

REFERENCE: P/16/376/RLX

APPLICANT: T B D (Uk) Ltd C/O John Matthews Planning & Dev., 47 Anglesey Way, Porthcawl, CF36 3QP

LOCATION: Waterton House Brocastle Avenue Waterton Industrial Estate

PROPOSAL: Relax condition 9 of P/09/937/FUL (operating hours of the site)

RECEIVED: 11 May 2016

SITE INSPECTED: 13 June 2016

APPLICATION/SITE DESCRIPTION

In 2010, planning permission was granted to TB Davies (UK) Ltd to extend an existing industrial unit to provide additional manufacturing floorspace on Brocastle Avenue, Waterton Industrial Estate (P/09/937/FUL refers). The Noise Assessment report that accompanied the aforementioned application indicated that hours of operation would be limited and, in a need to safeguard the amenity of residents but not discourage investment, a condition was imposed which sought to control the operations in and around the extended building with reference to hours of work. Condition 9 of P/09/937/FUL stated:

'No machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:

Monday-Friday: 07:30 hours to 18:00 hours;

Saturday: 07:30 hours to 12:30 hours;

And not at any times on Sundays, Bank Holidays

Reason: In the interests of residential amenities'.

In October 2015, the Department received complaints from residents of Treoes regarding noise emanating from operators on Waterton Industrial Estate. Subsequent investigations confirmed that TB Davies (UK) Ltd was carrying out operations outside of the approved hours of use. The breach was brought to the company's attention and initial consideration was given to changes to the operational systems so that no work would be undertaken within the extended building outside the hours controlled by the condition. This proved difficult and has resulted in this application, made under Section 73 of the Town and Country Planning Act, seeking to relax condition 9 and substitute with the following wording:

No process shall be carried out, no plant or machinery shall be operated, outside the building (approved under P/09/937/FUL) and no delivery vehicles shall enter or leave the site outside the following times:

Monday to Friday: 07:30 hours to 18:00 hours

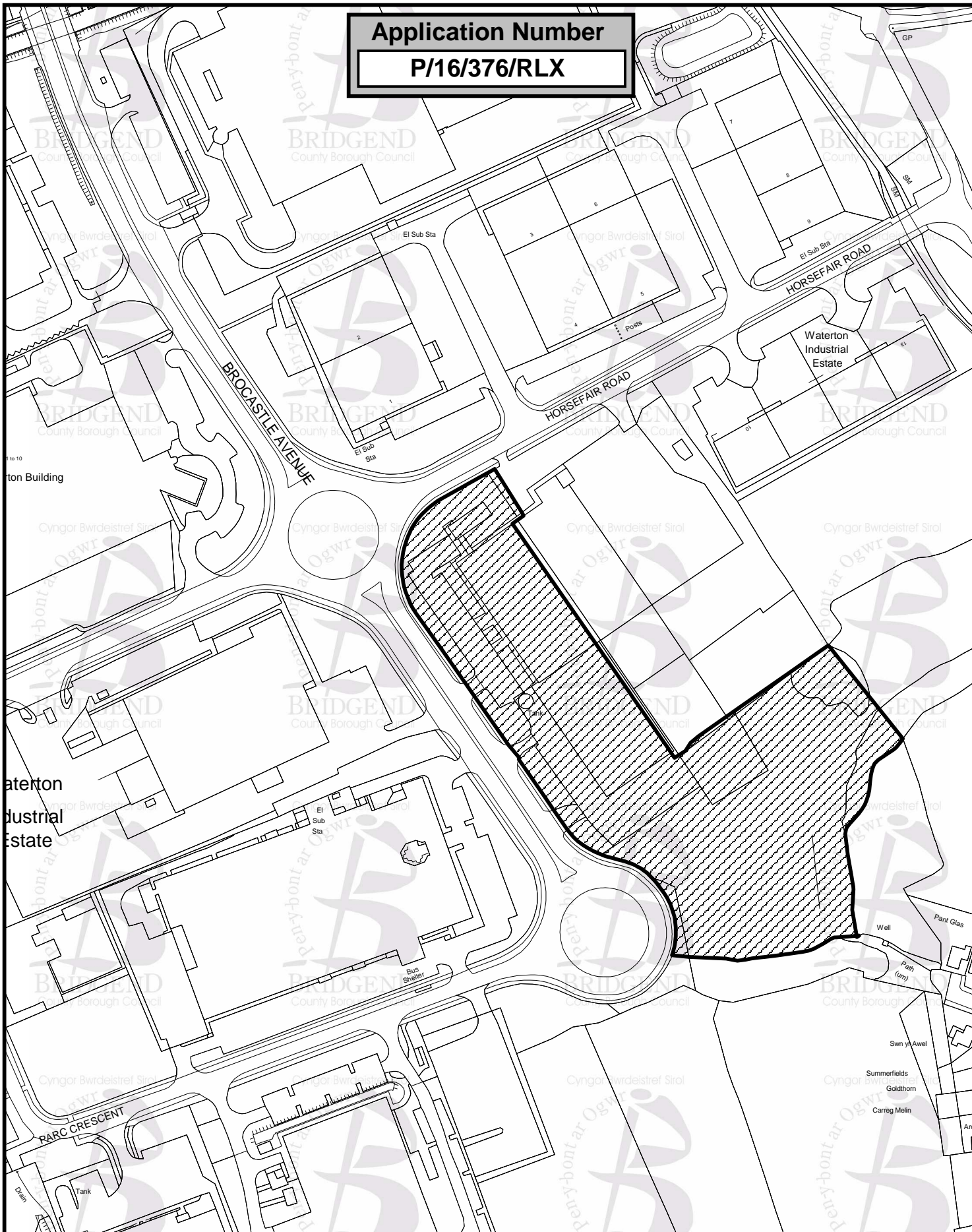
Saturday: 07:30 hours to 14:00 hours

And not at any time on Sundays or Bank/Public Holidays

Reason: In the interests of residential amenities.

Application Number

P/16/376/RLX



Scale 1:2,500

**Date Issued:
30/06/2016**

**Development-Mapping
Tel: 01656 643176**

Mark Shephard

Corporate Director-Communities

Communities Directorate,
Bridgend County Borough
Council, Civic Offices,
Angel Street,
Bridgend CF31 4WB.

O/Drive/Plandraw/new MI layouts/
Committee DC Plan

(c) Crown Copyright and database rights
(2016) Ordnance Survey (100023405)

(c) Hawlfraint a hawliau cronfa ddata'r Goron
(2016) Rhif Trwydded yr Arolwg Ordnans
(100023405)

(c) Cities Revealed Aerial Photography
copyright, The GeoInformation Group (2009)

Cyngor Bwrdeistref Sirol



Originally, the application sought to remove condition 9 to allow the operation to continue un-controlled but this has been amended as a result of negotiations with the applicant company and their planning representative.

The applicant company have requested that the following information be considered in support of the application:

(i) The Waterton Industrial Estate has long been, and continues to be allocated for employment uses including B2 general industry which by definition is a use for which operational hour restrictions are unjustifiable and,

(ii) It is irrational given that the existing original part of the industrial building is not the subject of an operational hour restriction. Moreover, other neighbouring uses notably the nearby Royal Mail depot which has large vehicles entering and exiting the site, is not the subject of operational hour restrictions.

The supporting statement continues and indicates that the planning condition places 'intolerable constraint on the effective and successful operation of the applicant company's business activities. It is understood that the company's acquisition of the property proceeded on the basis that the existing buildings were not the subject of any operational hour restriction and the estate's general allocation for employment uses including B2 general uses.

RELEVANT HISTORY

P/09/937/FUL: Planning permission was granted for an extension to an existing industrial unit on 14th June 2010.

PUBLICITY

The application has been advertised on site.

Residents of the village of Treoes (Vale of Glamorgan) have been notified of the receipt of the application.

The period allowed for responses to consultations/ publicity has expired.

A letter advising the residents, community councils and Vale of Glamorgan of the change to the description of development have been sent on 27th June 2016.

NEGOTIATIONS

Commenced on 9th June 2016 in response to concerns expressed by residents and the community councils

CONSULTATION RESPONSES

Coychurch Lower Community Council: This site is very close to homes in Treoes, and relaxing the condition increase noise experienced by residents in the village. The restricted operating hours condition should remain.

Head of Street Scene (Highways): No objection.

Group Manager Public Protection: No objection to the relaxation of the planning condition subject to a new condition being re-instated to control the hours of work outside the 'extended' building.

REPRESENTATIONS RECEIVED

Letters of objection have been received from the following properties:

The Croft, Swn Yr Awel, Summerfield, Goldthorn, Carreg Melin, Arosfa, Ty Onnen, Great House, 6 & 16 Yr Efail, The Old Barn, Ty Newydd, Bronhaul, Trelaun, Foxwood, Copperfield, 11 Nant Canna, Stoneybrook, Caeffynnon, Rhoslanog, Clifton House, Gwyndy and 11,14,21 Brookside.

The following is a summary of the objections received:

1. Industry opening 24 hours a day so close to existing properties is unacceptable - daytime working should be maintained. Original planning condition was required to preserve lower noise levels to protect the amenity of residents who have a right to the quiet enjoyment of their homes.
2. The applicant has secured business contracts in the full knowledge of the planning controls
3. To allow this application would set a precedent for other businesses to operate for 24 hours
4. Business could consider re-location elsewhere on Waterton Industrial Estate, where there are vacant units, further away from existing properties
5. Increased disturbance could dissuade people from living in the village and could devalue properties
6. Noise may have an impact on wildlife
7. Previous planning inquiry decision on the adjacent site considered the need to safeguard the living conditions of the Treoes residents and rejected the appeal on that basis.

Representations have also been received from Llangan Community Council who has objected on the basis of public amenity of Treoes residents. The Council are requested to consider proposals contained in the 1996 Secretary of State report re Boundary Changes and the 2001 Inspectorate Report which requires that BCBC give close attention to the siting and design of any development in order to protect the amenities of the nearby village of Treoes. Llangan Community Council request that this application to relax hours is refused and that BCBC take out enforcement action to return TBD (UK) to normal daytime working hours only.

Alun Cairns MP (Vale of Glamorgan), Jane Hutt (AM) and Andrew RT Davies (AM) have also written on behalf of their constituents and have asked that this Council consider maintaining the working hours so that works in the factory can only be undertaken during sociable working hours. All writers maintain that the Treoes residents are entitled to the quiet enjoyment of their homes during evenings and at weekends.

COMMENTS ON REPRESENTATIONS RECEIVED

Whilst the principal objection of the noise affecting the amenity will be considered in the appraisal section, the following comments are provided in response to the other objections received:

Setting a precedent for other businesses to operate for 24 hours:

This application is being considered on its own planning merits having regard to the specific site circumstances and existing planning controls. If the Council are minded to vary the planning condition that control the extended part of the TBD (UK) Ltd operation that would not influence any planning decision that would be made on other premises on the estate.

Business could consider re-location elsewhere on Waterton Industrial Estate,

The re-location of the business is not before this Council.

Increased disturbance could dissuade people from living in the village and could devalue properties

Ensuring that a development does not adversely affect the amenity of neighbouring uses is one of the criteria against which this application is being considered but it does not extend to protection of property values - this is not a material planning consideration.

Noise may have an impact on wildlife

No evidence has been offered as to the direct impact of this business on the local wildlife and as such this is not a basis for rejecting this planning application. The wording of the revised condition which will control operations outside the building will provide safeguards not only to residents but to any ecological interests.

Previous planning inquiry decision on the adjacent site considered the need to safeguard the living conditions of the Treoes residents and rejected the appeal on that basis

The appeal decision relates to an adjacent site but a very different operation which involved the storage and distribution of containers on open land. In the context of the development policies of the time, the Inspector concluded that the operation was having an unacceptable impact on the amenity of the residents of Treoes and dismissed the appeal and upheld the enforcement notice. The manufacturing process undertaken at the TBD (UK) Ltd site principally takes place inside the building but it is acknowledged that the Council does need to control activities outside the building and the revised condition does offer such controls which should be sufficient to reasonably safeguard the amenity of residents.

APPRAISAL

The application is referred to Committee in view of the objections received from the residents of Treoes and the Community Councils.

Section 73 (S73) of the Town and Country Planning Act 1990 relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. In this case TBD (UK) Ltd are seeking permission to continue operating from the building and land that were subject of planning application P/09/937/FUL but in accordance with the previously imposed conditions with condition 9 varied as follows:

No process shall be carried out, no plant or machinery shall be operated, outside the building (approved under P/09/937/FUL) and no delivery vehicles shall enter or leave the site outside the following times:

Monday to Friday: 07:30 hours to 18:00 hours

Saturday: 07:30 hours to 14:00 hours

And not at any time on Sundays or Bank/Public Holidays

Reason: In the interests of residential amenities.

On such applications, the Council must only consider the question of the conditions subject to which planning permission should be granted and if they decide planning permission should be granted subject to conditions differing from those previously granted then the S73 application should be granted. If the Council decides that planning permission should be granted subject to the same condition as originally imposed then planning permission should be refused.

National policy requires that all applications for planning permission, including applications made under S73 of the Town and Country Planning Act should be determined in accordance with the adopted development plan for the area, unless material considerations indicate otherwise. Material considerations could include current circumstances, policies in an emerging development plan, and planning policies of the Welsh Government.

The application site is located on Waterton Industrial Estate which is allocated and protected for employment development falling within uses B1, B2 and B8 (as defined by the schedule to the Town and Country Use Classes 1987), (Policy REG1 (8) of the Bridgend Local Development Plan (2013) refers). The supporting text in the development plan indicates that a variety of sites suitable for all types of employment uses of varying size and type have been identified with the policy also seeking to maintain the use of existing sites for employment purposes. National policy requires Local Authorities to place a greater emphasis on the likely economic benefits of a development with the numbers and types of jobs expected to be created or retained on a site, in the determination of any planning application for economic development.

All development is required to create high quality, attractive, sustainable places and Policy SP2 of the Bridgend Local Development Plan identifies 15 criteria which are the starting point for the assessment of all applications. Avoiding or minimising noise, soil and water pollution and safeguarding the amenity of neighbouring uses/occupiers are the relevant criteria for the purposes of this application. Policy ENV7 states that development proposals will only be permitted where it can be demonstrated that it would not cause a new or exacerbate an existing, unacceptable risk of harm to amenity due to...noise pollution. The policy further states that in areas currently subject to the above pollution, any development proposal will need to demonstrate mitigation measures to reduce the risk of harm to local amenity to an unacceptable level.

The main issue in the determination of this application is whether the revised planning condition would result in a business operation that would have an unacceptably harmful impact on the amenity of residents of Treoes through the generation of noise or does the revised condition provide adequate controls to reasonably safeguard the amenity of residents.

There has been a longstanding commitment to develop Waterton Industrial Estate for a range of commercial and industrial uses in various iterations of the development plans over a number of years. The 2009 permission to extend the existing factory and provide an external service yard was considered against the policies of the former Bridgend Unitary Development Plan which allocated the land for B1, B2 and B8 uses subject to the development maintaining or enhancing the environment. The condition which is subject of this application was imposed in the interests of protecting the amenity of residents, the nearest being those living in the village of Treoes which is some 125m due south east of the application site.

The business which manufactures ground support equipment and specialist access solutions for the military and aerospace industry has been carried out from the extended building and site for a number of years apparently without little cause for complaint but this changed toward the end of 2015, possibly as a result of changes in shift patterns to meet new contracts.

From the representations received, residents contend that the current operation is resulting in unacceptable levels of noise and disturbance particularly late at night or in the early hours of the morning. Complaints have been made to this Council and to the Public Protection Section in the Vale of Glamorgan (VOG) who can exercise statutory powers to control noise. Whilst investigations into the complaints have been made by officers of the VOG, it is understood that no formal action has been pursued as any incidences of noise and disturbance have not constituted a statutory noise nuisance. Nevertheless, it is evident that TBD (UK) LTD has been operating outside of the hours specified in the original planning condition.

The implications of noise in the planning process are set out in Planning Policy Wales – Edition 8 – January 2016 and Technical Advice Note 11: Noise (1997). Noise can be a material planning consideration and Councils are required to make a careful assessment of noise levels and in some circumstances, it will be necessary for a technical noise assessment to be provided.

This application has not been accompanied by a noise assessment and therefore a detailed appraisal of the noise levels from the industrial processes has not been provided. On the basis of the original submission which sought to remove the condition and therefore any controls on the hours of work in the building and on site, it may have been difficult to conclude that the business was not having some impact on the amenity of residents, given the level of objection received.

The application as amended, now seeks to vary rather than remove the condition and it is considered, following consultation with the Public Protection Section in this Council and the VOG that the revised condition provides sufficient control and an appropriate balance that will allow the company to continue manufacturing within the original buildings (which are not the subject of any planning restriction in respect of hours of operation) and the '2009 extension' for an extended period, whilst limiting the activities in the external yard and storage area, in the interests of safeguarding the amenity of residents in Treoes. It is understood that the complaints about noise have principally resulted from activities outside the building in the yard where metal has been stored or dropped into containers. Whilst some noise may emanate from within the building, particularly when the large service doors are open, this is not considered so significant in terms of the impact on residents.

The re-worded condition does allow manufacturing to continue inside the building for 24 hours, should that be required by the company but will limit activities outside to the normal working day with some limited working on Saturday morning.

The Council acknowledges that the substance of local views must be considered in the determination of an application and on this case significant objection has been submitted through individual letters, the community councils and local politicians. It is however considered that the revised condition will reasonably safeguard the living conditions and well-being of residents whilst allowing this important local employer to continue the business activities, thus safeguarding the retention of jobs on site.

CONCLUSION

This application is recommended for approval because on the balance of all the policy objectives, it is considered that the development complies with Council and national policy. When considering the application against the relevant planning circular on planning conditions, there are no reasons why the planning condition cannot be varied. Furthermore, the revised condition will reasonably protect the amenities of the occupiers of properties in Treoes.

Section 40 of the Natural Environment and Rural Communities Act 2006 states that 'every public authority must, in exercising its function, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. This "duty to conserve biodiversity" has been replaced by a "biodiversity and resilience of ecosystems duty" under Section 6 of the Environment (Wales) Act 2016 which came into force on 21st March, 2016.

Section 6 (1) states that "a public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions." Section 6(2) goes on to state that "In complying with subsection (1), a public authority must take account of the resilience of ecosystems, in particular (a) diversity between and within ecosystems; (b) the connections between and within ecosystems; (c) the scale of ecosystems; (d) the condition of ecosystems (including their structure and functioning); and, (e) the adaptability of ecosystems."

Regulation 9 of the Conservation of Habitats & Species Regulations 2010 requires LPA's to take account of the presence of European Protected Species at development sites. If they are present and affected by the development proposals, the Local Planning Authority must establish whether "the three tests" have been met, prior to determining the application. The three tests that must be satisfied are: 1. That the development is "in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment," 2. That there is "no satisfactory alternative," and 3. That the derogation is "not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range"

Given the nature of the application (relaxation of a condition) and application site on previously developed land on an industrial estate, it is considered that, overall, there will be no significant adverse residual impacts on biodiversity.

Therefore, the proposal is considered to comply with the requirements of the Habitats Regulations 1994 (as amended), Section 6 of the Environment (Wales) Act 2016, guidance contained within TAN 5: Nature Conservation and Planning (2009) and relevant LDP policies.

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with sustainable development principles to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (section 5). 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 and * a globally responsible Wales.

The duty has been considered in the assessment of this application. It is considered that there would be no significant or unacceptable impacts upon the achievement of wellbeing goals/objectives as a result of the proposed relaxation of the operating hours condition.

RECOMMENDATION

(R53) That permission be GRANTED subject to the following condition(s):-

1. No process shall be carried out, no plant or machinery shall be operated, outside the building (approved under P/09/937/FUL) and no delivery vehicles shall enter or leave the site outside the following times:

Monday to Friday: 07:30 hours to 18:00 hours

Saturday: 07:30 hours to 14:00 hours

And not at any time on Sundays or Bank/Public Holidays

Reason: In the interests of residential amenities.

2. The means of access shall be retained with 6 metre radius kerbing on either side of the entrance with vision splays of 2.4 x 43m to the North which shall be retained as such thereafter.

Reason: In the interests of highway safety.

3. No structure, erection or planting exceeding 0.9 metres in height above adjacent carriageway level shall be placed within the required vision splay areas.

Reason: In the interests of highway safety.

4. The parking area shall remain available for its designated use in perpetuity.

Reason: In the interests of highway safety.

5. No external tannoy system shall be installed unless otherwise agreed in writing by the Local Planning Authority. All systems installed as part of the agreed scheme shall thereafter be operated and maintained in accordance with the approved details for as long as the use continues.

Reason: To safeguard the amenities of the occupiers of the nearest residential properties.

6. No external lighting shall be installed without the prior written consent of the Local Planning Authority. All external lighting installed as part of the agreed scheme shall thereafter be operated and maintained in accordance with the approved details for as long as the use continues.

Reason: To ensure the Local Planning Authority has effective control over the development so as to minimise light spillage.

*** THE FOLLOWING ARE ADVISORY NOTES NOT CONDITIONS**

This application is recommended for approval because on the balance of all the policy objectives, it is considered that the development complies with Council and national policy. When considering the application against the relevant planning circular on planning conditions, there are no reasons why the planning condition cannot be varied. Furthermore, the revised condition will reasonably protect the amenities of the occupiers of properties in Treoes.

**MARK SHEPHARD
CORPORATE DIRECTOR COMMUNITIES**

Background Papers

None