

## CHAIRMANS URGENT ITEM

### THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE: 28<sup>th</sup> March, 2019

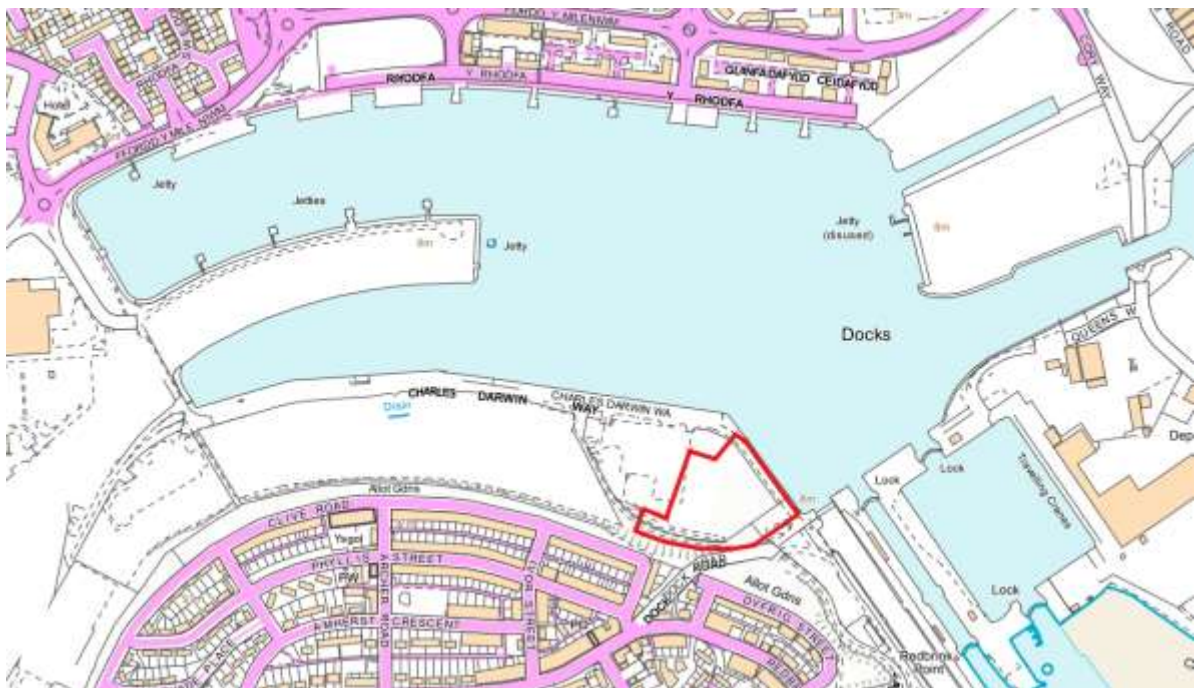
### REPORT OF THE HEAD OF REGENERATION AND PLANNING

**MATTER WHICH THE CHAIRMAN HAS DECIDED IS URGENT  
BY REASON OF THE NEED TO TAKE IMMEDIATE ENFORCEMENT ACTION  
THAT IS AUTHORISED BY PLANNING COMMITTEE.**

### LAND AND BUILDINGS AT SOUTH HAVEN PHASE 2, BARRY WATERFRONT, BARRY

#### Background

1. Members will recall the planning enforcement action that has been pursued by the Council in respect of the Barry Waterfront development and the failure of the consortium of developers (Persimmon, Taylor Wimpy and BDW) to deliver a number of A3 units within the District Centre.
2. Linked to this, Officers are currently considering the Reserved Matters application for the area of Barry Waterfront, known as South Haven Phase 2. This area is outlined in red on the following plan. The site is owned by Persimmon Homes Limited.



3. This application is yet to be determined and yet a recent site visit revealed the development on the site has commenced in earnest. This report relates to the development of that area of the site.

#### Details of the Breach

4. Outline planning permission was granted by virtue of application 2009/00946/OUT for the development of the Land identified in paragraph 3 below and the wider area known as Barry Waterfront for residential (C3), retail (A1), cafes, bars and restaurants (A3), hotel (C1), offices (B1) and community and leisure uses (D1 and D2). Development of vehicular and pedestrian/cycle access including a new link road, re-grading of site to form new site levels and associated infrastructure works, parking, servicing, landscaping, public realm and public open space provision, approved by the Council on 2nd March, 2012.
5. The 2009/00946/OUT outline planning permission was granted subject to a number of conditions, including a condition (condition 4) requiring the submission for approval of details of layout, scale, appearance, access and landscaping (hereinafter referred to as “Reserved Matters”) of each phase of the development. The condition prohibits the commencement of development on the relevant part of the development area until such time as the Reserved Matters details have been approved by the Local Planning Authority for that part of the development area. Whilst an application for approval of Reserved Matters has been submitted in respect of the land identified above (reference 2018/00592/RES), the details submitted have not yet been approved. Accordingly, the development is wholly unauthorised and does not have the benefit of any planning permission that has been granted.
6. The unauthorised development on site includes earth works and laying of foundations and slabs for the proposed dwellings.

#### Action Pursued to Date

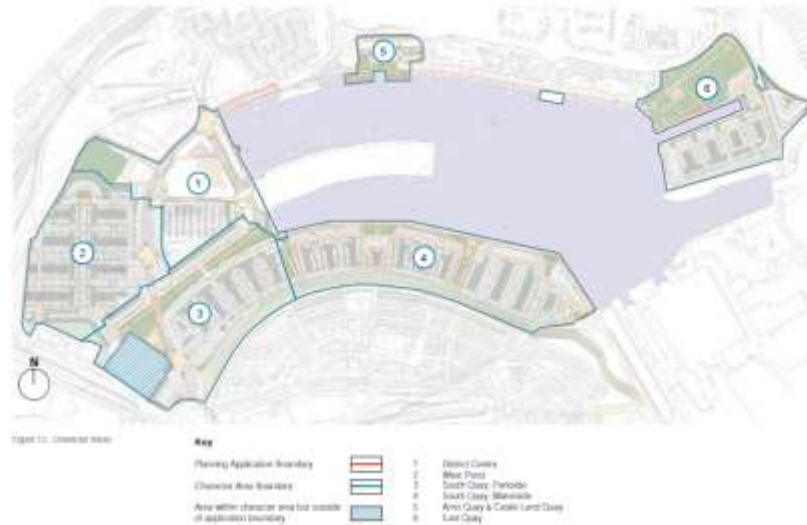
7. As noted from the planning history below, in addition to the Reserved Matters application (reference 2018/00592/RES), the Council are currently considering an application for a revised outline planning permission for the entirety of the remaining Waterfront development (application reference 2014/00229/EAO). The principle matter being considered in this latter application is the revision to the phasing plan for the delivery of the remaining elements of the Waterfront development to ensure that the commercial elements of the mixed use development are delivered in a timely manner alongside the residential dwellings. This includes the site subject of this report, the remaining units on the South Quay Waterside site, the East Quay site and the remaining commercial units within the central District Centre. Officers are negotiating with the consortium of developers in order to ensure that the commercial units within the district centre are delivered prior to the market housing elements of the whole of the Waterfront development being complete and occupied. These negotiations are ongoing and the phasing plans have not been agreed to date.

## 7.0 Character Areas

### Introduction

7.1 The Masterplan has been sub-divided into the following seven character areas:

- District Centre (1)
- West Pond (2)
- South Quay Parade (3)
- South Quay Waterfront (4)
- Area Quay and Quay (5)
- East Quay (6)



8. In view of the negotiations above, the developer of the site in question (Persimmon Homes) is acutely aware of the reasons for lack of a decision on the 2018/00592/RES reserved matters application for the South Haven site. In addition, the developer has been made aware of the fact that the development at the South Haven is wholly unauthorised (i.e. the lack of a full permission that would be granted by the approval of the reserved matters application). Despite this, the developer has commenced and continues building at the South Haven site.
9. As a result of the above, a Temporary Stop Notice has been issued (under delegated authority) in respect of the on-going development requiring that all works to construct the houses and associated development cease. The requirements of the Notice will have come into effect on the date of the planning committee. The notice will cease to have effect on 25<sup>th</sup> April, 2019.

### Planning History

10. There is extensive planning history relevant to the Waterfront development. The most relevant is the extant outline permission for the wider Waterfront site and the reserved matters application relating to the site subject of this report. Also of relevance is the more recent, and yet undetermined, planning application that seeks to amend some of the conditions of the outline permission, including condition 8 and 19 that both relate to phasing and the triggers for the delivery of the District Centre commercial units. These are as follows:

#### **Outline permission and proposed revision to outline:**

- **2009/00946/OUT:** Land at Barry Waterfront adjacent to Dock No. 1, Barry - Development of vacant land at Barry Waterfront for residential (C3), retail (A1), cafes, bars and restaurants (A3), hotel (C1), offices (B1) and community and leisure uses (D1 and D2). Development of vehicular and pedestrian/cycle access including a new link road, re-grading of site to form new site levels and associated infrastructure works, parking,

servicing, landscaping, public realm and public open space provision -  
Approved 02/03/2012

- **2014/00229/EAO**: Land at Barry Waterfront, adjacent to Dock No. 1, Barry - Deletion of Conditions 1 and 2, Variation of Conditions 3, 5, 19 and 20 of 2009/00946/OUT for the development of vacant land at Barry Waterfront for residential (C3), retail (A1), cafes, bars and restaurants (A3), hotel (C1), offices (B1) and community and leisure uses (D1 and D2). Development of vehicular and pedestrian/cycle access including a new link road, re-grading of site to form new site levels and associated infrastructure works, parking, servicing, landscaping, public realm and public open space provision at Land at Barry Waterfront adjacent to Dock No. 1, Barry - Not yet determined

#### **Reserved Matters for the South Haven Site (Part of South Quay Waterside)**

- **2018/00592/RES** : South Haven Phase 2, Barry Waterfront, Barry - Approval is sought for the access, appearance, landscaping, layout and scale for a residential development and associated infrastructure - Not yet determined

#### **Reserved Matters for the remainder of South Quay Waterside**

- **2017/00647/RES** : Land at Barry Waterfront, Cliffside Road, Barry - The erection of 163 residential dwellings, landscaping, parking and associated infrastructure - Approved 25/04/2018
- **2017/00647/RES** : Land at Barry Waterfront, Cliffside Road, Barry - The erection of 163 residential dwellings, landscaping, parking and associated infrastructure - Approved 25/04/2018

#### **Reserve Matters for South Quay Parkside:**

- **2015/01458/RES** : Land at Barry Waterfront, South Quay Parkside, Barry - Reserved matters application for residential development (45 units) - Approved 27/04/2016
- **2015/01305/RES** : Site known as South Quay, Barry Waterfront, Barry - Development of site known as South Quay (Parkside) for residential development and associated infrastructure works, parking servicing and landscape - Approved 17/08/2016
- **2015/01224/RES** : Site known as South Quay (Parkside), Barry Waterfront, Barry - Development of site known as South Quay (Parkside) for residential development and associated infrastructure works, parking, servicing and landscape (76 dwellings) - Approved 05/08/2016
- **2015/01032/RES** : Land at Barry Waterfront, Phase 2, Barry - Approval is sought for the layout, scale, appearance, access and landscaping of Phase 2 (109 dwellings) - Approved 17/08/2017

#### **Planning permissions for District Centre:**

- **2017/01356/RES** : Land at Barry Waterfront, Barry - Construction of new District Centre comprising of 57 residential apartments, 1,885sq.m food & drink use (A3), 390sq.m flexible commercial use (D1/D2/A3), together with associated infrastructure works, parking and landscaping - Approved 23/05/2018

- **2014/01182/EAR** : Proposed District Centre, Barry Waterfront, Powell Duffryn Way, Barry - Variation of condition 1 of planning permission 2012/00971/EAR and removal of conditions 2, 3 and 4. - Approved 19/11/2014
- **2014/00904/EAR** : Proposed District Centre, Barry Waterfront, Duffryn Way, Barry - Variation of conditions 1, 3 and 4 of Application 2012/00971/EAR - Approved 29/09/2014

### **Enforcement Action:**

11. As mentioned earlier, formal enforcement action has already been pursued in respect of this site, as follows:
  - **ENF/2019/0084/PRO (A)** – As noted above, a Temporary Stop Notice was issued on 26<sup>th</sup> March, 2019, in respect of the construction works underway at the site. The Notice prohibits the all activity to construct any housing and associated development on the site. The Notice will cease to have effect on the 25<sup>th</sup> April, 2019.
12. In addition to the matters referred to in this report, the Council has a number of other enforcement / monitoring cases open in respect of the Barry Waterfront Development.
13. Of most relevance are the extant Enforcement Notices that have been issued in respect of the Persimmon site within South Quay Parkside and the BDW site within South Quay Waterside (both to the west of the site subject of this report). The details of these are as follows:
  - **ENF/2018/0331/PRO (G)** – An Enforcement notice was issued in respect of the area of South Quay Parkside, subject of application reference 2015/1032/RES, being development by Persimmon Homes. This notice was issued on 3<sup>rd</sup> December, 2018, and came into effect on 2<sup>nd</sup> January, 2019. It prohibits the occupation of any market housing units within the site that were not already occupied before the Notice came into effect.
  - **ENF/2018/0331/PRO (I)** – An Enforcement notice was issued in respect of the area of South Quay Waterside, subject of application reference 2017/00662/RES, being development by Barratt Homes. This notice was issued on 6<sup>th</sup> December, 2018, and came into effect on 5<sup>th</sup> January, 2019. It prohibits the construction of any market housing units within the site that were not already commenced before the Notice came into effect.
  - **ENF/2015/0037/PC** - A Breach of Condition Notice in respect of the Construction Traffic Management Plan (specifically routes through Barry) was issued on 5<sup>th</sup> March 2015 and is still being monitored but has not led to formal prosecution to date.
14. Other on-going enforcement investigations include matters of dust suppression measures, landscaping, hours of construction, public open space delivery, section 106 planning obligations, and untidy land.

## Policy

### **Local Development Plan:**

15. 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 SP2 – STRATEGIC SITES  
POLICY SP3 – RESIDENTIAL REQUIREMENT  
POLICY SP4 – AFFORDABLE HOUSING PROVISION

#### *Managing Growth Policies:*

POLICY MG1 – HOUSING SUPPLY IN THE VALE OF GLAMORGAN  
POLICY MG2 – HOUSING ALLOCATIONS  
POLICY MG3 – STRATEGIC SITE AT BARRY WATERFRONT  
POLICY MG4 – AFFORDABLE HOUSING

#### *Managing Development Policies:*

POLICY MD1 - LOCATION OF NEW DEVELOPMENT  
POLICY MD2 - DESIGN OF NEW DEVELOPMENT  
POLICY MD3 - PROVISION FOR OPEN SPACE  
POLICY MD4 - COMMUNITY INFRASTRUCTURE AND PLANNING OBLIGATIONS  
POLICY MD5 - DEVELOPMENT WITHIN SETTLEMENT BOUNDARIES  
POLICY MD6 - HOUSING DENSITIES

### **Planning Policy Wales:**

16. National planning policy in the form of Planning Policy Wales (Edition 10, 2018) (PPW) is of relevance to the matters considered in this report.

### **Technical Advice Notes:**

17. 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 4 – Retailing and Town Centres (1996)
  - Technical Advice Note 12 – Design (2016)
  - Technical Advice Note 23 – Economic Development (2014)

### **Supplementary Planning Guidance:**

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

- Residential and Household Development
- Affordable Housing
- Barry Development Guidelines
- Parking Standards (Interactive Parking Standards Zones Map)
- Planning Obligations
- Public Art

**Other relevant evidence or policy guidance:**

- Manual for Streets (Welsh Assembly Government, DCLG and DfT - March 2007)
- Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management
- Welsh Office Circular 13/97 - Planning Obligations
- Welsh Office Circular 24/97 - Enforcing Planning Control
- Welsh Government Development Management Manual – Section 14 Annex “Enforcement Tools”

**Well Being of Future Generations (Wales) Act 2015:**

19. 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.

Reasons for Serving an Enforcement Notice

20. As noted from the planning history, outline planning permission has been granted for a housing development on this site, subject to a number of conditions including the submission of reserved matters details. Also as noted above, an application for the approval of reserved matters has been submitted and is currently being considered for the details of the development of the South Haven site (reference 2018/00592/RES). This application is, in principle, acceptable and matters such as design, drainage, highways, landscaping etc. have been resolved to the degree that a favourable recommendation could be made. The only outstanding issue and reason for the lack of a decision on that application is the matter of the agreement of a phasing plan for the remainder of the development.
21. Accordingly, and having regard to the fact that Officers are, on the whole, satisfied with the form of development proposed by virtue of the 2018 reserved matters application, the principle matter to consider in this report is the expediency of pursuing formal enforcement action in view of the lack of any agreement on the matter of the phasing of the remainder of the Waterfront

Development.

22. In this regard, Members will recall the matters considered in the Committee report on the 29<sup>th</sup> November, 2018, which sought authorisation to issue the two Enforcement notices in respect of the development on South Quay Waterside, referred to in the enforcement history section above. This advised as follows:

*“24. Barry is identified in the adopted LDP as being the Key Settlement within the Vale of Glamorgan Council administrative area. LDP policy SP2 also identifies Barry Waterfront as one of the three strategic sites within the Vale. Paragraph 5.36 of the LDP identifies the importance of the Waterfront development. It states:*

*“The strategic mixed use development at Barry Waterfront will help to realise significant regeneration benefits for the town, help to integrate Barry Island, the Waterfront and the town centre and strengthen Barry’s key settlement role in the Capital Region.”*

25. *The vision for Barry Waterfront is identified in the same paragraph of the LDP as follows:*

*“The creation of a sustainable new urban quarter with distinctive neighbourhoods, attractive places and community facilities that complement, integrate and link with Barry town and Barry Island, whilst taking full advantage of the maritime setting of the No. 1 Dock.”*

26. *In recently approving the LDP, the LDP Inspector agreed with the significance placed on the Barry Waterfront Development as a comprehensive mixed use regeneration scheme. The development and the Council’s vision for this mixed use regeneration project clearly accords with the sustainable development principles of set out in PPW.*

27. *Being a vital element of the mixed use scheme, the District Centre is a key component of the Barry Waterfront Development and is intended to create a new retail and entertainment centre to serve the Waterfront development and the wider area. It is a key component of the regeneration of this area and is essential for the delivery of the Council’s aspirations for the Waterfront.”*

23. Conditions 8 and 19 of the extant outline planning permission (2009/00946/OUT) relate to the approved phasing plan for the Waterfront development and required the delivery of the A3 units within the District Centre by a particular point of the development. The November 2018 report notes that *“A significant portion of the housing element of the Waterfront development has been delivered and the development has progressed*



*significantly passed the point at which condition 19 requires the delivery of the A3 units. Whilst the supermarket within the District Centre has been delivered, the smaller A3 units specifically referred to in the condition have not. More specifically, construction has commenced on three of the A3 units in the area now referred to as Dockside Quay (along the eastern boundary of the District Centre), but these have not been completed to the specification referred to in condition 19. No works have been undertaken to commence construction of the three A3 blocks in the southeast corner of the District Centre.”*

24. It is accepted that the Council have revised the development phasing agreed on the Outline application in two of the most recent reserved matters applications approved for the South Quay Waterside site (applications reference 2017/00662/RES and 2017/00647/RES). Nevertheless, the development as a whole has either exceeded this revised phasing or is close to exceeding it, and yet very little progress has been made to deliver the District Centre units required by the original conditions 8 and 19 of the outline permission. This is despite the enforcement action regarding this matter having commenced in early November 2018, i.e. some 5 months ago.
25. The development that has is now underway on the South Haven site has taken the nature of the authorised development at the Barry Waterfront to an unprecedented level. It exceeds the revised phasing plan; it has been undertaken without the benefit of planning permission; and has been commenced while active negotiations are still on-going with regard to the second revision of the phasing plan that the Council and all consortium members must agree.
26. It is essential that the Council have the certainty of a full planning permission for the South Haven site in order to ensure that, amongst all other matters, the district centre is delivered and is delivered in a timely manner. It is accepted that both the principle and the detail of the development that has been undertaken at the South Haven site is acceptable. However, without the certainty of an enforceable phasing plan for the remainder of the development, which would come from an approved reserved matters and the approval of the revised outline planning application for the development as a whole, it is considered expedient to put a stop to any further development on the site. The continuation of the development without any certainty would render the development unsustainable and, therefore, in conflict with the strategy of the LDP; strategic policies SP1, SP2, SP6 and MG3 as supported by the SPG on Barry Development Guidelines; and the wider principles of good design set out in policies MD1 and MD2. The breach of planning control in this case is also considered to conflict with the principles of sustainable development set out in PPW, Technical Advice Note 4 on Retailing and Commercial Development, and Technical Advice Note 23 on Economic Development.
27. Accordingly, in view of the issues identified in the paragraphs above, it is considered expedient to pursue formal enforcement action in the form of an Enforcement Notice and Stop Notice in respect of the unauthorised construction of dwellings and associated works on the area of the Barry Waterfront development known as South Haven, South Quay Waterside.
28. It is considered that the decision would comply 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.

### Resource Implications (Financial and Employment)

29. 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)

30. 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).
31. 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)

32. None.

### RECOMMENDATION

- (1) That the Head of Legal Services be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) to require:
  - (i) The cessation of the works to construct all dwellings and associated development.
- (2) That the Head of Legal Services be authorised to issue a Stop Notice under Section 183 of the Town and Country Planning Act 1990 (as amended) to require:
  - (i) The cessation of the works to construct all dwellings and associated development.
- (3) In the event of non-compliance with the Notice, authorisation is also sought to take such legal proceedings as may be required.

### Reason for Recommendation

- (1) In view of the failure to deliver the A3 units within the Waterfront District Centre in compliance with conditions 8 and 19 of planning permission reference 2009/00946/OUT and without the approval of a revised phasing plan for the delivery of those A3 units, the unauthorised development, as part of a strategic development site, is not considered to be sustainable and is considered to conflict with the strategy of the Vale of Glamorgan Adopted Local Development Plan 2011-2026; strategic policies SP1 – Delivering the Strategy, SP2 – Strategic Sites, SP6 - Retail and MG3 Strategic Site at Barry Waterfront of the Plan and the wider principles of good design set out in

policies MD1 – Location of New Development and MD2 – Design of New Development of the Plan. This breach of planning control is also considered to conflict with the principles of sustainable development set out in Planning Policy Wales (Edition 10), Technical Advice Note 4 on Retailing and Commercial Development and Technical Advice Note 23 on Economic Development.

- (2) It is considered that the decision to pursue formal enforcement action 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.

#### Background Papers

Enforcement File Ref: ENF/2019/0084/PRO

Contact Officer - Mrs. Justina M. Moss, Tel: 01446 704

#### Officers Consulted:

All relevant Chief Officers have been consulted on the contents of this report.

MARCUS GOLDSWORTHY  
HEAD OF REGENERATION AND PLANNING