

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO COUNCIL

31 JANUARY 2018

REPORT OF THE CORPORATE DIRECTOR – COMMUNITIES

DEPARTURE FROM DEVELOPMENT PLAN - PLANNING APPLICATION P/17/373/FUL

1. Purpose of Report

- 1.1 On 21st December, 2017, the Development Control Committee considered planning application P/17/373/FUL as a departure from the Local Development Plan. The Development Control Committee resolved not to refuse planning permission so the application is referred to Council which is requested to approve the application subject to conditions.
- 1.2 A copy of the Development Control Committee report is attached at Appendix 1.

2. Connection to Corporate Improvement Plan / Other Corporate Priorities

- 2.1 The delivery of the County Borough Council's planning functions has links to all three of the Council's corporate priorities as outlined in the Corporate Improvement Plan 2016-2020.

3. Background

- 3.1 The retrospective application relates to the change of use from a retail unit (Class A1) to a Members Only Swimming Pool (Class D2), as defined by the Town and Country Planning (Use Classes) Order 1987, at Unit 12d Kingsway Buildings, Kingsway, Bridgend Industrial Estate.
- 3.2 Unit 12d, the application premises, forms part of a complex of buildings that once accommodated the Sony Manufacturing Plant, off Western Avenue on Bridgend Industrial Estate. The unit was once used as a staff refectory and break out area and is centrally located, equidistant from Western Avenue and South Road which provide access to this site.
- 3.3 From 2007, Unit 12d was used for the sale of camping and leisure goods, eventually receiving retrospective consent for the operation in 2013. This retail use ceased in 2015 with the operator going into administration. In 2016, the applicant company took over the lease and commenced the construction of the indoor swimming pool and other internal works. Water Wings School is an established swim school business that previously operated from Bryntirion and Porthcawl Comprehensive Schools outside of school hours. The success of the swimming school and the need to expand the hours of operation required alternative premises for the business in the Bridgend area.
- 3.4 The application site is located within the Primary Key Settlement of Bridgend, as defined by Bridgend County Borough Council's Local Development Plan (2013). The site is within Bridgend Industrial Estate, which is an allocated Employment Site (REG1(2)) that is protected for employment development falling within B1, B2 and B8 use classes.
- 3.5 This application is a resubmission of a previous application for the "Change of use from camping and leisure sales outlet to private swim school and formation of swimming pool

within the space” under planning reference P/16/488/FUL. The application was refused on 11 November 2016 for the following reasons:

1. The use of the building as a 'Private Swim School' (Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987) conflicts with Policy REG1 (2) which allocates and protects the land for employment purposes (Classes B1, B2 and B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987) and it is considered that the use is not complementary to and/or ancillary to the industrial uses on Bridgend Industrial Estate. Insufficient information has been submitted to demonstrate that (i) no alternative location is sequentially preferable than the application site; (ii) the unit has been marketed for at least two years for employment uses; (iii) the site is accessible by a choice of means of transport; (iv) an industrial building is required to accommodate the use; (v) the use with other existing development does not threaten the status and character of Bridgend Industrial Estate; (vi) the operation of other industrial and employment uses would not be adversely affected and therefore the proposal does not comply with Policy REG 3 of the Bridgend Local Development Plan (2013).

2. Insufficient details of the proposed development have been submitted to enable an assessment of highway safety considerations to be made for compliance with Policies SP2, SP3, PLA4, and PL11 of the Bridgend Local Development Plan (2013).

- 3.6 Conversely to the original application, the resubmitted application, as considered by the Development Control Committee, included a planning statement to address local and national policy. It acknowledges that the business has commenced without permission but is seeking retrospective permission again on the basis of a number of changes to the business. The statement also confirms that Water Wings is a private members pool that only provides swimming lessons to members of Water Wings Swim School. Membership is included within the cost of purchasing a block of lessons and the school has also reduced the hours of opening for the Water Wings facility.
- 3.7 A Transport Statement and Proposed Site Layout Plan accompanied the resubmitted application to address concerns raised by the Highway Section in relation to the suitability of the site from a sustainable transport perspective and the likely conflict between pedestrians and vehicles due to the lack of a safe pedestrian route on site. An appraisal of the site's sustainability credentials with reference to public transport provision was included in the Transport Statement along with a calculation of trip generation and parking demand.
- 3.8 Policy REG1 identifies a variety of employment sites suitable for employment uses of varying size and type. The application site is located on Bridgend Industrial Estate and is therefore in an area allocated and protected for employment purposes (B1, B2 & B8). Development proposals which seek to change the use of existing employment buildings on REG1 sites to uses within Class D2 will be assessed against LDP Policy REG3.
- 3.9 In 2015, the Council adopted supplementary planning guidance that deals with the protection of identified employment sites and circumstances where alternative uses, including D2 uses, may be acceptable (SPG21). It outlines those uses which are considered as 'exceptions' in terms of the protection of employment land for its primary function, the D2 use classes that may be permitted on employment sites and guidance on site selection and the submission of planning applications which meet the criteria contained in the relevant LDP policies.
- 3.10 LDP Policy REG3 confirms that proposals which result in the change of use of existing employment (B1, B2 and B8) buildings to uses within Class D2 of the Use Classes Order on Policy REG1 sites will be permitted provided that:

1. In sequential order of preference, all suitable retailing and commercial centre, edge-of-centre and out-of-centre sites and buildings have been assessed and found unsuitable;

2. *The building has been vacant for at least 2 years and has been actively marketed for employment uses throughout that time;*
3. *The site is accessible by a choice of means of transport other than the car;*
4. *It is demonstrated that a former industrial building is required to accommodate the use;*
5. *The proposal, in terms of size and number, either singularly or cumulatively with other existing or permitted developments, is clearly subordinate to the employment use of the area and does not threaten the status and character of the wider allocation as an employment site for B1, B2 or B8 uses; and,*
6. *The operations of other industrial and employment uses in the vicinity of the site would not be adversely affected.*

- 3.11 Water Wings Swim School business is local with its client base being in the Bridgend area. Accordingly, when they were seeking to expand the business, the search for appropriate premises was within and around Bridgend town centre. The applicant worked with a number of local property agents to find suitable and acceptable premises and, of the few sites that were capable of accommodating a swimming pool, the application site was the only premises that proved a viable option. Also, it was the only unit where the landlord was willing to allow a swimming pool to be constructed and the units were all industrial in nature. The exception to this was the application site which had a previous retail permission and, as such, was no longer in employment use.
- 3.12 There is some uncertainty as to when the previous retail business vacated the site but it is understood that the company went into administration in 2015. The applicant's statement indicates that Bridgend Camping and Leisure ceased trading at the premises some time prior to going into administration but it is unclear whether the unit had been vacant for two or more years at the time the application was submitted. The marketing of the unit could not, however, commence immediately because of the legal restrictions associated with the administration process. It is accepted by the agent that the unit may not have been vacant for the time prescribed in the policy although there is documented evidence that the unit was marketed as part of the wider site for at least a year.
- 3.13 Whilst it is accepted that public transport services to the site are infrequent and limited, safe routes and bus stop facilities exist and arguably the supply of services through the estate could increase in the future to correspond with any increase in demand. The applicant acknowledges that, for the majority of customers, particularly very young children, the residential catchment will be outside reasonable walking limits. On the basis that the customer base is within the Bridgend area, the journey lengths, even by car, will be reasonably short and any use of this building would generate traffic. Therefore, it may be difficult to argue that the use is so unsustainable as to warrant refusing planning permission for this reason alone.
- 3.14 It is accepted that only an industrial type building could accommodate this proposal and it is noted that the pool is not an excavated, traditional swimming pool. It is an above ground pool and would not require major building operations for it to be removed.
- 3.15 The applicant's supporting statement refers to the current number of vacant units on Bridgend Industrial Estate and there being no shortage of B1, B2 and B8 floorspace in the vicinity of Unit 12D. A recent review of the Welsh Government's property database confirms a supply of comparable, available units on Bridgend, Ewenny and Waterton Industrial Estates. Recent demand has also been for smaller 'start-up' units. The current use of the building does not threaten the status of the employment allocation and accordingly the Economic Development Section has not opposed the application.
- 3.16 The operations of other industrial and employment uses in the vicinity of the site do not appear to be affected and the reduction in the operational hours to those outside of the general hours of the surrounding businesses should minimise any potential conflicts. No objections to the operation were raised during the consultation process.

- 3.17 Whilst any decision made by the Council must have regard to the adopted policies of the local plan it is accepted that previous planning decisions, depending on their status, may be afforded some weight. The previous permission referred to above only permitted limited retailing from the premises, namely the storage, display and sale of bulky camping and caravan equipment and ancillary complimentary goods. The members swimming club only takes up about 30-40% of the original unit.
- 3.18 The applicant's failure to market the vacant unit for at least two years represents a failing in the context of Policy REG3. The material planning harm caused by having failed to undertake this exercise is, however, difficult to substantiate. Had this process been undertaken correctly, it could be argued that the unit could have been occupied by a B1, B2 or B8 use. This is, however, hypothetical and does not constitute sound evidence that could be relied upon. Of the few sites that were capable of housing a swimming pool, the only premises that proved a viable option were all previously industrial in nature and on industrial estates. The applicant's agent indicates that the exception to this was the application site which had most recently been used for retail purposes and as such was no longer in employment use.
- 3.19 The business employs 10 swimming teachers, 4 lifeguards and a dedicated receptionist. The direct and indirect economic benefits of the business should not be dismissed and in this case they are afforded some weight against the scheme's policy deficiencies. Also, as part of its Economic Development function, the authority should be in a position to suggest more appropriate locations. Given the nature and physical requirements of the use, a similar type of building would be required and in all probability that is likely to be on an industrial estate.
- 3.20 In conclusion, due to the limited scale and extent of the use, the fact that the 'members only swimming pool' has a number of specific operational and functional requirements, the lack of suitable alternatives within the town centre, the availability of other units for B1, B2 and B8 uses, the economic benefits of the business and the fact that the unit had already been converted to A1 use, there is a reasoned argument for the facility being located on an allocated employment site. Overall, on the basis that the use is having no impact on the adjoining operators nor is it threatening the wider employment allocation on the estate, the development is, on balance, acceptable subject to conditions which will limit the use of the unit to the current operators and will prevent any permitted changes to other D2 uses.
- 3.21 The Local Planning Authority can grant permission for development which does not accord with the provisions of the development plan in force in the area under Article 20 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, subject to ratification by Council.

4. Current Situation

- 4.1 The application site is located within Bridgend Industrial Estate which is allocated and protected for employment uses falling within uses B1, B2 and B8 employment uses by policies REG1(2) and REG3 of the adopted Bridgend Local Development Plan (LDP). The application seeks retrospective consent for a Members Only Swimming Pool training facility.

5. Effect upon Policy Framework & Procedure Rules

- 5.1 Whilst the application does not fully accord with the policies of the Bridgend Local Development Plan, the Members Only Swimming Pool use has already commenced.

6. Equality Impact Assessment.

- 6.1 A screening for Equality Impact has been undertaken and no negative issues have been identified.

7. Wellbeing of Future Generations (Wales) Act 2015

7.1 The well-being goals identified in the Act are:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

7.2 The duty was considered in the assessment of the application and in the preparation of this report. It is considered that there will be no significant or unacceptable impacts upon the achievement of wellbeing goals/objectives as a result of the proposed development.

8. Financial Implications

8.1 There are no direct financial implications as a result of this report.

9. Recommendation

9.1 That if Council is minded not to refuse the development then the Corporate Director Communities be given plenary powers to issue a decision notice in respect of this proposal to include the following conditions:

1. The development shall be carried out in accordance with the following documents and plans:

- a) Paragraphs 1.12 to 1.15 of the Planning and Access Statement by Prospero Planning dated April 2017
- b) Job No. 15-168 Dwg No. 001 Revision A received on 3rd May 2017.

Reason: To avoid doubt and confusion as to the nature and extent of the approved development.

2. The Members Swimming School facility hereby permitted shall be operated only by Water Wings Swim School. All materials and equipment brought into the premises in connection with the use permitted shall be removed within three months following the cessation of the occupation by the above named company.

Reason: To ensure that the Local Planning Authority retains effective control over the development, in the interests of highway safety.

3. The premises shall be used as a Member's Swimming School and for no other purpose including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.

Reason: To ensure that the Local Planning Authority retains effective control over the development, in the interests of highway safety.

4. The use shall not be carried out outside the hours of 15:00 to 21:00 Monday to Friday and 08:30 to 14:45 on Saturdays and Sundays.

Reason: To ensure that the Local Planning Authority retains effective control over the development, in the interests of highway safety.

5. Within three months of the date of this permission the car parking shall be laid out within the site in accordance with drawing title: Layout of Development Drawing No: Figure 1.2 Revision A by Lime Transport received on 3rd May 2017. The parking spaces shall thereafter be kept available for the parking of vehicles in relation to this business in perpetuity.

Reason: In the interests of highway safety.

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Corporate Director Communities
31 December, 2017

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Background documents

Appendix 1: Development Control Committee Report