

## **APPEALS**

*The following appeals have been decided since my last report to Committee:*

<b>CODE NO.</b>	A/14/2225002 (1743)
<b>APP. NO.</b>	P/13/452/RLX
<b>APPELLANT</b>	GREENHILL CONSTRUCTION LTD
<b>SUBJECT OF APPEAL</b>	RELAX CONDITION 13 OF P/11/798/FUL TO OMIT THE PROVISION OF A PEDESTRIAN CROSSING ON BLACKMILL ROAD: FORMER MAESGWYN HOSPITAL, HIGHLAND AVENUE, BRYNCETHIN
<b>PROCEDURE</b>	WRITTEN REPS
<b>DECISION LEVEL</b>	COMMITTEE
<b>DECISION</b>	<b>THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE ALLOWED AND THE DISPUTED CONDITION REMOVED.</b>

A copy of this appeal decision is attached as APPENDIX A

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<b>CODE NO.</b>	A/14/2226395 (1744)
<b>APP. NO.</b>	P/14/222/FUL
<b>APPELLANT</b>	MS SUSAN JONES
<b>SUBJECT OF APPEAL</b>	CHANGE OF USE OF GROUND FLOOR TO TEA ROOMS (A3) & RETAIN RESIDENTIAL USE TO FIRST FLOOR: THE BREAKERS, 17 WEST DRIVE, PORTHCAWL
<b>PROCEDURE</b>	WRITTEN REPS
<b>DECISION LEVEL</b>	DELEGATED OFFICER
<b>DECISION</b>	<b>THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE DISMISSED.</b>

A copy of this appeal decision is attached as APPENDIX B

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<b>CODE NO.</b>	A/14/2225624 (1745)
<b>APP. NO.</b>	P/14/371/FUL
<b>APPELLANT</b>	MR KARL LEWIS
<b>SUBJECT OF APPEAL</b>	CHANGE OF USE FROM A1 TO A3 (TAKE AWAY) 31 COMMERCIAL STREET, KENFIG HILL
<b>PROCEDURE</b>	WRITTEN REPS

**DECISION LEVEL** DELEGATED OFFICER

**DECISION** **THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE ALLOWED SUBJECT TO CONDITIONS:**

A copy of this appeal decision is attached as APPENDIX C

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**CODE NO.** A/14/2226490 (1746)

**APP. NO.** P/14/419/RLX

**APPELLANT** WM MORRISON SUPERMARKETS PLC

**SUBJECT OF APPEAL** RELAXATION OF CONDITION 4 OF P/12/878/OUT TO ALLOW OPENING BETWEEN 0700-2300 EVERY DAY OF THE WEEK:  
270/270A NEW ROAD PORTHCAWL

**PROCEDURE** WRITTEN REPS

**DECISION LEVEL** DELEGATED OFFICER

**DECISION** **THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE ALLOWED SUBJECT TO A NEW CONDITION:**

A copy of this appeal decision is attached as APPENDIX D

**RECOMMENDATION:**

That the report of the Corporate Director Communities be noted.

**MARK SHEPHARD**  
**CORPORATE DIRECTOR COMMUNITIES**

**Background Papers**

See relevant application reference number.

## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 09/12/14

gan **Melissa Hall BA (Hons), BTP, Msc, MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 15 Ionawr 2015

## Appeal Decision

Site visit made on 09/12/14

by **Melissa Hall BA (Hons), BTP, Msc, MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 15 January 2015

**Appeal Ref: APP/F6915/A/14/2225002**

**Site address: Former Maesgwyn Hospital, Highland Avenue, Bryncethin, Bridgend.**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Greenhill Construction Ltd against the decision of Bridgend County Borough Council.
- The application Ref P/13/452/RLX, dated 13 June 2013, was refused by notice dated 7 March 2014.
- The application sought planning permission for the residential development of 44no dwellings consisting of 2 & 3 bedroom houses without complying with a condition attached to planning permission Ref P/11/798/FUL, dated 18 December 2012.
- The condition in dispute is No 13 which states that:  
*'No development shall commence on site until a comprehensive scheme has been submitted to and agreed in writing by the Local Planning Authority for a traffic signal controlled pedestrian crossing on route A4061 (Blackmill Road) to aid pedestrian movements between the site and public transport facilities. The agreed scheme shall include full engineering details including longitudinal and cross sections, construction details, electrical connections, surface water drainage, carriageway markings, signing, and Stage 2 Safety Audit which shall be submitted to and approved in writing by the Local Planning Authority before any works commence. Such scheme shall be implemented as agreed by the Local Planning Authority prior to the development being brought into beneficial use'.*
- The reason given for the condition is:
- *'In the interest of highway safety and promoting sustainable travel'.*

## Decision

1. The appeal is allowed and planning permission is granted for the residential development of 44no dwellings consisting of 2 & 3 bedroom houses at the Former Maesgwyn Hospital, Highland Avenue, Bryncethin, Bridgend in accordance with the application Ref P/13/452/RLX, dated 13 June 2013, without compliance with condition number 13 previously imposed on planning permission Ref P/11/798/FUL, dated 18 December 2012 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

## Procedural Matters

2. Whilst the appellant's Transport Statement refers to an application to vary Condition 13 of Planning Permission Ref P/11/798/FUL 201 and the appeal form specifies the relaxation of this condition, the appellant has not suggested how the condition should be varied. Notwithstanding this, the application form, grounds of appeal and written statement of evidence seek the removal of the condition on the grounds that it is prohibitive and unnecessary. It is therefore on this basis that I have determined the appeal.
3. I understand discussions have taken place between the Council and developer with a view to providing a financial contribution in lieu of the provision of the upgraded crossing. However, this does not form part of the matters for consideration before me.

## Background

4. Planning permission was granted under Ref P/11/798/FUL 2012 for the construction of 44 dwellings and associated highway works. I understand that details of a traffic signal controlled pedestrian crossing were submitted pursuant to Condition 13 of this permission in order to allow for commencement of development. The appellant claims that these details were approved by the Council. The Council states that the details were not formally agreed, albeit that the submissions represented a largely acceptable proposal requiring only minor amendments.
5. However, a S73 application was submitted in June 2013 seeking the removal of Condition 13 based on lack of justification for the provision of a traffic signal controlled pedestrian crossing. The application was supported by a Transport Statement (TS), which the appellant contends demonstrates that the existing crossing would adequately cater for the additional demand generated by the development.
6. At the time the S73 application was made, it was indicated on the application form that the development had not started. However, it has subsequently been completed and is now occupied. The appellant has confirmed that the additional pedestrian and vehicle flow surveys submitted with the appeal were carried out in July 2014 when the majority of the units in the development were occupied.

## Main Issue

7. Against this background, I consider the main issue to be whether the condition is reasonable and necessary having regard to matters of highway and pedestrian safety.

## Reasons

8. The appeal site, which was formerly occupied by Maesgwyn Hospital, lies in the settlement of Bryncethin. It is bounded by existing residential roads and access is derived from Highland Avenue and Wigan Terrace beyond.
9. The pedestrian crossing at issue is located on the A4061 Blackmill Road, south of the junction with Wigan Terrace. It currently consists of footway build-outs on both sides of the carriageway incorporating dropped kerbs and tactile paving together with a central refuge. I observed that it provides a crossing opportunity on the main road for *inter alia* a southbound bus stop, a shop and a hairdresser on Blackmill Road.
10. As part of a Transport Statement (TS), the appellant has used the TRICS 2012(b) trips generation database to determine the likely volumes of trips generated by the

proposed development. In terms of pedestrian movements, it states that the development could result in a peak of 28 pedestrian movements between 08:00 and 09:00 and 29 pedestrian movements between 15:00 and 16:00.

11. Although the Council has raised concern that the appellant's evidence has not identified what proportion of the pedestrian movements are likely to involve walking to or from Blackmill Road, the appellant has confirmed that the TS assumes all additional movements would be in this direction.
12. The Council's Highway Consultant advised that, of the additional pedestrian movements generated by the development, the maximum number of pedestrians likely to walk and possibly cross Blackmill Road equates to around 10 additional movements. He concluded that such an increase is unlikely to be sufficient to require a new crossing at the site to be fully funded by the developer.
13. In the light of the foregoing, I consider that the increase in pedestrian movements as a result of the development is moderate and the proportion of these additional movements that will utilise the crossing on Blackmill Road is likely to be small. Consequently, the requirement to provide a traffic controlled crossing would not be fairly and reasonably related to the development in either scale or nature.
14. It is clear from the representations made by the Council and interested parties that there is concern regarding the safety of the existing crossing. To this end, I note the Council's criticisms of the methodology in the TS in relation to *inter alia* pedestrian flows.
15. The appellant subsequently undertook a further pedestrian survey in July 2014 in relation to the use of the crossing. The pedestrian survey was carried out in school term time and identifies that during the 12 hour survey period there was a total of 149 pedestrians using the crossing; a total of 10 pedestrians during the AM peak period and 19 during the PM peak period, none of which were children or elderly people.
16. I accept that the TS may not have been undertaken strictly in accordance with the Local Transport Note 1/95 '*The Assessment of Pedestrian Crossings*' (LTN 1/95). However, when read in conjunction with the subsequent pedestrian survey of the crossing, I am satisfied that there is sufficient evidence as to the order of numbers concerned in terms of pedestrian movement.
17. I also note that the Council has not provided any compelling evidence to the contrary. Thus, I do not find that the TS and subsequent survey are inaccurate to the point that they disturb my overall conclusion that the number of pedestrians using the crossing is moderate.
18. I have also had regard to the effect of the development on vehicle flows and the resultant impact on the safety of pedestrians using the crossing. Although the volume of traffic was relatively low at the time of my site visit, I understand from the Council and representations of other parties that it can be much higher along the main highway network, particularly at peak times. Whilst the TS included a review of vehicle flow, the Council raised concern regarding the absence of speed survey data to evidence the general assumptions that have been made concerning the speed and volume of traffic travelling along the main highway network.
19. In response to requests from the Council, an automatic traffic count loop was installed on the approach to the existing crossing. A survey which recorded vehicle flows and speeds over a 24 hour period was also undertaken in July 2014. It concluded that

there is no evidence of excessive vehicle speeds beyond the 30mph limit in the vicinity of the crossing and that the peak hour flows are below the capacity of the road.

20. Furthermore, the submitted evidence indicates neither significant delay in terms of pedestrians waiting to cross or that the existing crossing arrangements cause delays to traffic flow during peak times.
21. In assessing the safety of the existing crossing, the Council also considered historical accident data, which shows two accidents over a five year period along this stretch of Blackmill Road. Over an extended ten year period this figure rose to eleven accidents. The Council contends that with the exception of three accidents, the others have occurred predominantly during the morning or afternoon peak hours and that the high volume of traffic is likely to be a contributory factor. Nevertheless, it is possible that the accidents occurred as a result of drivers undertaking manoeuvres without due care and attention rather than as a direct result of traffic volume. I also note that none of the accidents involved pedestrians. I am unconvinced therefore, that the limited number of reported accidents in the vicinity of the site can be attributed to the volume of traffic or should be linked to the existing crossing.
22. For these reasons, there is little evidence that the that the existing crossing represents a dangerous situation in highway safety terms or that the increase in vehicular movements associated with the development would contribute to making conditions worse such that the existing arrangement would be unsafe. Neither is there substantive or expert evidence before me that the additional volume of pedestrians arising from the development and using the crossing would be so significant as to place an unacceptable demand on the existing arrangement.
23. As a result, I do not find that additional measures would be necessary to mitigate the effect of the additional pedestrians using the crossing as a result of the development. Furthermore, the upgrading of the crossing would not be required to promote access to, and the use of, public transport facilities in the area.
24. Thus, the development would not conflict with Technical Advice Note 18 '*Transport*' and Policy SP2 of the Bridgend Local Development Plan in terms of the requirement to promote safe, sustainable and healthy forms of transport.
25. Conditions should satisfy the tests outlined in Welsh Government Circular 016/2014 '*The Use of Conditions in Development Management*'. In this context, I find that control by condition requiring the provision of a crossing which is not reasonable related in scale and nature to the development to be unreasonable. The lack of substantive evidence demonstrating that the existing pedestrian crossing is unsafe and that the development would have an unacceptable effect on the existing arrangements also makes such a condition unnecessary. It would therefore fail the tests outlined in Circular 016/2014.

## **Conditions**

26. The Council has suggested five conditions which it considers are those outstanding on planning permission P/11/798/FUL. However, I also note that other conditions attached to planning permission P/11/798/FUL may have outstanding requirements or on-going provisions which need to be secured by this planning permission. Thus, whilst I have allowed the removal of Condition 13, the permission is subject to the other conditions imposed on P/11/798/FUL, so far as the same are still subsisting and capable of taking effect.

**Conclusion**

27. For the reasons outlined above, and having regard to all matters raised, I conclude that the appeal should be allowed and the disputed condition removed.

*Melissa Hall*

INSPECTOR

## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 25/11/14

gan **Janine Townsley LLB (Hons)**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 22 Ionawr 2015

## Appeal Decision

Site visit made on 25/11/14

by **Janine Townsley LLB (Hons)**

an Inspector appointed by the Welsh Ministers

Date: 22 January 2015

**Appeal Ref: APP/F6915/A/14/2226395**

**Site address: The Breakers, 17 West Drive, Porthcawl, Bridgend, CF36 3LS**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Susan Jones against the decision of Bridgend County Borough Council.
- The application Ref P/14/222/FUL, dated 30 March 2014, was refused by notice dated 27 June 2014.
- The development proposed is the change of use to proposed tea rooms to the ground floor of the existing dwelling house – A3 and retention of first floor of premises as residential accommodation.

### Decision

1. The appeal is dismissed.

### Main Issues

2. These are:
  - The effect of the development on the living conditions of occupants of neighbouring properties with particular reference to noise and disturbance.
  - The effect on the vitality and viability of Porthcawl town centre.

### Reasons

#### *Living Conditions*

3. The appeal property is a detached residential house situated on a road which fronts the foreshore and coastal path.
4. The existing main entrance to the appeal property is on the side elevation. This would be retained as the entrance to the proposed tea rooms. The properties either side of the proposal are residential. No. 16 West Drive has been demolished and is being rebuilt. The partially reconstructed dwelling has window openings to the side elevation of the property opposite the entrance to the appeal property and bay windows to the front. Visitors to the proposed tea rooms would pass in close proximity to the side of the bay window and the windows on the side elevation of No.



16 when entering the proposed tea rooms. The change to a commercial use would result in an increase in footfall to this area.

5. I accept that some noise disturbance to the neighbouring properties already exists due to the proximity of the road and the foreshore, however, the noise and disturbance which would be generated by the tea rooms would have a different character due to the number of expected patrons. The increased noise and disturbance would result in significant harm to the amenity of occupiers of neighbouring properties, in particular No. 16, contrary to policies SP2 and ENV7 of the Bridgend Local Development Plan 2006-2021 (LDP).
6. I have considered whether conditions limiting hours of operation and numbers of covers could be imposed which would mitigate the effect on the living conditions of neighbouring properties, however, I consider that the harm which would be caused by this development is not capable of being suitably controlled by conditions.

#### *The Vitality and Viability of the Town Centre*

7. The development proposed is situated outside of the retailing and commercial centres identified in policy SP10 of the LDP. The policy requirements are that new out-of-centre retail development should be developed as a result of an identified need and sequential test of sites. It is clear from the supporting text to policy SP10 that the strategy is to direct all new development of an appropriate scale and nature to town and district centres in order to protect their vitality and viability. Whilst the proposal is not for retail development it is clear from the policy wording that it is intended to cover all new commercial development.
8. The appellant has referred to a petition in support of the proposal as indicative of need, however, no evidence has been submitted to demonstrate that a sequential test of sites has been carried out. In the absence of this evidence I conclude that this development has the potential to harm the vitality and viability of the town centre and consequently it would conflict with policy SP10 of the LDP.
9. I have taken into account the economic benefits which may arise from the proposal and whilst Planning Policy Wales (Edition 7) requires that the planning system should support economic and employment growth this should be alongside social and environmental considerations within the context of sustainable development. In this case any economic benefits which might be generated by the change of use would not outweigh the harm the development would cause.

#### **Conclusion**

10. For the reasons outlined above, I consider the appeal should be dismissed.

*Janine Townsley*

INSPECTOR

## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/1/2015

**gan Aidan McCooey BA MSc MRTPI**  
Arolygydd a benodir gan Weinidogion Cymru  
Dyddiad: 26/01/2015

## Appeal Decision

Site visit made on 14/1/2015

**by Aidan McCooey BA MSc MRTPI**  
an Inspector appointed by the Welsh Ministers  
Date: 26/01/2015

**Appeal Ref: APP/F6915/A/14/2225624**

**Site address: 31 Commercial Street, Kenfig Hill, Bridgend, CF33 6DH**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Karl Lewis against the decision of Bridgend County Borough Council.
- The application Ref P/14/371/FUL, dated 23 May 2014, was refused by notice dated 17 July 2014.
- The development is described as Change of use status from A1 usage (empty premises) to A5 usage as Thai take away including shop window replacement and external extract duct at rear of shop.

## Decision

1. The appeal is allowed and planning permission is granted for a change of use status from A1 usage (empty premises) to A3 usage as Thai take away including shop window replacement and external extract duct at rear of shop, at 31 Commercial Street, Kenfig Hill, Bridgend, CF33 6DH, in accordance with the terms of the application, Ref P/14/371/FUL, dated 23 May 2014, and the plans submitted with it, subject to the following conditions:
  1. The development shall begin not later than five years from the date of this decision.
  2. The development shall be carried out in accordance with the following approved plans: COU/CS/01 and COF/CS/02.
  3. The premises shall be used for a Hot Food Takeaway and for no other purpose, including any other purpose in Class A3 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 with or without modification).
  4. Customers are not permitted on the premises outside the hours of 18:00 to 23:00 Mondays to Saturdays and 18:00 to 22:00 on Sundays.

5. No development shall take place until details of the extraction system to be installed including odour abatement and sound power/pressure levels generated by the external unit, a vertical section plan indicating the position and height of final openings of the exhaust ducts and details of any external condensers (including a plan of their location) have been submitted to and agreed in writing by the Local Planning Authority. The agreed equipment shall be installed prior to the use commencing and shall thereafter be operated and maintained in accordance with the approved details for as long as the use continues.

### **Procedural Matter**

2. The application form specifies a change of use to Class A5 of the Use Classes Order. There is no Class A5 in the Town and Country Planning (Use Classes) Order 1987 as it applies in Wales. There is such a Class in England, which relates to use as a hot food takeaway premises. I shall consider the appeal on the basis of a change of use to a takeaway within Class A3 as this is the appropriate Use Class in Wales.

### **Main Issues**

3. The main issue is the effect of the proposed development on highway safety.

### **Reasons**

4. The appeal site is a vacant retail unit on the main road through Kenfig Hill. There are several shops nearby as well as dwellings. The main concentrations of commercial uses in the vicinity are at the junctions to the east (at the War Memorial) and west (at the traffic lights), where the nearest takeaways are also located. The chip shop at the traffic lights has a car park to the rear for the use of customers. The site is on a straight relatively wide section of the road with double yellow lines along the opposite side. There are marked parking bays all along the road outside the appeal site, which are subject to a waiting restriction of 30 minutes from 08:00 to 18:00 Monday to Saturday. These parking bays were mostly free of vehicles at the time of my site visit at lunchtime on a weekday.
5. The suggested opening hours were in the evenings when traffic volumes would be lower and there would be no parking restrictions. The spaces outside the premises would be potentially available for customers. The appellant supplied photographs taken over several days showing available spaces. There was no convincing evidence of any problems with existing takeaways in similar locations on this road caused by lack of parking. The lawful use as a shop would also generate traffic. I noted that there are parking facilities to the rear of the dwellings in this area and at the entrance to the nearby school. There were no other takeaways in the immediate vicinity of the site that would add to the demand for on-street parking. The appellant stated that a large proportion of takeaways would be delivered, which would reduce traffic flow to the site. There are double yellow lines opposite and any illegal parking could be addressed by the Police.
6. The site is in a sustainable location within the District Centre of Kenfig Hill. There are dwellings in the area and some patrons could walk to the proposal. The particular circumstances of the site and proposal lead me to conclude that it would not lead to highway safety problems to such an extent as to justify the refusal of planning permission. The proposal would therefore comply with the Council's Supplementary Planning Guidance 14 – Hot Food Takeaway Establishments.

7. I have carefully considered the objections made to the Council. The Council raised no concerns on design grounds and was satisfied that there would not be an over-concentration of takeaways in the area. Any concerns regarding odour could be addressed by the imposition of an appropriate condition. The opening hours could also be limited by condition. The evidence was that the shop had been empty for 6 years and the proposal would bring it back into use. The appellant stated that 3 jobs would be created, which is also a benefit of the proposal. The other issues raised in the objections before the Council were addressed in the Officer's report and I am satisfied that they do not constitute a reason to refuse planning permission.
8. The Council suggested opening hours be limited to 23:00 Monday – Saturday rather than midnight as suggested by the appellant. This is in line with the opening hours of other takeaways in the area and would safeguard the amenities of residents. The restriction of opening hours to 18:00 was so that the premises would not be open when traffic volumes were higher as discussed in paragraph 5. The slightly shorter opening hours on a Sunday evening were agreed and are considered necessary on a Sunday. A condition limiting the use of the premises to a takeaway is appropriate to control the type of development in this location. It is also the specific use for which the appellant applied. I have considered the suggested conditions in the light of the advice in Welsh Government Circular 016/2014 - The Use of Planning Conditions in Development Management and amended the suggested wordings as appropriate.

### **Conclusion**

9. Having considered all relevant matters raised, I conclude that the reason for refusal and objections to the proposal have not been sustained and that the appeal should succeed.

*Aidan McCooey*

Inspector

## Penderfyniad ar Apêl

Ymweliad safle a wnaed ar 06/01/15

**gan Emyr Jones BSc(Hons) CEng  
MICE MCI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 13 Ionawr 2015**

## Appeal Decision

Site visit made on 06/01/15

**by Emyr Jones BSc(Hons) CEng MICE  
MCI**

**an Inspector appointed by the Welsh Ministers**

**Date: 13 January 2015**

**Appeal Ref: APP/F6915/A/14/2226490**

**Site address: 270/270A New Road, Porthcawl**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Wm Morrison Supermarkets plc against the decision of Bridgend County Borough Council.
- The application Ref P/14/419/RLX, dated 19 June 2014, was refused by notice dated 14 August 2014.
- The application sought planning permission for residential development, two Class A1 retail units, car parking and access and demolish existing dwelling without complying with a condition attached to planning permission Ref P/12/878/OUT, dated 28 October 2013.
- The condition in dispute is No 4 which states that: "The use of the retail units hereby permitted shall not be open to customers outside the following times:-  
07.00 hours to 22.00 hours – Monday to Saturday; and  
07.00 hours to 21.00 hours – Sundays and Bank Holidays."
- The reason given for the condition is: "In the interests of residential amenities."

## Decision

1. The appeal is allowed and planning permission is granted for residential development, two Class A1 retail units, car parking and access and demolish existing dwelling at 270/270A New Road, Porthcawl in accordance with the application Ref P/14/419/RLX dated 19 June 2014, without compliance with condition number 4 previously imposed on planning permission Ref P/12/878/OUT dated 28 October 2013 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:
  - 4) The retail units hereby permitted shall not be open to customers outside the times of 0700 – 2300 on any day.

## Main Issue

2. I consider the main issue in this case to be the effect of varying condition 4 on the living conditions of existing and proposed neighbouring residential occupiers.

## Reasons

3. The development is currently under construction with opening anticipated in the coming spring. The appellant seeks to vary condition 4 to allow trading until 2300 on every day of the week. The Council accepts that the noise from car parking and fixed plant has been addressed for both existing and proposed residential properties. Its concerns relate specifically to the impact of noise from within the curtilage of the premises due to people visiting the store between 2200 and 2300.
4. Although the appeal site is located in a predominantly residential area, it is adjacent to a roundabout which forms the junction of New Road and Aldenham Road and is on one of the routes into Porthcawl. The June 2014 Noise Impact Assessment notes that the existing ambient noise climate is controlled by traffic noise on the above roads. Previous noise monitoring showed that maximum noise levels generated between 2100 and 2300 on Saturday 20 July 2013 were from HGVs/cars accelerating from the roundabout.
5. The appeal site is also close to the entrance to a very large caravan site which has approximately 1900 caravans. Whilst that site has its own shop, in peak season it closes at 2000 such that those staying at the caravan site could well use the appellant's 'M Local' convenience store after that time, including for the purchase of alcoholic drinks.
6. For all of the appellant's 'M Local' stores which are open until 2300, on average only 3.35% of sales take place in the last hour. The appellant operates an 'M Local' store in Rhyl which is open from 0700 to 2300 and is located in close proximity to a popular caravan park. In that case the average number of transactions during the last hour is 28.59 (approximately 1 customer every 2 minutes) which is 3.41% of the total daily trade. Although I have no information on the scale of the caravan park near the Rhyl store, it is likely that the 'M Local' store at the appeal site would also experience a reduced trading pattern between 2200 and 2300. Furthermore, in my experience, convenience stores, including those that sell alcohol, do not have the same propensity as hot-food takeaways for people to congregate outside late at night.
7. The appellant's commissioned a noise survey close to the nearby 'Bargain Booze' on the evening of Saturday 6 September 2014. This was on the basis that it is a similar local amenity, within closer proximity to the caravan park than the appeal site, and is likely to experience similar trading patterns during the late evening period as the appellant's store. However, due to different traffic conditions, background noise levels are quieter than at the appeal site. Although 'Bargain Booze' closes at 2200, 2100 to 2200 and 2200 to 2300 can both reasonably be considered as being late evening. No anti-social behaviour associated with the store was identified, people talking was generally not a significant source of noise, with only occasional short conversations from people using the shop being just audible. The level of activity appeared to reflect that at the appellant's Rhyl 'M Local' store.
8. *Technical Advice Note (Wales) 11 Noise* distinguishes between two different time periods, 0700 – 2300 and 2300 – 0700. It is important to note that the proposal would not extend trading into the more sensitive 2300 – 0700 period.
9. The appellant draws attention to appeal decision APP/L6940/A/12/2169571 where a proposal to extend trading hours at a 'Tesco Express' store to 2300 was allowed. Whilst the character of the two areas could well be different, that site also has dwellings in close proximity and the decision confirms that the trading pattern at such stores between 2200 and 2300 is limited and does not create unacceptable disturbance.

10. For the above reasons, I am of the view that noise from within the curtilage of the premises due to people visiting the store between 2200 and 2300 would not be likely to materially harm the living conditions of existing and proposed neighbouring residential occupiers. As a result, the proposed increase in trading hours would not conflict with *Bridgend Local Development Plan* policy SP2.
11. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting another and retaining the relevant non-disputed conditions from the previous permission.

*E Jones*

Inspector