. The works include an additional entrance to the front, with bin storage and bicycle parking to the rear.

The internal flat arrangements would have the living space at ground floor with bedrooms generally located on the lower ground floor.

Plans of the proposal are shown below;



PLANNING HISTORY

2010/01221/FUL, Address: First Floor Flat, 4, Arcot Street, Penarth, Proposal: Provision of screened external area for clothes drying, recycling and refuse, Decision: Approved;

CONSULTATIONS

Penarth Town Council were consulted and a response was received which stated no objection to the principle of the development, subject to the officer being satisfied with parking, amenity space and loss of existing use.

Shared Regulatory Services (Pollution) were consulted and a response was received which stated no observations to the proposal.

Housing Strategy were consulted and a response was received which stated the need for affordable housing in Penarth and the affordable housing contribution this development would trigger.

Contaminated Land, Air & Water Quality were consulted and no representation has been received.

St. Augustines ward member were consulted and a response was received from Cllr Thomas who raised an objection to the proposal and has called for the application to be determined at Planning Committee, with concerns relating to the size of the units, amenity space and parking.

Highway Development were consulted and an objection was originally raised in regard to the development. Following additional information in regard to the existing use on site and its parking expectancy together with the sustainable location of the development, further comments were received which stated that the highway authority could not sustain their objection to the development.

REPRESENTATIONS

The neighbouring properties were consulted on 15 June 2020 and one letter of representation was received, which questioned the impact upon the water supply to their unit.

REPORT

Planning Policies and Guidance

Local Development Plan:

Section 38 of The Planning and Compulsory Purchase Act 2004 requires that in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026, which was formally adopted by the Council on 28 June 2017, and within which the following policies are of relevance:

Strategic Policies:

POLICY SP1 – Delivering the Strategy

POLICY SP3 – Residential Requirement

POLICY SP4 – Affordable Housing Provision

Managing Development Policies:

POLICY MD1 - Location of New Development

POLICY MD2 - Design of New Development

POLICY MD4 – Community Infrastructure and Planning Obligations

POLICY MD5 - Development within Settlement Boundaries

In addition to the Adopted LDP the following policy, guidance and documentation supports the relevant LDP policies.

Planning Policy Wales:

National planning policy in the form of Planning Policy Wales (Edition 10, 2018) (PPW) is of relevance to the determination of this application.

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales. The following chapters and sections are of particular relevance in the assessment of this planning application:

Chapter 2 - People and Places: Achieving Well-being Through Placemaking,

- Maximising well-being and sustainable places through placemaking (key Planning Principles, national sustainable placemaking outcomes, Planning Policy Wales and placemaking)

Chapter 3 - Strategic and Spatial Choices

- Good Design Making Better Places
- Promoting Healthier Places

- Accessibility
- Previously Developed Land

Chapter 6 - Distinctive and Natural Places

- Recognising the Special Characteristics of Places (The Historic Environment, Green Infrastructure, Landscape, Biodiversity and Ecological Networks, Coastal Areas)
- Recognising the Environmental Qualities of Places (water and flood risk, air quality and soundscape, lighting, unlocking potential by taking a de-risking approach)

Technical Advice Notes:

The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:

- Technical Advice Note 2 – Planning and Affordable Housing (2006)
- Technical Advice Note 12 – Design (2016)
- Technical Advice Note 18 – Transport (2007)

Welsh National Marine Plan:

National marine planning policy in the form of the Welsh National Marine Plan (2019) (WNMP) is of relevance to the determination of this application. The primary objective of WNMP is to ensure that the planning system contributes towards the delivery of sustainable development and contributes to the Wales well-being goals within the Marine Plan Area for Wales.

Supplementary Planning Guidance:

In addition to the adopted Local Development Plan, the Council has approved Supplementary Planning Guidance (SPG). Some SPG documents refer to previous adopted UDP policies and to ensure conformity with LDP policies, a review will be carried out as soon as is practicable following adoption of the LDP. The Council considers that the content and guidance of the adopted SPGs remains relevant and has approved the continued use of these SPGs as material considerations in the determination of planning applications until they are replaced or otherwise withdrawn. The following SPG are of relevance:

- Affordable Housing (2018)
- Parking Standards (2019)
- Residential and Householder Development (2018)
- Sustainable Development - A Developer's Guide

Other relevant evidence or policy guidance:

- Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management
- Welsh Office Circular 13/97 - Planning Obligations

- Section 58 (1) of the Marine and Coastal Access Act places a requirement on the Council to take authorisation decisions in accordance with the appropriate marine policy documents, unless relevant consideration indicates otherwise.

Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

ISSUES

Principle of Development

The property falls within the settlement boundary of Penarth, where Policy MD5 of the LDP supports additional residential development, subject to the proposal satisfying the criteria set out within Policy MD5 (Development within Settlement Boundaries) and the advice within the Residential and Householder Development SPG. Criteria 5 of MD5 states that proposals should not result in the unacceptable loss of public open space, community or tourism buildings or facilities.

In relation to the existing use of the building, it was last used as a social club, which is considered a community facility for the purpose of LDP Policy MD5 (criteria 5). The information provided by the applicant and Estate Agent states that the building has been vacant and marketed since the 29th October 2019. The building was advertised on Rightmove, Zoopla and On the Market as well as the local press and on a For Sale board outside the property. The applicant also states that the estate agents have had no further interest in the building.

It is noted that the building is located within the centre of Penarth, with a number of Community Facilities within the locality. The Estate Agents confirm that a local Church has offered the Trustees of Penarth Old Age Pensioners Association, who previously used the facility, their church hall as a meeting point due to the refurbishment work required at the application site. The building is in a state of disrepair and the proposed re-use of the building is considered an improvement.

The LDP Background Paper for Community facilities does identify that the St. Augustines ward does have an excess of 39sq.m in regard to existing community building provision. Furthermore, it is noted within the background paper that the projected housing growth within this ward over the LDP period would result in a very minimal deficit of provision by 2026 and has therefore stated that no additional community space is required to accommodate the projected housing growth. The loss of the community facility in this instance is not considered detrimental to the locality given the provision of other community facilities within the St. Augustines Ward and Penarth generally.

Moreover, this section of Ludlow Street and Arcot Street is primarily residential and the re-use of the building for a residential use would not be incompatible with the surrounding area.

Design and Visual impact

Policy MD2 Design of New Developments of the Local Development Plan states that in order to create high quality, healthy, sustainable and locally distinct places development proposals should (inter alia): (1) Be of a high standard of design that positively contributes to the context and character of the surrounding natural and built environment and protects existing features of townscape or landscape interest; and (2) Respond appropriately to the local context and character of neighbouring buildings and uses in terms of use, type, form, scale, mix and density.

The application site is located on the corner of Arcot Street and Ludlow Street and is characterised with large windows at ground floor, characteristic of a social club. This part of Ludlow Street is largely characterised with residential properties and the site falls outside of the Penarth District Centre. The windows will be replaced, however the replacement would mirror the existing design, with an additional door located on the front elevation. The alterations to the front elevation are considered to be minor and are not considered to harm the overall character and appearance of the building or the wider street scene. The retention of the glazed frontage is considered to be in-keeping with the local area as a retail centre but would also fit the local context of neighbouring buildings.

It is noted that a bay window would be located at the rear of the property, however this would not be visible from the road and would not impact upon the appearance of the building.

With regard to the concerns raised about the size of the units proposed, it is noted that the Planning Authority does not have specified standards in regard to dwelling sizes or internal accommodation provision. However the proposed duplex units are considered to provide sufficient living accommodation over the two floors, that would not be dissimilar to other conversions within this area.

It is noted that the interior of the building would require extensive work with the ground floor level being increased to provide a suitable ceiling height at the lower ground floor. However, these internal works would not impact upon the external appearance of the building.

Impact on neighbouring properties

Whilst noting that the proposal would result in a change of use of the ground and lower ground floor, the proposal would not result in an enlargement of the building and is not considered to result in unacceptable impact upon the residential amenity of the neighbours, nor would the modest external alterations introduce additional mass and bulk that would cause an overbearing impact.

It is noted that a new triangular bay window would be installed at ground floor (first floor when viewed at rear) which, which only shows one angled pane to be obscure glazed with angled views towards the neighbouring garden, through the clear glazed pane. Furthermore, the existing window at first floor which serves the lounge /kitchen of flat 1 is currently obscure glazed and it is considered necessary to ensure that this window remains as obscure glazed, to retain the level of privacy the neighbours at the rear (**Condition 3** refers). It is noted that one window is shown to be blocked up at first floor

level (to the rear) and a small additional window serving a bedroom (Flat 3), which due to its angle would not result in any overlooking.

In terms of use, the conversion of a community facility to residential use is likely to be a positive impact on nearby neighbours in terms of noise / disturbance that might be associated with the established community use.

Amenity space

In respect of the conversion of the building into 4 residential flats and amenity space provision, the Council's approved Residential and Householder (2018) Supplementary Planning Guidance (SPG) indicates a need for 20 sq m per person. The SPG also requires that garden areas of the dwelling should be of a useable shape, form and topography. In flatted developments (including conversions) all units should be provided with direct access to amenity space within/through the site.

The proposals would have a maximum of two bedrooms resulting in a typical occupancy of 8 persons. For the purposes of the SPG an amenity space figure of 160sqm would be expected. The proposal relates to the conversion of the ground and lower ground floor of an existing building within an urban location where it is not possible to provide this level of amenity space. However, the application does propose external bin storage and cycle parking, that is accessible to all units.

In terms of access to alternative outdoor space, the site is within easy walking distance of Plassey Square, Dingle Park and Belle Vue Park, all within 300m as well as Alexandra Park within 500m. The proximity of these areas of Public Open Space are considered to provide adequate usable outdoor space for the units.

Given the modest size of the units, the proposals would not result in the introduction of family accommodation that may require access to more extensive amenity space, which would not be possible in this instance due to the constrained nature of the site. As such it is considered that in this instance, taking account of nearby public open space, and given the limited size of the flats in terms of likely occupation levels, the provision of external cycle parking and bin storage and a narrow section of shared amenity space would meet the basic essential needs of the future occupiers. However, it is considered necessary to ensure that the bin store area and cycle storage is provided prior to the occupation of the flats which shall be secured by condition (**Condition 4** refers).

Parking

In relation to the existing parking arrangements of the former social club, there is currently no off-street parking provision. The former hub would have a parking requirement of 1 space per 10 sq m as set out in the Council's Parking Standards SPG. On this basis, the existing 130 sq m of operational floor area (based on the ground floor) would require 13 car parking spaces in addition to 1 commercial vehicle space.

The proposed conversion to four units would require a maximum of 7 spaces (based on number of bedrooms). Therefore, the parking demand for the proposed use will be less than the existing/former use, albeit with a reliance of on-street parking. However, the on-street parking demand will be less than the former use.

It is noted that initial concerns were raised by the Highway Authority in regard to parking. However following discussions with the applicant, it was concluded that having regard to the existing community facility parking requirement, the proposal is not considered to unacceptably impact upon the parking demand in the locality.

Additionally, the site is located within a sustainable location within easy walking distance of local amenities, including good public transport facilities. Moreover the proposal includes provision for secure external cycle parking to be secured by condition (**Condition 4** refers).

Overall it is considered that the proposal would not result in any additional parking demands (based on the existing use) and would provide appropriate provision for cycle parking in a location which is highly sustainable.

Affordable Housing

Policies MG4, MD1 (criterion 4) and MG4 of the LDP require new residential development to support the delivery of affordable housing in areas of identified need, where viable. The Council are aware of the acute need for such provision within the Penarth area, as evidenced in the latest Local Housing Market Assessment (2019).

Policy MG4 of the LDP relating to Affordable Housing, requires all new residential sites in Penarth resulting in a net gain of one or more dwellings to provide an element of affordable housing.

Penarth lies within an area where the requirement is for 40% affordable housing to be provided. Based upon sites of 1-9 dwellings, the Council's Adopted SPG on Affordable Housing (2018) sets out how to calculate the level of off-site contribution.

Based upon a net gain of 4 dwellings, the affordable housing calculation in relation to the proposal is based on the payment of £41,655,60, plus a one bedroom unit on site.

Welsh Government advice contained in "Delivering Affordable Housing Using Section 106 Agreements: A Guidance Update" (2009) makes it clear that development viability is a material consideration in determining planning applications.

LDP Policy MD4 recognises that regard should be given to development viability, and supporting paragraphs 7.29-7.30 advise as follows:

"7.29 Where a developer contends that the Section 106 requirements are too onerous...and will potentially make the scheme unviable, they will be expected to submit a breakdown of the development costs and anticipated profits based on properly sourced evidence. Developers must take account of the necessary planning obligation requirements at an early stage to ensure these are reflected in the land value assumptions. The Council may seek independent verification of these details before considering whether to reduce the number and / or value of planning obligations sought.

7.30 The Council accepts that it may not always be possible for developers to satisfy all the planning obligation requirements. Where this is proven to be the case, the Council will need to consider what the planning obligation priorities will be for that particular development, having regard to the site location and the local needs in the vicinity. This will be considered on a site by site basis having regard to the statutory tests. The Welsh

Government has advised that, in such circumstances, affordable housing should be the priority once sufficient infrastructure to enable the scheme to proceed has been made available”

The adopted Affordable Housing SPG states under para 7.1.2:

7.1.2. In line with the above advice, the Council will normally expect developments to deliver affordable housing on development sites, usually in the form of units built for and transferred to the Council or a Registered Social Landlord. LDP Policy MG4 specifies this to be required unless exceptional circumstances are demonstrated as to why this cannot be achieved, such as:

- *Insurmountable development viability issues caused or exacerbated by the affordable housing requirements;*

Chapter 8 of the Affordable Housing SPG provides further guidance with regard to the assessment of development and reviewing viability appraisals. The Council accepts that there may be sites, which may not be viable, due to site specific constraints, high abnormal build costs, and lower gross development values. Therefore in accordance with the above policy, and guidance set out within the SPGs, the applicant has submitted information in relation to the build/conversion costs and the likely value of the property once completed. The information submitted include a detailed bill of quantities, including valuations from estate agents and quotes from builders. The viability appraisal demonstrates that the payment of the Affordable Housing contribution would render the scheme unviable with the provision of an on-site affordable housing unit and off-site contribution.

It is noted that the viability assessment was amended to convey the amendments made to the VAT scheme. However, following the reduction in VAT the profit from the development remained below an acceptable profit margin (generally in the region of 15-20%), at below 10% excluding the affordable housing requirements.

The viability appraisal has been assessed by the Councils Quantity Surveyor and Estates Team who are satisfied that the inputs are reasonable. The results of assessment show that based upon the projected sales values and build costs. There would not be sufficient viability in the project to meet the affordable housing obligations.

Officers are satisfied that the developer has demonstrated that based on the particulars of the development costs and comparable sales values, that on-site provision of an Affordable Housing unit and an Affordable Housing Contribution would render the development unviable. As such, the requirement to meet the Affordable Housing obligations or even any reduced level of contribution, would be unreasonable in this case. Whilst the development does not meet the affordable housing policy requirements due to viability, the development is still considered acceptable, given the need and demand for general market housing in this area.

RECOMMENDATION

APPROVE subject to the following condition(s):

1. The development shall begin no later than five years from the date of this decision.

Reason:

To comply with the requirements 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:

CVV6/3/b - Lower Ground Floor Proposed - Received 20/10/20

CVV6/4/a - Proposed Ground Floor Plan - Received 27/02/20

CVV6/5/a - Proposed Elevations - Received 27/02/20

Proposed Section Plan - Received 18/08/20

CVV6/6 - Site plan - Received 20/10/20

CVV6/1 - Site Location Plan - Received 20/10/20

Reason:

For the avoidance of doubt as to the approved development and to accord with Circular 016:2014 on The Use of Planning Conditions for Development Management.

3. Any part of the rear elevation ground floor (first floor when viewed at rear) windows (lounge kitchen window and bedroom window serving Flat 1) that are below 1.7m in height above the level of the floor in the room that it serves shall be obscurely glazed to a minimum of level 3 of the "Pilkington" scale of obscuration and fixed pane at the time of installation, and so retained at all times thereafter.

Reason:

To ensure that the privacy and amenities of adjoining occupiers are safeguarded, and to ensure compliance with Policies SP1 (Delivering the Strategy) and MD2 (Design of New Developments) of the Local Development Plan.

4. The development shall not be occupied until the bin store and Sheffield cycle stands have been provided as in accordance with the approved plan CVV6/3/b - Lower Ground Floor Proposed - Received 20/10/20 and they shall be retained in perpetuity.

Reason:

To ensure that satisfactory parking for cycles and bin storage facilities are provided on site to serve the development, and to ensure compliance with the terms of Policies SP1 (Delivering the Strategy), MD1 (Location of New Development) and MD2 (Design of New Developments) of the Local Development Plan.

REASON FOR RECOMMENDATION

The decision to recommend planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the

Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026.

Having regard to Policies SP1 – Delivering the Strategy, MD1 - Location of New Development, MD2 - Design of New Development and MD5 – Development within Settlement Boundaries, of the Vale of Glamorgan Adopted Local Development Plan 2011-2026 and the advice contained within the Council's Supplementary Planning Guidance on Residential and Householder Development, Planning Obligations and Affordable Housing, Planning Policy Wales 10th Edition and Technical Advice Note 12 – Design (2016), the proposal is considered acceptable in terms of its scale, design, impact on neighbours and amenity space provision and parking.

It is considered that the decision complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well-being of Future Generations (Wales) Act 2015.

The appropriate marine policy documents have been considered in the determination of this application in accordance with Section 59 of the Marine and Coastal Access Act 2009.

NOTE:

Please note that this consent is specific to the plans and particulars approved as part of the application. Any departure from the approved plans will constitute unauthorised development and may be liable to enforcement action. You (or any subsequent developer) should advise the Council of any actual or proposed variations from the approved plans immediately so that you can be advised how to best resolve the matter.

In addition, any conditions that the Council has imposed on this consent will be listed above and should be read carefully. It is your (or any subsequent developers) responsibility to ensure that the terms of all conditions are met in full at the appropriate time (as outlined in the specific condition).

The commencement of development without firstly meeting in full the terms of any conditions that require the submission of details prior to the commencement of development will constitute unauthorised development. This will necessitate the submission of a further application to retain the unauthorised development and may render you liable to formal enforcement action.

Failure on the part of the developer to observe the requirements of any other conditions could result in the Council pursuing formal enforcement action in the form of a Breach of Condition Notice.



DTB DESIGN
 TEMPLE COURT 13a CATHEDRAL ROAD
 CARDIFF CF11 9HA
 TEL 029 2035 0365

TO PLANNING STAGE ONLY		
REVISIONS	DATE	REVISIONS

**DEVELOPMENT AT
 4 ARCOT STREET
 PENARTH**

DATE FEB 2020 PLAN NO. CVV616

SITE PLAN 1:500 at A3

2020/00511/FUL Received on 29 June 2020

APPLICANT : Mr. Ryan Pen Trading Ltd, Beachcliff Fish and Chips, Unit 4, The Esplanade, Penarth, Vale of Glamorgan, CF63 3AS

Agent : Ms. Carolyn Jones Carolyn Jones Planning Services, 58, Lyric Way, Thornhill, Cardiff, CF14 9BP

Unit 4, Beachcliff, The Esplanade, Penarth

Variation of Condition 8 of Planning Permission Reference: 2013/00629/FUL to allow the takeaway element of the business to continue to operate from the premises, and the regularisation of outstanding conditions from that consent

REASON FOR COMMITTEE DETERMINATION

The application is required to be determined by Planning Committee under the Council's approved scheme of delegation because the application has been called in for determination by Cllr B Gray due to concerns relating to the impact of the use on the amenity of nearby occupiers.

EXECUTIVE SUMMARY

The application site relates to the Unit 4 of the recently re-furnished Beachcliff building on the Esplanade, Penarth.

This is a retrospective Section 73 application to vary planning permission ref. 2013/00629/FUL to allow for Unit 4, Beachcliff Fish and Chips, to operate with a takeaway facility.

The relevant part of the existing condition limits the 5 A3 (Food and Drinks) units at Beachcliff as follows: *The units indicated as commercial uses for purposes falling within class A3 (Food and Drink) of the Town and Country Planning (Use Classes) Order 1987 as amended shall not be used for purposes of a takeaway unless the Local Planning Authority give prior written consent.*

The takeaway operation has been taking place at this site since early spring 2020 and a total of 30 letters of objection have been received. These principally raise concerns in respect to highway safety, litter and the odour being produced from the premises. A number of other concerns are also raised.

The Highways Officer's opinion is that the proposals *would not have a material impact along the adjacent highway. Furthermore* an upgraded extraction system was installed at the site and on assessment of the details of this new system, SRS have confirmed that the fume extraction system that exists at Beachcliff Fish and Chips is acceptable. In addition to the requirement to provide refuse bins on site, the application is recommended for approval subject to conditions.

Details have also been submitted pursuant of regularising a number of conditions that relate to planning permission ref. 2013/00629/FUL. These have no material impact on the assessment of the takeaway and relate to the whole Beachcliff building.

order amending revoking or re-enacting that order, the A3 uses hereby approved shall not be changed to any other permitted use.

Reason:

To control the precise nature of the use of the site in the interests of highway safety and to ensure compliance with the terms of Policy ENV27 of the Unitary Development Plan.

It is proposed to vary the planning permission by amending the original condition number 8 above (now **condition 3**) to permit take-away from Unit 4 only.

In addition, a number of the conditions attached to planning permission 2013/00629/FUL (which relate to the whole building and not solely Beachcliff Fish and Chips) required that details be submitted to and approved in writing by the Vale of Glamorgan Council. Details were not received for four of these conditions and therefore they were never formally discharged, namely:

- Condition 3, which related to the details of the shopfront;
- Condition 5, which related to fume extraction;
- Condition 7, which related to the external materials used on the building; and
- Condition 10, which related to the architectural details on the building.

Details have been submitted as a part of this application in relation to these conditions. This allows these outstanding conditions to be regularised through this consent.

PLANNING HISTORY

There is an extensive planning history at this site, which predominantly relates to the building that existed previously at this site. These applications can be viewed on the Vale of Glamorgan planning register. The planning history relevant to this application is as follows:

2010/01030/FUL, Address: Beach Cliff, The Esplanade, Penarth, Proposal: 4 Residential Units, Restaurant/Cafe and D2 Assembly and Leisure Use, Decision: Approved

2013/00629/FUL, Address: Beach Cliff, The Esplanade, Penarth, Proposal: Application for Change of Use from approved Use Class D2 (Gym) to Use Class A3 (Restaurant) on Ground Floor; Change of Use from Use Class C3 (Residential Unit) to Use Class C1 (Hotel) on a section of First, Second and Third Floor., Decision: Approved

2014/00070/FUL, Address: Beach Cliff, The Esplanade, Penarth, Proposal: Development of five residential units for previously approved refurbishment of Beach Cliff, Penarth, Decision: Approved

CONSULTATIONS

Penarth Town Council were first consulted on the 29th of May 2020 and responded with no objection, stating the following:

No objection to the takeaway facility considering the current use as a fish and chip restaurant and its siting within a predominantly commercial area. However, the Planning Officer would need to ensure that the residential amenity of any neighbouring residents is not detrimentally affected by cooking odours which has not been addressed as part of this application. PTC would also like to note the potential refuse generated by all outlets conducting takeaway services on the Esplanade

Penarth Town Council were re-consulted on the 29th of June 2020 (following receipt of an amended site plan) and responded with an objection, stating the following:

Objection, due to the effects on the neighbouring residents e.g. cooking odours, increased refuse generated, and increased activity on the Esplanade later in the evening.

Highway Development was first consulted on the 28th of May 2020 and responded with no objection, stating the following:

Having fully considered the proposal, the location of The Esplanade is in an urban (Zone B) location. There is good access to public transport and there is short stay free parking (2 hours) located along The Esplanade. Additionally, the existing parking requirements/allowance for the premises, could mean that this proposal would have a minimal increase in parking requirements. The councils SPG – Parking Standards indicates that for this proposal the site should be complete with 1 commercial vehicle space, 1 space per 3 non-resident staff and based on the floor area, 4 customer parking spaces.

Therefore, based on the above the highway authority has no objection to the proposal.

Highway Development was re-consulted on the 29th of June 2020 (following receipt of an amended site plan) and responded with no objection, stating the following:

The Highway Authority has now reviewed the above planning application and would comment as follows

Considering the existing parking requirements for the restaurant and a sea front resort location with availability of short stay free parking (2 hours) along Esplanade, the proposal for a takeaway element would not have a material impact along the adjacent highway. Therefore, the highway authority would raise no objections in relation to this proposal.

Shared Regulatory Services (Pollution) were first consulted on the 28th of May 2020 and responded with the following comments:

In regards to the above application I have received several complaints from local residents concerning the cooking odours emanating from the premises. In light of these complaints I will require the applicant to supply me with details of the current odour abatement system they have in place before I can formally comment on this application.

Shared Regulatory Services (Pollution) were re-consulted on the 29th of June 2020 (following receipt of an amended site plan) and responded with an objection, stating the following:

In regards to the above application I have reviewed the information provided and I am not satisfied that the system employed is suitable for the current undertaking as a Fish and Chip shop. There are no details as to the control of odour from the cooking processes involved which are classed as high intensity cooking. A typical system in most food business establishments that deal with Fish and Chips would have a grease trap followed by pre filters and then odour abatement system/deodoriser such as carbon filters, or ESP to eliminate or reduce odours as a result of the cooking involved.

Several complaints have been made to our department and to the planning department regarding the cooking odours affecting residents at their homes and I myself have been out and witnessed the odours outside the premises and across the road. In my opinion the system needs to be looked at again with the view of adding an odour abatement system into the current extraction unit to reduce the level of odour.

When looking at fitting or amending an extraction system the applicant should look at the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust systems 2005 which sets out the most suitable system to be employed to reduce odours from high intensity cooking. It was also noted during my visit that the roof termination point is horizontal which could allow odour from the flue to dissipate at low levels where residential properties are located. Ideally the flue should be vertical and high enough to allow enough air dispersal and dilution of any odours away from residential properties

In order for this department to be satisfied that the odour can be controlled sufficiently the applicant will need to look at implementing some form of odour control in which the current system does not have in place at the moment.

Following the upgrading of the fume extraction systems, **Shared Regulatory Services** provided the following comments, identifying that they were satisfied with the installed systems, on the 11th of August 2020 and the 15th of October 2020, respectively:

11th of August 2020: Having spoken to the installer and seen the information of the installed system, I am satisfied that the applicant has done what I have asked for by having the 2 x pre filters and carbon filtration units added to the existing flue to reduce the level of the odours from the cooking process.

15th of October 2020: In regards to the system employed and the information that the agent and the installers have supplied I am happy with the current system in place. However complaints have still been received about the odour in which I am investigating under the EPA 190 remit.

Shared Regulatory Services also provided the following comments regarding the details submitted in relation to the extraction systems at units 1, 2, 3 and 5: Shared Regulatory Services:

Having looked at the application and the information supplied regarding the extraction system I am satisfied that it is sufficient for the activities to be undertaken at the food premises in relation to units 1, 2, 3 and 5

Contaminated Land, Air & Water Quality were first consulted on the 28th of May 2019 and re-consulted on the 29th of June 2019. No representations have been received at the time of writing.

Plymouth Ward Members were consulted on the 28th of May 2019 and Cllr Gray responded, requesting that the application be called in to planning committee, if the application is recommended for approval. Cllr Gray added the following comments (as summarised):

There is considerable weight to the argument that there is an unneighbourly aspect to the manner of the take away operation and a benefit in debating how relevant a prior business which primarily did ice creams as a comparison.

The reason for the site visit is owing to the affect it is having on the surrounding area which members can gather from a site visit.

The Plymouth Ward Members were re-consulted on the 29th of June 2020 (following receipt of an amended site plan) and no further correspondence was received.

Waste Management were consulted on the 25th of June 2020 and responded with the following comments (as summarised):

Litter and fast food waste has increased and has impacted on the frequency we have had to empty the bins. There have also been complaints fish and chip related waste from Cllr Thomas and overflowing bins.

I agree that it comes with the environment and typically its waste from a seaside resort (and something we probably want to see on a seaside esplanade) but I think we should insist that they put out a waste receptacle outside their shop whilst trading and that waste form part of their commercial waste that they are responsible for. Other than that we would rely on members of the public to use the litter bins and an increase in food wrapping is something that would be expected from this business.

The Conservation Officer was also consulted and responded with the following comments:

Turning first to the issue of the change of use. I am satisfied that this will have no adverse impact on the character or appearance of the conservation area and have no objection to this element of the proposal.

Secondly, the original consent had a number of conditions which I understand were not formally discharged. [...] I am satisfied that the details submitted will preserve the County Treasure and the character and appearance of the conservation area.

REPRESENTATIONS

The neighbouring properties were first consulted on the 29th of May 2020 and were re-consulted on the 29th of June 2020 (following receipt of an amended site plan). Site notices were also displayed at the site on the 24th of June 2020 and the 15th of July 2020. At the time of writing, 30 letters of representation have been received from the surrounding neighbours. The following comments were received (as summarised), raising concerns:

- The odours that the fish and chip shop produce are unacceptable and this is exacerbated by the front windows of the shop being left open
- The extraction system in place is inadequate
- The front windows should not be allowed to open for health and safety reasons
- The business has put up metal fencing around the car parking spaces in front of it, stopping cars from parking
- The barriers are creating a narrow choke point on the pavement
- The barriers and number of customers is creating highway safety problems
- The delivery service will increase the volume of traffic on the Esplanade and will result in additional nuisance due to noise
- Barrels have been placed in the road, blocking off parking spaces
- The signage and advertisement at the site is unacceptable and negatively impacts visual amenity
- The litter that is being produced is negatively impacting the character of the area and has attracted vermin, which are a nuisance
- The Fish and Chip Shop attracts anti-social behaviour, especially when alcohol is sold from the premises
- Customers are defecating in public
- There are points in the applications supporting statement that are contested, namely: the impact on residential amenity and the number of residences in the locality; the intensity of previous takeaway uses from this site; and the manner in which the front of the building has been represented (with the windows closed)
- Late opening hours are causing a disturbance and are out of keeping with the activity of the locality
- The volume of customers means that the Esplanade is constantly occupied, with all of the benches full and some sitting on curbs
- There is not enough seating in the locality
- The beaches, which are Sites of Specific Scientific Investigation, Special Protection Areas and RAMSAR sites are being littered on
- There is already a fish and chip shop at the pier and other premises that offer takeaways. The proliferation of these is negative for the locality
- People are not taking their takeaway away like they would normally, they are eating it at the Esplanade
- It has had an adverse impact on the character of the area and conservation area
- Constant opening hours throughout the day means that people converge on the Esplanade and beach, which is not good in the current pandemic
- This application is seeking to take advantage of the lessening of restrictions due to the pandemic
- The delivery service will increase the volume of traffic on the Esplanade and will result in additional nuisance due to noise
- The owners may want to operate a 24 hour fish and chip shop in the future

- The takeaway service was intended from the offset and did not start after the pandemic begun

REPORT

Planning Policies and Guidance

Local Development Plan:

Section 38 of The Planning and Compulsory Purchase Act 2004 requires that in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026, which was formally adopted by the Council on 28 June 2017, and within which the following policies are of relevance:

Strategic Policies:

POLICY SP1 – Delivering the Strategy
POLICY SP10 – Built and Natural Environment

Managing Development Policies:

POLICY MD2 - Design of New Development
POLICY MD5 - Development within Settlement Boundaries
POLICY MD7 - Environmental Protection
POLICY MD8 – Historic Environment

In addition to the Adopted LDP the following policy, guidance and documentation supports the relevant LDP policies.

Planning Policy Wales:

National planning policy in the form of Planning Policy Wales (Edition 10, 2018) (PPW) is of relevance to the determination of this application.

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales.

Technical Advice Notes:

The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:

- Technical Advice Note 24 – The Historic Environment (2017)

Welsh National Marine Plan:

National marine planning policy in the form of the Welsh National Marine Plan (2019) (WNMP) is of relevance to the determination of this application. The primary objective of

WNMP is to ensure that the planning system contributes towards the delivery of sustainable development and contributes to the Wales well-being goals within the Marine Plan Area for Wales.

Supplementary Planning Guidance:

In addition to the adopted Local Development Plan, the Council has approved Supplementary Planning Guidance (SPG). Some SPG documents refer to previous adopted UDP policies and to ensure conformity with LDP policies, a review will be carried out as soon as is practicable following adoption of the LDP. The Council considers that the content and guidance of the adopted SPGs remains relevant and has approved the continued use of these SPGs as material considerations in the determination of planning applications until they are replaced or otherwise withdrawn. The following SPG are of relevance:

- Parking Standards (2019)
- Penarth Conservation Area
- Penarth Conservation Area Appraisal and Management Plan

Other relevant evidence or policy guidance:

- Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management
- Section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, imposes a duty on the Council with respect to any buildings or other land in a conservation area, where *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*

Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Issues

The principal issues to consider when assessing the variation of planning permission ref. 2013/00629/FUL to allow for a takeaway facility to operate from Beachcliff Fish and Chips are: the impact on highway safety; the character of the locality and the conservation area; and the environmental quality of the locality including impacts on nearby residential properties.

Highway Safety

The condition attached to planning permission ref. 2013/00629/FUL that restricted a takeaway specifically refers to highway safety as its reason.

The locality surrounding the application site is served by local public transport (service 88 Penarth to Barry, and 89b Penarth to Cardiff and Llandough daytime services) and is within walking and cycling distance to many living in the area.

The Parking Standards SPG identifies that there should be (a maximum of) one commercial space allocated for hot food takeaways. There are no allocated car parking spaces in the locality for any commercial units. However, there is an adequate supply of short stay car parking spaces in the locality and to the front of the application site. Considering that the existing use, without a takeaway element, demands a certain amount of car parking, it is not envisaged that the takeaway element would exacerbate this demand. It is likely that many customers will have travelled to the Esplanade as it is a destination and, therefore, their use of the fish and chip shop will likely be incidental. When this is not the case, there will most likely be a quick turnover of parking space provision, as customers collect their food then leave the locality.

In response to this application, the Highways Department have identified that the site meets the parking standards for such a use and are content that the use as a takeaway will have no material impact on the adjacent highway. Therefore, it is considered that the takeaway operation is acceptable in terms of its impacts on car parking provision.

It is noted that instances of parking spaces being blocked off were reported during the Covid-19 lockdown. It is understood that the applicant has been in liaison with the Highways Department as to whether this is acceptable and when it can take place. The Highways Department / Police have the powers to action against these activities if they result in highways safety issues. This is not considered to be material to the determination of this planning application.

Impact on Residential Amenity

A number of letters of objection have been received from local residents as set out above and issues of litter and odour are considered below. In terms of general impacts on residential amenity arising from allowing a take-away use rather than a restricted A3 restaurant use, it is necessary to consider what affect that change will cause. This change would primarily result in a potential for increased patronage to the site and changing customer behaviour in terms of arriving for take-away collection rather than eating in (which could potentially increase traffic flow and demand for very short-term parking but reduce demand for longer-stay parking). These changes are not considered to significantly alter the impacts on residential amenity in the area. Whilst there may be increased 'comings and goings' it must be acknowledged that this is already a mixed residential / commercial / tourism location with a degree of activity you would expect in such an area. Permitting a take-away use is therefore unlikely to have a significantly harmful effect on residential amenity.

Character of the Conservation Area and Locality

In conducting a character analysis, The Penarth Conservation Area Appraisal and Management Plan identifies the Esplanade as an *attractive destination*. The locality is characterised by its mixture of uses, with a number of A3 uses attracting visitors and enhancing the vibrancy of the area. It is not considered that the takeaway use is out of keeping with this character and this view is maintained by the Conservation Officer.

Waste / Litter

It is accepted that a takeaway use may result in an increase in waste and possibly litter at or near the site. The Waste Management Team have stated that refuse bins should be provided at the site. The applicant has identified that they have 5 refuse bins at the site when they operate and it is considered that these, along with the Council owned bins, provide sufficient coverage to deal with the waste created by this site, which can be secured by way of planning condition (**Condition 5** refers).

Odours and fume extraction

It is noted that significant public concern has been raised in relation to the odours being produced by the application site and the harm that this has on the amenity of nearby occupiers. However, odours would be produced when the unit operated without a takeaway function, as an A3 restaurant, in accordance with its existing planning permission. Therefore, whether or not a takeaway function exists would not directly impact upon whether or not odours are produced from the application site and it would be unreasonable to object to these proposals on this basis.

Notwithstanding this, condition 5 of the 2013 consent did require the submission and approval of extraction details, however no details were ever submitted.

In respect of the extraction system that was originally installed. Shared Regulatory Services were not satisfied that the odour was being controlled sufficiently and requested that the applicant implements some form of odour control. It was requested that the extraction system be improved and regularised through this consent. An upgraded extraction system was installed at the site and on assessment of the details of this new system, SRS have confirmed that the fume extraction system that exists at Beachcliff Fish and Chips is acceptable. However it is necessary ensure that the extraction system is both retained and maintained to ensure continued effective odour control, which shall be secured by way of planning condition (**Condition 6** refers).

This application relates to the takeaway operation of the approved A3 use, and it is not considered necessary to ensure by condition that the windows to the front of the units are permanently closed, as this has not been recommended by SRS. In respect of the public requests to limit the operating hours of the A3 restaurant use, whilst the authority could limit the operating hours of the takeaway, this has not been recommended by SRS and is not considered to be warranted in this case.

Outstanding conditions

The outstanding conditions from planning permission ref. 2013/00629/FUL related to the whole of the Beachcliff building. They related to details in respect of shopfronts; fume extraction; external materials on the building; and architectural detailing on the building.

In relation to the fume extraction, SRS have confirmed that the systems in place at Units 1, 2, 3 and 5 are satisfactory. Following a request to improve the systems at Unit 4, they are also now at an acceptable standard.

The shopfronts, external materials and architectural detailing are of a high standard that reflect the design and style of the Victorian building that previously existed in place of the current one. These views are supported by those of the Conservation Officer.

Accordingly, the details that have been submitted are acceptable and can regularise the outstanding conditions.

Other Matters

The following statements are made in relation to the representations made by the public that have not been addressed in the paragraphs above:

- Any acts of anti-social behaviour or public defecation should be reported to the Police and are not relevant to the assessment of this planning application
- It would be unreasonable to object to these proposals on the basis that this business attracts a lot of custom. The Esplanade is a tourist destination and the services present there cater for that demand
- The Council cannot object to these proposals on the basis that there are other fish and chip shops in the locality
- Whether or not customers consume their purchase in the locality of Beachcliff Fish and Chips or not is not a material planning consideration
- A banner previously existed at the site, which had been displayed without advertisement consent, which has now been removed

Section 73 Matters

As this is a section 73 application to vary a condition of planning permission 2013/00629/FUL granting this application will be a 'new' planning permission for the whole development. It is therefore necessary to re-impose any of the original conditions of that planning permission that are still reasonably necessary. These are summarised and set out below:

1. Time limit – no longer necessary.
2. Details of a scheme for the drainage of the site – discharged in February 2014, condition no longer necessary.
3. Further details of the proposed shopfront, fascias, pilasters, awnings and window surrounds – acceptable details submitted with this application, condition replaced by Plans conditions **(No.1)**.
4. Parking scheme – already implemented. Condition no longer necessary.
5. Details of fume extraction and noise attenuation for the site shall be submitted to and approved in writing by the Local Planning Authority – acceptable details submitted with this application, condition replaced by Plans conditions **(No.1)** and additional **Condition 6**.

6. Any new means of enclosure, including any gates or piers, associated with the development hereby approved shall be in accordance with a scheme which shall have first been submitted to and approved in writing by the Local Planning Authority, prior to their erection or construction on site. Notwithstanding the terms of the Town and Country Planning (General Permitted Development) Order 1995 or any order amending ,revoking, or re-enacting that order the approved means of enclosure shall not be replaced with any alternative enclosure, gate or pier without the prior written consent of the Local Planning Authority.

Reason:

To safeguard local visual amenities, and to ensure compliance with the terms of Policies ENV17, ENV20 and ENV27 of the Unitary Development Plan.

This condition is still necessary and is recommended to be re-imposed with an updated reason **(No.2)**

7. Details of materials, for all external areas and for any retaining works or walls Authority – acceptable details submitted with this application, condition replaced by Plans conditions **(No.1)**.
8. The units indicated as commercial uses for purposes falling within class A3 (Food and Drink) of the Town and Country Planning (Use Classes)Order 1987 as amended shall not be used for purposes of a takeaway unless the Local Planning Authority give prior written consent. Notwithstanding the terms of the Town and Country Planning (General Permitted Development) Order 1995 Part 3, or any order amending revoking or re-enacting that order, the A3 uses hereby approved shall not be changed to any other permitted use.

Reason:

To control the precise nature of the use of the site in the interests of highway safety and to ensure compliance with the terms of Policy ENV27 of the Unitary Development Plan.

This condition is still necessary as amended to allow takeaway use at Unit 4 and is recommended to be re-imposed with an updated reason **(No.3)**

9. Details of a method statement for the restoration of the building referred to as Porters Lodge / Nook – acceptable details previously submitted, condition no longer required.
10. Details of technical architectural elements (various) – acceptable details submitted with this application, condition replaced by Plans conditions **(No.1)**.
11. There shall be no use of adhesive film or vinyl graphics sheets as a form of window treatment on any of the new ground floor front windows at any time and a window display shall be provided at all times unless the Local Planning Authority give written consent to any variation.

Reason:

To avoid the creation of a 'dead frontage' and to ensure compliance with Policies ENV17, ENV20 and ENV23 of the Unitary Development Plan.

This condition is still necessary and is recommended to be re-imposed with an updated reason (**No.4**)

Other conditions relating to this application are also recommended below.

RECOMMENDATION

APPROVE subject to the following condition(s):

1. The development shall be retained in accordance with the following approved plans and documents:

- CAJ/2020/40Q-01/B, Site Location Plan, Received 16/10/20
- Floor Plan of Unit 4, Received 19/05/20

Drainage Details

- GP-DMI-STD-2 Product Data Sheet, Received 10/08/20

Architectural Details/ Windows and Doors Details/ Shop Front Details/ External Materials Details

- Beachcliff Outstanding Planning Conditions (1), Received 10/08/20
- External Window/Door Schedule 01 08 05 (1), Received 10/08/20
- C_AC004 (A), New Shop Fronts (Ground Floor), Received 12/08/20
- C_AC005 (A), New Shop Fronts/Doors (Ground Floor), Received 12/08/20
- C AC006, Condition 5 (New Shop Fronts), Received 12/08/20
- C_AD431, Exterior Wall (Brickwork Coursing), Received 12/08/20
- C_AD443, Section Detail (Apron Roof above Bay Window), Received 12/08/20
- C_AD445, Typical Chimney Section Plan and Elevation, Received 12/08/20
- C_AD453, (A) Section Detail (Setting out Blockwork), Received 12/08/20
- C_AD459, Section Details (Head Detail 2nd Floor Bay Win), Received 12/08/20
- C_AD462, Section Detail (Head Detail 2nd Floor Flush Win), Received 12/08/20
- C_AD468, Section Detail (Flat Roof Above 1st Floor Bay Windows), Received 12/08/20
- C_AD469, Section Gable (Gable Ridge G/L 4/8), Received 12/08/20
- C_AD472, Detail Section (Roof Ridge), Received 12/08/20
- C_AD474, Detail Section (Roof Valley), Received 12/08/20
- AS615 (A), Section C-C (Hotel Service Core), Received 12/08/20

Fume Extraction Details

- 303.1392.005 (C), ELEVATION F-J, Received 03/09/20
- DE-008, Item 12.03 Air Replacement Canopy, Received 03/09/20
- Quote Letter dated 02/09/20, Received 03/09/20
- 303.1392.001, Ground Floor General Arrangement Layout, Received 03/09/20
- 303.1330.000, Ground Floor Catering Design Layout Issue, Received 10/08/20
- Scope of Works Carried Out, Received 05/08/20

Reason:

For the avoidance of doubt as to the approved development and to accord with Circular 016:2014 on The Use of Planning Conditions for Development Management.

2. Any new means of enclosure, including any gates or piers, associated with the development hereby approved shall be in accordance with a scheme which shall have first been submitted to and approved in writing by the Local Planning Authority, prior to their erection or construction on site. Notwithstanding the terms of the Town and Country Planning (General Permitted Development) Order 1995 or any order amending ,revoking, or re-enacting that order the approved means of enclosure shall not be replaced with any alternative enclosure, gate or pier without the prior written consent of the Local Planning Authority.

Reason:

To safeguard local visual amenities, and to ensure compliance with the terms of Policies MD2 (Design of New Development, MD5 (Development within Settlement Boundaries) and MD8 (Historic Environment) of the adopted Local Development Plan.

3. With the exception of Unit 4 (identified shaded green on plan ref. CAJ/2020/40Q-01/B Site Location Plan, Received 16/10/20) the units indicated as commercial uses for purposes falling within class A3 (Food and Drink) of the Town and Country Planning (Use Classes) Order 1987 as amended shall not be used for purposes of a takeaway unless the Local Planning Authority give prior written consent. Notwithstanding the terms of the Town and Country Planning (General Permitted Development) Order 1995 Part 3, or any order amending revoking or re-enacting that order, the A3 uses hereby approved shall not be changed to any other permitted use.

Reason:

To control the precise nature of the use of the site in the interests of highway safety and to ensure compliance with the terms of Policy MD5 (Development within Settlement Boundaries) of the Local Development Plan.

4. There shall be no use of adhesive film or vinyl graphics sheets as a form of window treatment on any of the new ground floor front windows at any time and a window display shall be provided at all times unless the Local Planning Authority give written consent to any variation.

Reason:

To avoid the creation of a 'dead frontage' and to ensure compliance with Policies MD2 (Design of New Development), MD5 (Development within Settlement Boundaries) and MD8 (Historic Environment) of the adopted Local Development Plan.

5. 5 refuse bins shall be sited to the front of Unit 4 (Identified shaded green on plan ref. CAJ/2020/40Q-01/B Site Location Plan, Received 16/10/20), as stated in the email received from Carolyn Jones (Agent) dated 28/06/20 at all times when that unit is operating as a takeaway.

Reason:

To protect the environmental quality of the locality and comply with the requirements of Policy MD5 (Development within Settlement Boundaries) of the adopted Local Development Plan.

6. The fume extraction systems identified in plans and documents ref.:

- 303.1392.005 (C), ELEVATION F-J, Received 03/09/20
- DE-008, Item 12.03 Air Replacement Canopy, Received 03/09/20
- Quote Letter dated 02/09/20, Received 03/09/20
- 303.1392.001, Ground Floor General Arrangement Layout, Received 03/09/20
- 303.1330.000, Ground Floor Catering Design Layout Issue, Received 10/08/20
- Scope of Works Carried Out, Received 05/08/20

shall be maintained and retained on site at all times.

Reason:

To mitigate the impact of smells and odours on surrounding occupiers and comply with the requirements of Policy MD5 (Development within Settlement Boundaries)

REASON FOR RECOMMENDATION

The decision to recommend planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026.

Having regard to Policies SP1 Delivering the Strategy, SP10 Built and Natural Environment, MD2 Design of New Development, MD5 Development within Settlement Boundaries, MD7 Environmental Protection and MD8 Historic Environment, as well as guidance contained within the Parking Standards SPG and Planning Policy Wales Edition 10, these proposals are considered acceptable in respect of their impact on highway safety, the character of the locality and conservation area and the environmental quality of the locality.

It is considered that the decision complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well-being of Future Generations (Wales) Act 2015.

The appropriate marine policy documents have been considered in the determination of this application in accordance with Section 59 of the Marine and Coastal Access Act 2009.

NOTE:

Please note that this consent is specific to the plans and particulars approved as part of the application. Any departure from the approved plans will constitute unauthorised development and may be liable to enforcement action. You (or any subsequent developer) should advise the Council of any actual or proposed variations from the approved plans immediately so that you can be advised how to best resolve the matter.

In addition, any conditions that the Council has imposed on this consent will be listed above and should be read carefully. It is your (or any subsequent developers) responsibility to ensure that the terms of all conditions are met in full at the appropriate time (as outlined in the specific condition).

The commencement of development without firstly meeting in full the terms of any conditions that require the submission of details prior to the commencement of development will constitute unauthorised development. This will necessitate the submission of a further application to retain the unauthorised development and may render you liable to formal enforcement action.

Failure on the part of the developer to observe the requirements of any other conditions could result in the Council pursuing formal enforcement action in the form of a Breach of Condition Notice.

2020/00881/FUL Received on 26 August 2020

APPLICANT : Jill Lias 98, South Road, Sully, Vale of Glamorgan. CF64 5SN

AGENT : Jill Lias 98, South Road, Sully, Vale of Glamorgan. CF64 5SN

98, South Road, Sully

Retention of fence adjacent to South Road

REASON FOR COMMITTEE DETERMINATION

This application is reported to Planning Committee under the Council's approved scheme of delegation because the report contains a dual recommendation including planning enforcement action in the form of a Planning Enforcement Notice, which is outside the scheme of delegated powers.

EXECUTIVE SUMMARY

This retrospective planning application relates to a fence erected adjacent to the highway on South Road, Sully, which exceeds 1m in height and therefore requires planning permission. The principal issue to consider is the impact of the fencing on the character and appearance of the street scene and the application site.

It is recommended that the planning application be REFUSED and that PLANNING ENFORCEMENT ACTION BE AUTHORISED in order that a planning enforcement notice may be pursued to remedy the breach of planning control that is considered to have an unacceptably negative impact on the visual amenities of the locality and the application site. In addition, in the event of non-compliance with the enforcement notice, authorisation is also sought to take such legal action that may be required.

SITE AND CONTEXT

The application site relates to 98, South Road, a dormer bungalow located within the Sully Settlement Boundary. The surrounding street scene is characterised by dwellings of a varying design and appearance. South Road is the principal route through Sully and whilst it is predominantly residential, a number of commercial and community facilities also exist on it. The fronts of sites are generally enclosed by either natural features such as hedges, or low walls and fences.

DESCRIPTION OF DEVELOPMENT

This is a full application for the retention of a front boundary fence. The fence is 10 metres in length and 1.8 metres in height. The fence was installed in 2019 in place of a hedge that previously demarcated the front boundary. The fence can be seen in the photograph below:



It should be noted that planning permission is not being sought for the retention of the gate on the right hand side of the above image (and in photograph below from 2008). It has been evidenced that this has been in situ for over four years, and it is therefore exempt from planning control.



PLANNING HISTORY

1999/00855/FUL, Address: 98, South Road, Sully, Proposal: Alter existing flat part of roof to an apex and completely re-tile new and existing roof, Decision: Approved

2006/01043/FUL, Address: 98, South Road, Sully, Proposal: Rear ground floor extension and side garage, Decision: Approved

CONSULTATIONS

Sully Community Council were consulted on the 3rd of September 2020 and responded with no objection.

Sully Ward Members were consulted on the 3rd of September 2020 and no representations have been received at the time of writing.

REPRESENTATIONS

The neighbouring properties were consulted on 3 September 2020 and no representations have been received at the time of writing.

REPORT

Planning Policies and Guidance

Local Development Plan:

Section 38 of The Planning and Compulsory Purchase Act 2004 requires that in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026, which was formally adopted by the Council on 28 June 2017, and within which the following policies are of relevance:

Strategic Policies:

POLICY SP1 – Delivering the Strategy

Managing Development Policies:

POLICY MD2 - Design of New Development

POLICY MD5 - Development within Settlement Boundaries

In addition to the Adopted LDP the following policy, guidance and documentation supports the relevant LDP policies.

Planning Policy Wales:

National planning policy in the form of Planning Policy Wales (Edition 10, 2018) (PPW) is of relevance to the determination of this application.

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales.

The following chapters and sections from are of particular relevance in the assessment of this planning application:

Chapter 3 - Strategic and Spatial Choices

- Good Design Making Better Places:

3.9 The special characteristics of an area should be central to the design of a development. The layout, form, scale and visual appearance of a proposed development and its relationship to its surroundings are important planning considerations.

3.16 Planning authorities should through a process of negotiation seek to improve poor or average developments which are not well designed, do not take account of their context and consider their place, or do not meet the objectives of good design. Where this cannot be achieved proposals should be rejected. However, they should not attempt to impose a particular architectural taste or style arbitrarily and should avoid inhibiting opportunities for innovative design solutions. If a decision maker considers that a planning application should not be approved because of design concerns they should ensure that these reasons are clearly articulated in their decision and justified with sufficient evidence. In the event of an appeal, in these circumstances, the Planning Inspectorate will need to examine the issues in detail and consider if the proposal meets the objectives of good design including the relationship between the site and its surroundings.

Technical Advice Notes:

The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:

- Technical Advice Note 12 – Design (2016), specifically the following paragraphs:

2.6 Design which is inappropriate in its context, or which fails to grasp opportunities to enhance the character, quality and function of an area, should not be accepted, as these have detrimental effects on existing communities.

4.5 In many cases an appraisal of the local context will highlight distinctive patterns of development or landscape where the intention will be to sustain character. Appraisal is equally important in areas where patterns of development have failed to respond to context in the past. In these areas appraisal should point towards solution which reverse the trend.

4.8 Appraising “character” involves attention to topography; historic street patterns, archaeological features, waterways, hierarchy of development and spaces, prevalent materials in buildings or floorscape, architecture and historic quality, landscape character, field patterns and land use patterns, distinctive views (in and out of the site), skylines and vistas, prevailing uses and plan forms, boundary treatments, local biodiversity, natural and cultural resources and locally distinctive features and traditions (also known as vernacular elements).

6.16 The appearance and function of proposed development, its scale and its relationship to its surroundings are material considerations in determining planning applications and appeals. Developments that do not address the objectives of good design should not be accepted.

Welsh National Marine Plan:

National marine planning policy in the form of the Welsh National Marine Plan (2019) (WNMP) is of relevance to the determination of this application. The primary objective of WNMP is to ensure that the planning system contributes towards the delivery of sustainable development and contributes to the Wales well-being goals within the Marine Plan Area for Wales.

Supplementary Planning Guidance:

In addition to the adopted Local Development Plan, the Council has approved Supplementary Planning Guidance (SPG). The following SPG is of relevance:

- Residential and Householder Development (2018)

Other relevant evidence or policy guidance:

- Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management
- Section 58 (1) of the Marine and Coastal Access Act places a requirement on the Council to take authorisation decisions in accordance with the appropriate marine policy documents, unless relevant consideration indicates otherwise.

Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Issues

The principle issues to consider when assessing these proposals against the above policy and guidance include the impact of the fence on visual amenities, the character of the locality and the character of the application site.

Visual Impact

Criterion 1 of Policy MD2 of the LDP, Design of New Development requires development to: "*Positively contribute to the context and character of the surrounding built environment*". Criterion 2 of the same Policy states that development should "*Respond appropriately to the local context and character of neighbouring buildings in terms of type, form and scale.*"

Criterion 3 of Policy MD5, Development within Settlement Boundaries states that development will be permitted where it: *“is of a scale, form, layout and character that is sympathetic to and respects its immediate setting and the wider surroundings and does not unacceptably impact upon the character and appearance of the locality.”*

Furthermore, Criterion 6 of Policy SP1 requires: *“protection and enhancement of the built environment.”* These sentiments are supported by the above identified paragraphs from Planning Policy Wales (Edition 10) and TAN12- Design (2016) (above cited extracts in particular).

South Road is the primary route through Sully. The fencing subject to this application forms the front boundary of no.98 and as a result, the fencing is highly prominent and widely visible along South Road.

Boundary treatments in the street scene are generally low or permeable, and they allow for views into front gardens and of the dwellings on South Road. Where views into front gardens do not exist, the front boundary treatment is predominantly a hedge, which was previously the case at the application site. Whilst there is a variance in house design and type along South Road, there is a visually attractive consistency in the openness of front gardens, with views of dwellings and hedges. This is especially the case in the area that immediately surrounds the application site. Therefore, the street scene is characterised by a general openness of front gardens and respective principal elevations; and where views do not exist, mature hedges.

A fence that is similar in design and scale to the fence subject to this application has recently been installed at 108, South Road without the benefit of planning permission. This fence is consequently unauthorised and is subject to a planning enforcement investigation. In view of this, its existence has been given limited weight in the determination of this application.

Views of the front garden and of the dwelling at no.98 did not exist previously due to the existence of a mature hedge that formed the front. As identified above, in places, especially on the southern side of south road (where the application site is located), mature hedges form the front boundaries. As well as being exempt from planning control, hedges generally form a visually softer and more attractive natural boundary with the highway and contribute positively to the local visual amenities. The application identifies that the fence that has been installed is a replacement for a previously existing fence. However, that fence would (if in existence) have been located behind the hedge and very limited views of it would have existed. Notwithstanding that, historical street view photo images do not support the claim that there was previously a fence in situ. The below photo is from 2019 and shows a semi-permeable hedge without a fence behind:



Similarly, the images from 2009 and 2011 appear to show no fence behind the hedge, albeit the hedge is thicker in those images and that position is not quite so clear.

In terms of its impacts on the street scene and the character of the wider locality, the fence that has been installed obscures views of the application site and the front garden. Its appearance is a visually harmful and insensitive contrast to the hedge that existed previously and the lower level enclosures that are prevalent along the road. By virtue of its scale and design, the fence is out of keeping with other authorised boundary treatments that exist in this street scene and is damaging to the character of the area. The fence results in the qualities of this street scene being eroded. The only comparable feature in the street scene is the gate that also serves no.98 (excluding the unauthorised fence at no.108). When viewed with the gate, the fence forms a visually harmful and incongruous addition that does not respond appropriately to the local context.

Therefore, the retention of the fence is contrary to the requirements of Policies SP1 (criterion 6), MD2 (criteria 1 and 2) and MD5 (criterion 3) of the Local Development Plan, paragraphs 2.6 and 6.16 of TAN 12, and paragraph 3.16 of PPW.

If the Council were to allow the proposal, it would be difficult to resist further similar development in the area, such as that at no.108 South Road. The cumulative effect of such development would be to significantly harm the character of this section of South Road.

Highway safety

While the development does not assist with visibility along the pavement in particular, it is not materially worse in that respect than the previous hedge, and consequently the development itself is not considered to be harmful to pedestrian safety.

Enforcement Action

In light of the information provided in the preceding paragraphs with regard to the impact of the development on the character and visual amenity of the area, it is considered necessary to refuse the planning application and expedient to pursue formal enforcement action to remedy the breach of planning control at the site.

When pursuing such action, it is reasonable to take into account the height of enclosure that could be erected without the need for planning permission. In view of the permitted development rights that exist in the 1995 Order for the erection of a means of enclosure, it is recommended that the enforcement action pursued in this case requires the reduction in the height of the fence to no greater than 1 metre. Such a reduction will reduce the visual prominence of the enclosure and therefore, the harm it causes.

RESOURCE IMPLICATIONS (FINANCIAL AND EMPLOYMENT)

Any costs involved in drafting and issuing Notices, attending enquiries and undertaking monitoring work can be met within the departmental budget. There are no employment issues.

LEGAL IMPLICATIONS (TO INCLUDE HUMAN RIGHTS IMPLICATIONS)

If an Enforcement Notice is served, the recipient has a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended). The Action is founded in law and would not be considered to breach any of the rights referred to in the Human Rights Act.

EQUAL OPPORTUNITIES IMPLICATIONS (TO INCLUDE WELSH LANGUAGE ISSUES)

None.

RECOMMENDATION

It is therefore recommended that:

- (1) Planning permission for retention of the fence is refused for the following reason:
 - (i) By virtue of its design, siting and scale, and the context of open frontages within which the site sits within, the fence appears as a visually harmful and incongruous form of development, which is damaging to the appearance and character of the site and the wider street scene. Therefore, the retention of the fence is considered unacceptable and contrary to the requirements of policies SP1 Delivering the Strategy, MD2 Design of New Development, MD5 Development within Settlement Boundaries of the Local Development Plan, as well as guidance contained within TAN 12 Design and PPW 10.
- (2) That the Head of Legal Services be authorised to serve an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) to require:
 - (i) The reduction in the height of the fence and any supporting posts / structure

to a height of no more than 1m above ground level.

- (3) The Head of Legal Services be authorised to take such legal proceedings as may be required, in the event of non-compliance with the Notice.

REASON FOR RECOMMENDATION

By virtue of its design, siting and scale, and the context of open frontages within which the site sits within, the fence appears as a visually harmful and incongruous form of development, which is damaging to the appearance and character of the site and the wider street scene. Therefore, the retention of the fence is considered unacceptable and contrary to the requirements of policies SP1 Delivering the Strategy, MD2 Design of New Development, MD5 Development within Settlement Boundaries of the Local Development Plan, as well as guidance contained within TAN 12 Design and PPW 10.

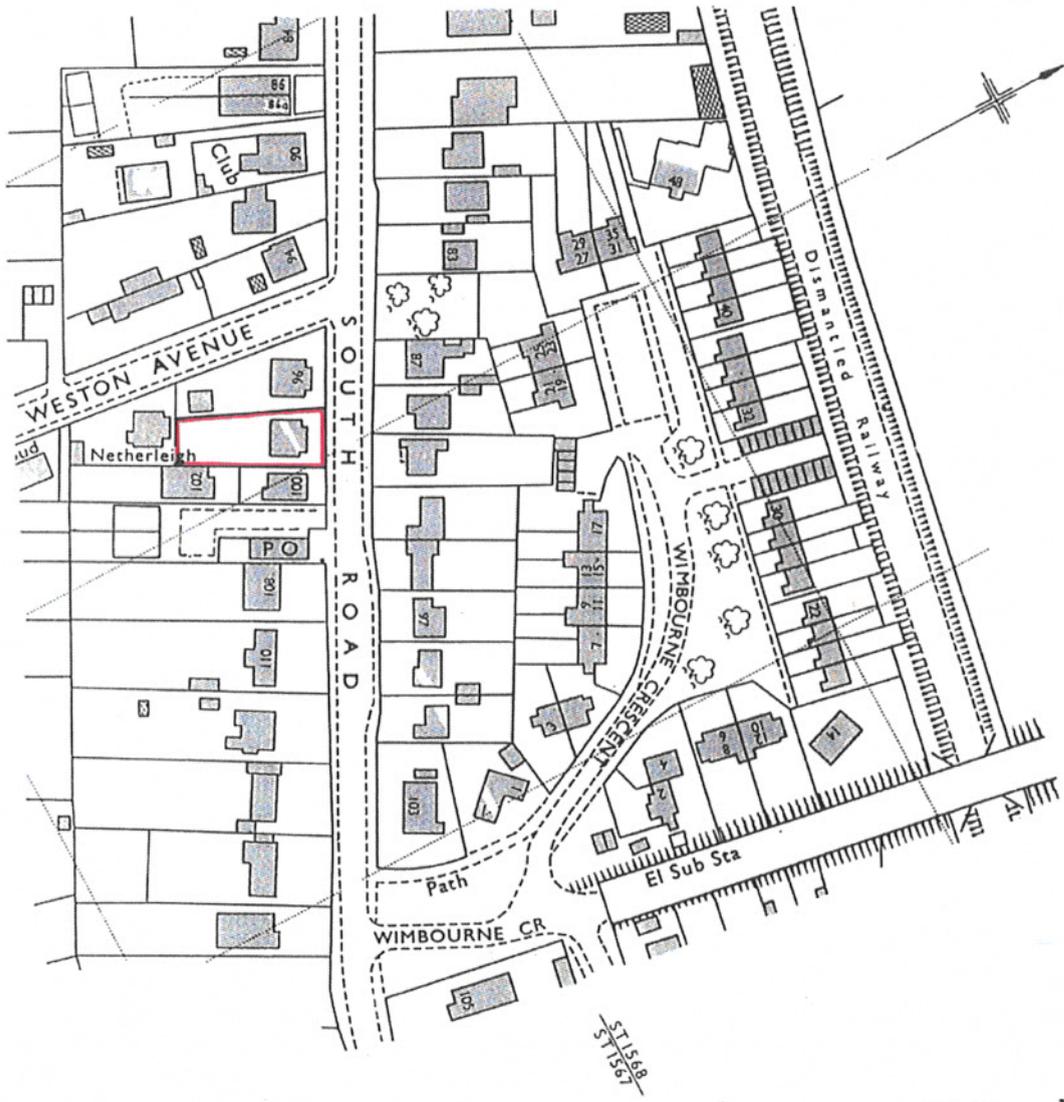
The decision to refuse planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026.

The appropriate marine policy documents have been considered in the determination of this application in accordance with Section 59 of the Marine and Coastal Access Act 2009.

It is considered that the decision to issue an Enforcement Notice complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well Being of Future Generations (Wales) Act 2015.

H.M. LAND REGISTRY		TITLE NUMBER	
		WA372966	
ORDNANCE SURVEY PLAN REFERENCE	ST 1568	SECTION H	Scale 1/1250 Enlarged from 1/2500
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ADMINISTRATIVE AREA
THE VALE OF GLAMORGAN
BRO MORGANNWG



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