

## **SECTION A – MATTERS FOR DECISION**

### **Planning Applications Recommended For Refusal**

<b><u>APPLICATION NO:</u> P2017/0512</b>	<b><u>DATE:</u></b>
<b>PROPOSAL:</b>	Retention of use of part of car park for two pitches for the sale of meat and potatoes.
<b>LOCATION:</b>	Resolven AFC, Neath Vale Supplier Park access road, Resolven
<b>APPLICANT:</b>	Mr Ieuan Ace – Resolven AFC
<b>TYPE:</b>	Change of Use
<b>WARD:</b>	Resolven

### **BACKGROUND**

This application has been called to Committee at the request of Ward Councillor Des Davies, who raises concern at the inconsistency between the recommendation and the granting of Street-Trading Licenses for the same use, with no objection having been raised by Planning Officers to a license for potato sales in November 2013.

### **SITE AND CONTEXT**

The application site is located within the grounds of Resolven AFC car park.

The application site itself measures 10m wide by 3m in depth. Access to the site is via an unmade track leading onto the Resolven AFC gravel car park. To the north, south and east of the site is Resolven AFC land, with the clubhouse itself to the west. The existing market site is located to the south-east of the application site on the former TRW factory.

### **DESCRIPTION OF DEVELOPMENT**

This application seeks retrospective planning permission for the retention of use of part of the car park for two pitches for the sale of meat and potatoes respectively on a Saturday from 7.00am to 13.30pm.

In support of the application the developer has submitted a letter of support from the Costcutter store in Resolven, together with the NISA store in Resolven, and a petition of support of 20 signatures.

All plans / documents submitted in respect of this application can be viewed on the [Council's online register](#).

## NEGOTIATIONS

It should be noted that following receipt of a complaint to the Enforcement Section, an investigation was undertaken and it was found that the retail use within the car park of Resolven AFC was operating without the benefit of planning permission. However, due to the potential impacts on the existing retail centre of Resolven and the employment allocation, an application was not invited. Notwithstanding that, the developer chose to submit this application.

## PLANNING HISTORY

The application site does not have any relevant planning history.

## CONSULTATIONS

**Natural Resources Wales:** No objection, subject to an informative.

**Resolven Community Council:** No reply, therefore no observations to make.

**South Wales Trunk Road Agency:** No reply, therefore no observations to make.

## REPRESENTATIONS

A site notice was displayed on 14/06/17. In response, to date 2 no. representations have been received, with the issues raised summarised as follows: -

- The proposal would have a detrimental impact on traffic flow on market days at the former TRW site with inevitable consequences impacting upon the safety of road users and pedestrians.
- The former TRW site has planning consent to operate a market and this proposal represents a direct conflict with this activity, and will have financial consequences for established traders who currently operate at the market.
- Why has no enforcement action been undertaken, despite numerous complaints?

- The claim in the application that the owners of the market were consulted and didn't object is factually incorrect and wholly misleading.
- The weight of the goods referred to by the applicant is immaterial as the established traders within the market have received no onerous comments on this matter.
- The applicant is affiliated to the Community Council, who are consultees. Has a potential conflict of interest been declared?

## REPORT

### National Planning Policy

- [Planning Policy Wales](#)
- [Technical Advice Notes](#)
  - Technical Advice Note 15: Development and Flood Risk

### Local Planning Policies

The Development Plan for the area comprises the Neath Port Talbot Local Development Plan which was adopted in January 2016, and within which the following policies are of relevance:

### Strategic Policies

- Policy SP3      Sustainable Communities
- Policy SP11      Employment Growth
- Policy SP12      Retail
- Policy SP20      Transport Network
- Policy SP21      Built Environment and Historic Heritage

### Topic based Policies

- Policy SC1      Settlement limits
- Policy EC2      Existing Employment Areas
- Policy EC3      Employment Area Uses
- Policy R3      Out of Centre Retail Proposals
- Policy TR2      Design and Access of New Development
- Policy BE1      Design

## EIA and AA Screening

As the development is not Schedule 1 or Schedule 2 Development on the EIA Regulations, a screening opinion will not be required for this application.

## Issues

Having regard to the above, the main issues to consider in this application relate to the principle of development, together with the impact on the visual amenity of the area, the amenities of neighbouring residents and highway safety.

## Principle of Development

It is noted that the application site is located outside the settlement limits defined by Policy SC1 of the adopted Neath Port Talbot Local Development Plan (LDP), and would not fall under any of the permitted categories listed under this Policy. As such, the development is contrary to Policy SC1.

It should also be noted that the application site is sited within an area allocated as an existing employment area under Policy EC2/16. Although the existing clubhouse itself is not an employment use, Policy EC3 nevertheless restricts uses within these existing employment areas to uses within B1, B2 and B8; ancillary facilities or services which support and complement the wider role of the primary uses or; commercial services unrelated to Class B.

The supporting justification to Policy EC3 emphasises that, in order to stimulate growth in the economy a wider mix of uses will be permitted on the allocated sites and the existing employment areas. While noting that these are likely to be commercial services and complementary uses, it specifically notes that this does not include uses best located in a retail centre.

Notwithstanding that, it is noted there is an existing indoor market use within the former TRW site. However, this was granted temporary planning permission for 5 years, due to the original market location (Rheola House) being subject to an ongoing planning application which is subject to the signing of a S106 agreement. The temporary permission is intended to prevent the market from operating in two separate locations within the Resolven area, should the application at

Rheola House not be implemented or only partially implemented. Notwithstanding the presence of the nearby indoor market, it is considered that the introduction of a new retail use on this site, even on one day a week, would be contrary to Policies EC2 and EC3 of the LDP.

The final relevant Policy is Policy R3, which relates to 'out-of-centre retail proposals' which sets out criteria for retail developments outside designated centres. Its permissive effect, however, does not extend beyond the defined limits of settlements. The amplification to the policy explains that the intention of the policy is to apply strict controls over retail proposals to ensure retail centres are supported and enhanced as far as possible.

As the application site is outside the settlement limit defined in the LDP, and in the absence of any other relevant supportive retail policy, it follows that as a matter of fact the proposal cannot comply with Policy R3.

As the retention of the retail use would be contrary to the above policies, and any new retail uses in the area should either be located within the settlement of Resolven (or the existing market site), it is considered that the principle of the retention of the A1 retail use would be detrimental to the retail policies within the LDP and the overall function of the employment area. As such, refusal is therefore recommended on these grounds.

#### Impact on Visual Amenity

By virtue of the fact that the development relates to the use of the car park by mobile retail vans for 6 ½ hours on a Saturday morning, it is considered that there would be no detrimental impact upon the character and appearance of the surrounding area or street-scene. Furthermore, suitably worded conditions requiring the removal of the vans outside of the specified times could be imposed on the application in the event it was recommended for approval.

#### Impact on Residential Amenity

Due to the location of the application site and the fact that there are no residential properties in close proximity, it is considered that the use of the existing car park for short-term retail activities would not create any unacceptable impacts on residential amenity.

## Parking and Access Requirements and Impact on Highway Safety

It is noted that the sales pitches are located within the existing car park serving the AFC clubhouse, and would be accessed via the existing access track. Whilst it is noted that the sales pitches would take up some of the car parking area, given the short-term nature of the use (6 ½ hours on a Saturday) and the timings of the use, it is considered that there is sufficient space within the existing Resolven AFC car parking area for customer parking for both the sale pitches and clubhouse. Although the operators of the indoor market have expressed concern over the impact on traffic flow on market days at the former TRW site “with inevitable consequences impacting upon the safety of road users and pedestrians” no objection has been raised by the Highways Officer on such grounds, such that it is considered that there would be no detrimental highway safety issues over and above that which would be experienced with the movements associated with the existing club and car parking area.

## Flood Risk / Drainage

It should be noted that the application site is located in a C2 flood zone. A Flood Consequences Assessment (letter of acceptance) was submitted in support of the application. This has been assessed by Natural Resources Wales who offer no objection, subject to an informative in respect of flood warning. Having regards to the tests in Technical Advice Note 15, the proposal is therefore considered acceptable in terms of flood risk.

## Other Matters

*Responses to matters raised in representations not covered in the report on the main issues.*

As identified earlier in this report, a number of objections were received in response to the publicity exercise. In response to the main issues raised which have not been addressed elsewhere in this report, the following comments are made:

- With regards to the potential impact on the viability of the existing market, it should be noted that Planning Policy Wales (at paragraph 10.2.12) emphasises that “*it is not the role of the planning system to restrict competition between retailers within centres*”. While this is not a ‘retail centre’, it is thus nevertheless

considered that refusal on such grounds could not be substantiated.

- It has been queried why no enforcement action has been taken. However, the application has been submitted to the Local Planning Authority, such that the expediency of taking any action is considered together. It should be noted that enforcement action is recommended as part of this decision.
- In respect of the comments that the owners of the market did not object, these are noted.
- With regards to the comments regarding the weight of the product these are noted, but would not be considered a reason to approve or refuse the application.
- Finally, the comments that the applicant is affiliated to the Community Council, who are consultees. It should be noted that Resolven Community Council have not responded on the application. Nevertheless, it would be for members of the Community Council to declare any such interest at one of their meetings accordingly.

## CONCLUSION

The decision to refuse planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the Neath Port Talbot Local Development Plan (2011–2026) adopted January 2016.

It is considered that the principle of the retention of the A1 retail pitches outside of the identified settlement limits, and the defined retail area of Resolven, would be contrary to Policies SC1 and R3 of the Neath Port Talbot Local Development Plan. Furthermore, as the application site is located in an area allocated for employment use and the A1 use would not constitute an ancillary facility to support or complement the wider role and overall function of the allocated employment area the development would be contrary to Policies EC2 and EC3 of the Neath Port Talbot Local Development Plan. Refusal is therefore recommended.

## **Enforcement**

Faced with a recommendation to refuse planning permission for this out-of-centre retail use, it is also necessary to consider the expediency of taking enforcement action against the unauthorised use(s).

It is noted that Councillor Des Davies has raised the fact that a Trading License exists for two pitches, and contact with Licensing has confirmed that both the retail pitches have been granted Street-Trading Licenses from the Licensing Section. The potato sales was granted approximately 2014, and the meat sales in March 2017. Cllr Davies has also noted that in November 2013 Planning Officers did not raise objection to the license (meat sales). In this regard, it is noted that there may appear to be inconsistency from the department.

In response, however, it is emphasised that in November 2013 the Planning department's informal stance was that street-traders would not normally require planning permission to site a single mobile trailer/ vehicle provided it was for a limited number of hours. At that time (for a single van, not the two which are the subject of the current application), the Licensing Section was advised (following initial objections being raised) that the Local Planning Authority would have no objections to the license provided that

- Trading is only permitted on a Saturday
- Trading is only permitted between 8.00hrs and 16.00hrs
- Only potatoes are traded from the vehicle
- The vehicle is removed from the site at the end of the approved hours

Since that time however, the Planning department has taken a more restrictive approach which seeks to protect the retail centres and ensure that retail uses are focussed in such designated centres, all in accordance with the objectives of the LDP. Accordingly, all street-traders (including burger vans, jacket potato sellers etc.) require planning permission for the change of use of the land where their sales 'pitch' is located.

It is thus also noted that while the Planning Authority did not make representations on the 2017 license for the meat sales, the licensing process now makes explicit mention in their applications to the requirement for an applicant to contact the Planning department direct to enquire if permission is required. No such contact was made, and



thus following receipt of an enforcement complaint into the alleged unauthorised use an investigation found that the use (alongside the potato sales that have existed on site for approximately four years) was being undertaken without planning permission.

Having regard to the conclusions within the main body of this report, it is emphasised that the objections are even more relevant for two sales pitches, albeit the principle is the same for one or more such temporary retail uses. In this regard, Members are advised that if the Local Planning Authority were to allow these sales pitches to remain within the AFC car parking area, then it would be difficult to justify the refusal of further pitches on this (or other similar) sites as the principle would have been established. As a matter of principle, this would be contrary to and undermine the retail objectives of the LDP and be to the detriment of the other retail uses within local village and designated District Centres, who have to pay overheads such as Business Rates, utilities etc.

For these reasons, and notwithstanding the existing licences to operate pitches from this site between 08.00 and 13.00 on Saturdays, it is also recommended that Enforcement Action is authorised to cease the existing unauthorised retail use within 1 month from the date of the Enforcement Notice.

### RECOMMENDATION

A. That planning permission is REFUSED on the following ground:-

- (1) The principle of the retention of the A1 retail pitches outside of the identified settlement limits, and the defined retail area of Resolven, would be contrary to Policies SC1 and R3 of the Neath Port Talbot Local Development Plan. Furthermore, as the application site is located in an area allocated for employment use and the A1 use would not constitute an ancillary facility to support or complement the wider role and overall function of the allocated employment area, the development would be contrary to Policies EC2 and EC3 of the Neath Port Talbot Local Development Plan.

B. That authorisation is granted to take enforcement action to secure the cessation of the unauthorised retail use