



County Hall
Cardiff
CF10 4UW
Tel: (029) 2087 2000

Neuadd y Sir
Caerdydd
CF10 4UW
Ffôn: (029) 2087 2000

LATE REPRESENTATIONS

Committee PLANNING COMMITTEE

Date and Time of Meeting WEDNESDAY, 19 JUNE 2019, 1.30 PM

Please see attached Late Representation Schedule received in respect of applications to be determined at this Planning Committee

Late Reps 19.06.19 (Pages 1 - 40)

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LATE REPRESENTATIONS SCHEDULE
PLANNING COMMITTEE – 19TH JUNE 2019

PAGE NO. 35	APPLICATION NO. 18/2469/MJR
ADDRESS:	199-209 CITY ROAD, ROATH
FROM:	Transport Officer
SUMMARY:	The Transport Officer has advised the applicant's agent that there are different cycle parking standards in the SPG for students/non-students. In this case he is prepared to accept a reduction in the minimum cycle standards of no more than 10.
REMARKS:	The applicant would therefore be required to provide 136 quality cycle spaces for this development which is over three times that required for the approved student provision and further reduces the limited amenity space available that would be available within the site for future residents requirements.

PAGE NO. 35	APPLICATION NO. 18/2469/MJR
ADDRESS:	199-209 CITY ROAD, ROATH
FROM:	Planning Officer
SUMMARY:	Policy H3 Affordable Housing should have been identified in para 4.2 of the report.
REMARKS:	Policy H3 is identified in the recommended second reason for refusal and other sections of the Officer's report.

PAGE NO. 51	APPLICATION NO. 18/2622/MJR
ADDRESS:	TRACK 2000, RESOURCE HOUSE, 54B PENARTH ROAD, GRANGETOWN, CARDIFF
FROM:	Head of Planning
SUMMARY:	<p>1. Omit the following draft conditions: Condition 8 (Provision of Additional Street Trees and Nextbike Stand) Condition 20 (Landscaping Design and Implementation Programme) Condition 21 (Landscaping Maintenance)</p> <p>2. Add the following draft condition: <i>Implementation of landscaping:</i> All planting shown on the approved plans shall be carried out in the first planting season following the occupation of the building or the completion of the development, whichever is sooner. Any new planting which within a period of 5 years from the completion of the development dies, is removed,</p>

becomes seriously damaged or diseased, or in the opinion of the Local Planning Authority (LPA) otherwise defective, shall be replaced in the first available planting season and to the specification shown on approved plans and in supporting documents, unless the LPA gives written consent to any variation. Reason: To maintain and improve the amenity and environmental value of the area.

3. Amend draft condition 2 (Application Plans) to read:

The consent relates to the application plans numbered:

- SP545-P100 Site Location Plan
- SP545-P01 Existing Site Plan
- SP545-P02 Proposed Site Plan
- SP545-P03revB Proposed Basement Plan
- SP545-P04revD Proposed Ground Floor Plan
- SP545-P05revA Proposed First Floor Plan
- SP545-P06revA Proposed Second Floor Plan
- SP545-P07revA Proposed Third Floor Plan
- SP545-P08 Proposed Fourth Floor Plan
- SP545-P09 Proposed Fifth Floor Plan
- SP545-P10 Proposed Roof Plan
- SP545-P11revB Proposed Elevations 1
- SP545-P12revB Proposed Elevations 2
- SP545-P13revB Proposed Elevations 3
- SP545-P15 Proposed Elevations 4
- SP545-P16 Proposed Elevations 5
- SP545-P14revB Proposed Sections
- 184010/A09 Existing & Proposed Traffic Orders
- 184010/A03revA Proposed Table Crossing
- 291 2018/.92 Existing Landscape
- 291 2018/.93revD Landscape Proposals
- 291 2018/.94revB Tree Pit Sections

Reason: For the avoidance of doubt.

4. Amend draft condition 5 (Cycle Parking) to read:

No above-ground development shall take place until details showing the provision of cycle parking spaces have been submitted to and approved in writing by the LPA. The approved details shall be implemented prior to the development being put into beneficial use. Thereafter the cycle parking spaces shall be maintained and shall not be used for any other purpose. Reason: To ensure that adequate provision is made for the secure parking of cycles.

5. Amend draft condition 7 (Environmental Highway Improvements) to read:

A scheme of environmental improvements to the footways on Penarth Road, Taffs Mead Embankment and Pentre Gardens adjacent to the site shall be submitted to and approved in writing by

	<p>the LPA and implemented prior to beneficial occupation of the site. The scheme shall comprise the resurfacing of the footways, including as required the renewal or resetting of sunken or damaged kerbs, channels and edging as may be required, and include:</p> <ul style="list-style-type: none"> • details of an uncontrolled raised table zebra crossing and build-out on Taffs Mead Embankment, immediately south of the Pentre Gardens junction, in accordance with illustrative Vectos plan 184010/A03revA, • the reinstatement of the footway and realignment of the kerb at the southern end of Taffs Mead Embankment in accordance with illustrative Vectos plan 184010/A09 • the reinstatement of the footway on Pentre Gardens, including the provision of 3no. street trees, between the site entrance and the junction with Taffs Mead Embankment in accordance with illustrative Vectos plan 184010/A09. <p>Reason: To ensure the reinstatement of the adjacent public highway in the interests of highway and pedestrian safety and to facilitate access to the proposed development.</p> <p>6. Amend draft condition 9 (Road Traffic Noise) to read: <i>Road Traffic Noise:</i> All habitable rooms must achieve an internal noise level of 35dBA Leq 16 hour during the day, and 30dBA Leq 8 hour at night. If any habitable rooms require sound insulation measures to achieve these noise levels, a scheme shall be submitted to ensure that habitable rooms subject to such sound insulation measures shall be provided with acoustic ventilators designed to the latest Building regulations Part F, or individual room mechanical ventilators included meeting requirements of the Noise Insulation Regulations 1988. No Habitable room shall be occupied until the approved sound insulation and ventilation measures have been installed in that room. Any private open space (excepting terraces or balconies to any apartment) shall be designed to provide an area which is at least 50% of the area for sitting out where the maximum day noise level does not exceed 55dBA Leq 16 hour (free field), where practical. Reason: to ensure that the amenities of future occupiers are protected.</p>
<p>REMARKS:</p>	<p>Condition 8 not required as amended landscape plans and details have been submitted showing provision of additional street trees, and Nextbike stand provision is covered by the s106 legal agreement.</p> <p>Conditions 20 is not required as submitted details are sufficient and acceptable. A condition has been added covering implementation and maintenance so condition 21 is not required.</p> <p>Conditions have been amended to adjust trigger points (conditions 5, 7), and update the road traffic noise condition.</p>

ADDRESS:	TRACK 2000, RESOURCE HOUSE, 54B PENARTH ROAD, GRANGETOWN, CARDIFF
FROM:	Local Member Cllr. Ashley Lister
SUMMARY:	<p>Email received from Local Member on 18.6.19 enclosing a document that that the residents wish to have considered as a late rep. The document is reproduced in full below:</p> <p>Response from residents and local community to the Committee report: Proposed Rightacres development at Track 2000</p> <p>Introduction</p> <p>The Committee Report for the proposed Rightacres development was posted on the Cardiff Planning website on Friday 14.6.2019. Residents have had very little time to respond to the report prior to the Planning Committee meeting scheduled for 19.6.2019.</p> <p>Dear Planning Committee Members</p> <p>Firstly, we would like to thank you for taking the time to visit the proposed development site last week and for interacting with members of the community. We have built quite a following on social media now and some of our tweets are attracting audiences of around 13,000 views. We have a great deal of support across Cardiff</p> <p>We have collated here a joint response to the planning committee report by Lawrence Dowdall), which we received only 3 working days before the planning committee date. We consider this response to be more helpful than expecting the planning committee members to probe numerous documents/individual responses in such a short time frame.</p> <p>We want firstly to draw your attention to the part of Report for the Planning Committee addressing Section 106 matters.</p> <p>The report states the following:</p> <p><i>S106 Matters</i></p> <p><i>8.65 In line with service area responses the following financial contributions (total £1,361,363) are sought:</i></p> <p>This sum includes: <i>£1,157,912 towards the provision of</i></p>

affordable housing;

The report goes on to state that following 'An independent viability review carried out by the District Valuer ' such a sum would render the development unviable.

The report continues:

8.68 Notwithstanding the conclusion of the DV viability review the developer has agreed to make a financial contribution for the implementation of the TRO process, and for the provision of a minimum of 6no. Nextbikes stands.

This **agreement** is for a total of **£30,000**. It amounts to **2.2%** of the total Section106 funding sought by the Council. That's a **97.8% reduction** and no social housing contribution !

Material Planning Objections submitted

In putting forward material planning objections, residents commissioned the following consultants/reports which have been submitted to the LPA:

**Lowrie Hughson Smith' Planning Consultant
Lucie Taylor ; Planning Consultant ; Affordable Planning Solutions
Building Research Establishment (BRE); Daylight Sunlight Review**

We would ask Committee members to refer to these documents on the planning website as well as the over 300 objections listed.

Description of the Development:

The proposed development contains 74 apartments and is predominantly between 5 and 6 storeys with roof structures/terraces with privacy screens on top of the extensive 5th floor. It sits on a corner plot and abuts the pavement on 3 sides in an U shape with a 57 space car park to the rear (partly basement) next to the gardens of adjacent homes.

Scale and height

Residents feel the scale, height and massing of the development is **overbearing** and **out of character** with the neighbouring pitched roof 2 storey Edwardian houses and streets. It is an **overdevelopment** of the site which will have a profoundly detrimental effect on the amenity and 'place function' of the surrounding streets, the park and this community. It is a tall building.

As a result of its scale, height and orientation in relation to local homes, (to the East, south and south east of residential properties at a distance of between 10m to 31m) the proposed development **overshadows** and **overlooks** the adjacent 2 storey properties and gardens.



Rightacres Image of the proposed development (not made available to the public). It is overbearing and overlooks neighbouring properties

Despite being 5 to 6 storeys high, the Committee report states that the development does not constitute a Tall Building (Outside the City Centre). Para 8.10 states:

It is not therefore considered on balance to be significantly taller than its immediate context and the Tall Buildings SPG is not therefore applicable.

The SPG: Tall Buildings states the following:

*In areas outside the city centre, buildings tend to be far lower. Buildings which are double or more than double height of surrounding properties **or significantly taller in terms of actual height and number of floors, would be considered tall in this context. Tall buildings outside the city centre are unlikely to be supported unless they can be demonstrated as meeting all of the criteria outlined in this SPG.***

The proposed development is **6 storeys** at its highest. The 5th storey has roof structures, and a private terrace with Privacy screens. It is more than double the height of the adjacent 2 storey properties and **significantly taller in terms of height and number of floors** than those pitched roof 2 storey Edwardian terrace houses behind the development.

Planning consultant Lowrie Hughson Smith states that;

Notwithstanding the fact that the building is double the height of adjacent dwellings, the building is quite clearly significantly taller in terms of actual height than surrounding dwellings which is exacerbated by the difference in ground levels. Given the context, and in accordance with the above extract of the Tall Buildings SPG, there can be no doubt the proposal is tall in the context.

The height, scale and orientation of the proposed Track 2000 development is very overbearing and overshadows and overlooks neighbouring properties. This is particularly felt in relation to the 2 storey Edwardian homes behind the development as well as the streets and park close by.

Infill Development SPG

In listing the relevant SPGs for the development, the Committee Report omits the Tall buildings SPG. Despite describing the development as a 'large Infill development', the Committee Report also omits the Infill Development SPG.

Cardiff Infill Sites November 2017: Supplementary Planning Guidance

The image below is copied from the Cardiff Infill SPG. The proposed development is remarkably similar to this illustration in the Cardiff Supplementary Planning Guidance : Infill Sites (2017) which is indicated as unacceptable.

The Infill SPG states:

4.11 To safeguard the amenity of existing residents, proposals must not result in unacceptable harm regarding the level of overbearing,

overshadowing or overlooking of neighbouring properties.

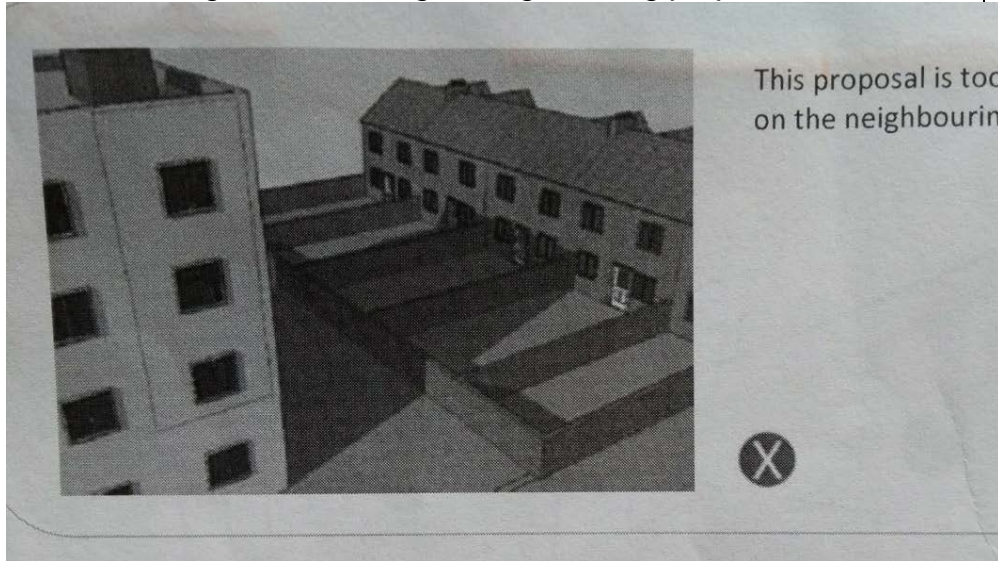


Image from Cardiff Infill Sites SPG (2017) page 27



Rightacres image (**not made available to the public**): View of the development from the kitchen of a 2 storey home in Pentre Gardens. The height and scale remains **overbearing** and **overlooks** neighbouring properties and gardens

We hope the Planning Committee will agree with many of the people who live here who believe that the proposed development does not meet planning requirements. It is simply too big and overbearing.

Overlooking and Loss of Privacy

Loss of privacy & overlooking has been a continuous subject of the objections by the residents & we feel that this has not been fully appreciated with this development or by the submitted planning

report.

The comments in red are points that require addressing.

Impact on Amenity of Neighbours

8.47 Overlooking and privacy: The Council's privacy standards require a minimum separation distance of 21m between facing windows of habitable rooms on the garden (private) side of new residential development. The guidance recognises there is flexibility to relax this 21m distance on the street (public) side. Habitable room windows of traditional terraced streets in inner city Cardiff typically overlook each other at a separation distance of between 12 and 15m. – This comment is totally irrelevant as the proposal is not to build traditional terraced houses but to erect an overbearing block of flats which overlook traditional Edwardian houses affecting privacy & excessive overlooking to existing properties on Pentre Gardens, Taff's Mead Embankment & Skomer Court.

8.48 The separation distance (habitable room to habitable room) between the development and facing rear windows on Pentre Gardens is approximately 30m, comfortably in excess of the minimum 21m. – No mention is made with regards to the Juliette balconies that will adorn the flats overlooking the rear of the existing houses & their gardens. In this report it is stated that the Tall Buildings SPG is not applicable for the proposed building but in Cardiff Council Resident Planning Policy Design Guidance it is stated that: "Balconies should generally be avoided in established suburban locations characterised by larger rear gardens if they will result in significant overlooking".

Does this development fall under a new set of guidelines only applicable to Rightacres Developments?

8.49 In the case of 46A and 46B Taff's Mead Embankment the separation distance is 13m between facing habitable room windows. The kitchen dining room window of 46B is directly overlooked and a privacy screen has been provided to the overlooking windows on the first and second floors of the new development to ensure privacy is maintained. – The height of the building will allow the upper floors to overlook this existing building. Although the parapet is to be lowered to supposedly allow more sunlight, this in effect will cause increased overlooking into the property & therefore intrusion of privacy.

8.50 Roof terraces to the rear of the development are located on the 3rd, 4th and 5th floors at a separation distance of 22m from the rear garden boundary walls of the closest properties at nos. 1 – 7 Pentre Gardens. The large 3rd floor roof terrace at the north end of the development has a 1.8m high privacy screen to prevent overlooking of nos. 1 and 3 Pentre Gardens and nos. 46A and 46B Taff's Mead Embankment. The communal roof terrace on the 4th

floor at the southern end of the development indirectly overlooks the rear garden of Skomer Court at a separation distance of 10.6m. In accordance with SPG minimum separation distances for roof terraces/balconies from boundaries are respected. – SPG guidance also states that “The scale and massing of any design must not be overbearing or result in the unacceptable overshadowing of neighbouring properties.”

The CGI views submitted do not show the impact on overlooking to the rear of Pentre Gardens & Skomer Court. The effect will be detrimental to the privacy of residents ensuring their own private rear gardens will be continuously overlooked by residents of the development.

As well as the residents objections, local councillors & AM’s who have visited the sight have also noted the invasion of privacy that existing residents will suffer as noted below:

On behalf of their constituents Cllrs. Lister and Thorne object to the application on the following grounds:

- The 5/6 storey scale of the development is inappropriate for the local 2 storey context, and overbearing in relation to immediate neighbours.

- Privacy of neighbours likely to be compromised.

On behalf of local constituents AM Vaughan Gething objects to the application on the following grounds:

- The proposed development would have a detrimental impact on the surrounding area, especially Pentre Gardens, which may result in a loss of privacy due to direct overlooking.

On behalf of local constituents AM Neil McEvoy objects to the application on the following grounds:

- Properties behind the development will suffer a loss of daylight and sunlight, as well as privacy.

Concerns regarding the McCann and Partners Sunlight and Daylight Analysis

Rightacres claim that the submitted McCann and Partners Sunlight and Daylight Analysis Report is a fully scientific study that complies with BRE guidelines. However, the sunlight and daylight report submitted with the application was inadequate and littered with errors. I contacted the BRE Group and was told informally by the author of the ‘BRE Report, Site Layout planning for daylight and sunlight: a guide to good practice’, that the McCann report contained many flaws and as a consequence it was not possible to gauge the impact of the development on our homes. This is in stark contrast to the many assertions made by Rightacres in the submitted documents that their proposal with regard to BRE guidance on light, overlooking and privacy, ‘satisfied these criteria’ and that ‘This study [Justification of Heights and Volumes

Document] is augmented by the submitted sunlight and daylight analysis which scientifically advocates the findings above’.

The highly critical BRE Review of the McCann Sunlight and Daylight Analysis and Rightacres’ Justification of Heights and Volumes Document detailed those flaws. Following the BRE Review, a revised sunlight and daylight analysis report was submitted which provided further information but still contained many errors and omissions and failed to address many of the issues raised by the Review. The revised sunlight and daylight report did reveal however, that all of the properties assessed would suffer a much larger loss of light than originally claimed.

I have continued to highlight the inaccuracies and omissions within the McCann Report, as detailed by the BRE Review, to the Council and Developer via objections on the portal, emails and a telephone conversation with the Case Officer, and at the site visit. A number of appendices have been added but the Report still fails, in a number of crucial areas, to adhere to the BRE guidelines. As such, the latest McCann Report (Issue 6) is not compliant with BRE guidance and in addition contains a number of anomalies within the results presented which raise further doubts over its validity. The Committee Report, when referencing The McCann Sunlight and Daylight Analysis and BRE guidelines, also contains significant omissions and errors. I detail some of the main issues below.

Loss of sunlight

There has been a clear reluctance on behalf of Rightacres to present any results regarding the impact this development will have on sunlight availability to existing homes. Despite the need to assess loss of sunlight being highlighted repeatedly by the BRE Group in their review of Issue 2 of the Sunlight and Daylight Report and repeated requests from residents, it was not until Issue 6 that any numerical data assessing loss of sunlight was presented.

BRE guidance states that ‘windows should receive at least 25% of annual probable sunlight hours including at least 5% of annual probable sunlight hours during the winter months, between 21st September and 21st March’.

Section 8.41 Committee Report acknowledges that the overshadowing created by the development ‘will be more acute during the winter months when the sun is lower in the sky’

It’s clearly very important to assess that loss accurately in order to determine the degree of harm on existing residents. Instead the McCann Report uses incorrect methodology and inflated data. No seasonal breakdown of results is presented therefore it is not possible to determine whether windows studied would receive the

prescribed levels of sunlight for the summer and winter months to meet BRE guidelines. The wording in section 8.41 suggests that for the winter months, at least, they may not.

The baseline figure for total annual probable sunlight hours used by McCann (1846) is considerably higher than the figure of 1486 the BRE state for London and South Wales. This would likely have an appreciable effect on results generated.

The results given show a number of surprising results. Nos. 1, 3 and 5 Pentre Gardens, the closest properties on Pentre Gardens to the development, are shown to lose between 10% and 12% of the existing sunlight to their upstairs windows and yet there will be no reduction in sunlight at all to their downstairs windows. No. 17 Pentre Gardens will not lose any sunlight to the downstairs window whilst their neighbours either side at 15 and 19, will both lose noticeable amounts to their downstairs. For a row of terraced housing, such anomalies seem a little odd.

Crucially, no assessment of loss of sunlight has been made for any of the side return windows of houses on Pentre Gardens even though they are applicable under BRE guidelines and the BRE Review stated they should be assessed.

As a result of the use of incorrect data and methodology by McCann, it is impossible to determine the extent of loss of sunlight (overshadowing) to the homes and gardens adjacent to the development which therefore must raise serious doubts over the conclusion reached by the Case Officer in section 8.46: 'It is concluded therefore that the development does not cause significant harm to the levels of sunlighting enjoyed by neighbouring occupiers'.

Applicable windows and rooms.

The BRE Review states 'The loss of daylight guidelines within the BRE Report are intended for use for habitable rooms (ie living rooms, kitchens and bedrooms) in nearby dwellings' and that 'Windows on the side extensions with a view of the development should be included where relevant, if they have not already been'.

None of the side return (extension) windows of Pentre Gardens properties have been assessed for loss of sunlight or for loss of daylight with the exception of those at No.3 which have been assessed for loss of daylight but not sunlight. As a result of the orientation and enveloping design of the development these windows for many properties would be the 'worst case' windows the McCann Reports claim to have assessed. Of my own side return windows on Pentre Gardens directly behind the site, 5 windows light habitable rooms and face the development and in line with

BRE guidelines should be assessed. A BRE Group quote for a Daylight and Sunlight Study given to myself, states that those windows and rooms would be included in any study.

Shadow plots

The initial shadow plots presented were very poorly executed; using multiple angles, omitting obstructions and employing different angles for the images of the development as opposed to those of the existing Track 2000 building and were criticised by the BRE Review. In addition, the BRE Review stressed that data should always be presented numerically and whilst sometimes illustrative, shadow plots should not be relied upon to convey results.

Importantly, the McCann report has continued to use shadow plots alone to address particularly significant concerns.

As acknowledged in the Committee Report, the development will block morning sun to neighbouring properties considerably:

‘The shadow plots demonstrate that the proposed development will result in more overshadowing for 46 Taff’s Mead Embankment and the Pentre Gardens properties closest to the development in the morning hours (more acute during the winter months when the sun is lower in the sky), however from late morning onwards the Pentre Gardens properties and their gardens will not experience any reduction in sunlighting’.

This is a highly significant admission as this loss of morning sun has been our overriding concern throughout this process. It’s loss will have a hugely detrimental impact on our amenity. (The houses and gardens will receive the sunlight in the afternoon because by that time of day the sun will have moved past the development rather than because of the development itself). Despite this acknowledged negative impact, McCann chooses to provide results via a flawed, previously criticised method ie shadow plots. No numerical data is presented for the morning hours shown (7 to 9.30) and as stated above, no assessment has been made of winter sun loss as required by BRE guidelines. The shadow plots to be relied upon for information regarding the extent of loss, are not comparable as again, they utilize different viewing angles. This effectively elongates the shadows with the Track 2000 building in place, giving the impression that the existing situation is far worse than it actually is. Overshadowing would therefore have a considerably more harmful effect with the development in place than the shadow plots imply.

Daylight Distribution

As stated in the BRE Review ‘The BRE Report [guidelines] also recommends the assessment of daylight distribution within existing

habitable rooms, via the calculation of the working plane (usually 0.85m from the floor) which can and cannot see the sky' and that 'If *either* the vertical sky component or daylight distribution guidelines are not met then the diffuse daylighting of the existing building may be adversely affected'.

The only daylight distribution results presented by McCann are for the two living rooms at 46A and 46B Taffs Mead Embankment. Both of these rooms are dual aspect with windows overlooking the development but also with bay windows to Taffs Mead Embankment and would therefore be expected to comply with daylight distribution guidelines. However, the two habitable kitchens of both flats are single aspect with their sole windows directly facing the development and neither of these rooms have been assessed for daylight distribution. The BRE Evaluation pointed out in December '18 that for these rooms 'daylight would be significantly impacted'.

No daylight distribution assessment has been made for any of the rooms of Pentre Gardens which directly face the development and will be inevitably significantly impacted due to the height and orientation of the development. A number of these rooms' windows also fall below the suggested acceptable vertical sky component level of 27% and therefore light to these rooms is already compromised.

Sunlight to gardens

The BRE Review states that 'The BRE Report recommends that to be adequately sunlit, gardens and open spaces should receive two or more hours of sunlight on 21st March over at least half their area' and 'that obstructions over 1.5m should be included in the calculations'.

As with many other of the BRE guidelines, McCann have adopted their own take on this, selecting a sample point from each of the garden areas to the rear of Pentre Gardens'. They also point out that the assessment is 'for comparative purposes only and does not include for trees, outbuildings or other obstructions'

No assessment has been made of the garden of 46 Taff's Mead Embankment.

Light provision to the new development

The BRE review states that 'An assessment of daylight and sunlight provision to rooms in the proposed development itself has not been included. The worst case rooms, at least, should be checked for appropriate provision to potential future residents'.

No assessment has been made of rooms in the proposed development. Most, if not all of the proposed flats are single aspect and consequently, light provision to many will be compromised.

Omissions and factual errors in the Committee Report

Section 8.17 The conclusions of the BRE Review are summarised almost verbatim and yet the following critical point is omitted:

‘The Justification of Heights document does not correctly apply the obstruction angle guideline (“25% rule”).

In the following paragraph, wording is altered and removed from the BRE original, to the detriment of existing residents. The lettering in bold is omitted from the Case Officer’s report.

BRE Review: ‘An assessment of loss of sunlight is presented via shadow plots. The format used does not make for easy comparison between scenarios. Results of a loss of sunlight **in line with the numerical guidelines in the BRE Report** are not presented. Loss of sunlight to the living areas at 46A and 46B Taff’s Mead Embankment should be considered, as well as 2 - 12 Pentre Gardens **and any living areas to the rear of 1 - 25 Pentre Gardens**, using the probable sunlight hours methodology’.

Committee Report: ‘An assessment of loss of sunlight is presented via shadow plots. The format used does not make for easy comparison between scenarios and there is no numerical analysis of probable sunlight hours. Loss of sunlight to the living areas of 46A and 46B Taff’s Mead Embankment should be considered, as well as 2 - 12 Pentre Gardens, using the probable sunlight hours methodology’.

There are also a number of factual errors in the Committee report. Section 8.25 ‘Nos. 1 and 3 Pentre Gardens... habitable room windows (separation distance of about 13m) will experience a small reduction of the order of 5-10% in VSC [daylight] from the already low levels of between 20% and 25% experienced with the former Track 2000 development. These windows do not face the development directly (ie they are angled to the south east or north east’

Both of these statements are incorrect. The results actually show that 41.7% of the applicable rooms analysed will see a reduction in daylight levels of above 10%. Due to the orientation of the development, all of the analysed windows of the habitable rooms face the proposed development, as shown by the applicant’s plans.

Section 8.32 The Committee Report states incorrect VSC results for windows at 46A and 46B Taffs Mead Embankment, using the data

provided in Issue 2 of the Daylight and Sunlight report rather than the latest results. Following the BRE Review, an adjusted set of results for the windows was produced showing significantly more impact than had been initially presented. The Committee Report states that the VSC for the kitchen/ dining room window of 46A Taff's Mead Embankment reduces from 33.4% to 23.8% and the VSC of the living room from 35% to 25.4% In fact, the latest figures show that the kitchen window VSC actually reduces from 27.4% existing to 17.4% and the living room window from 29.90% to 19.4%. A significantly higher negative impact than that quoted. Figures for 46B show similar discrepancies. For reasons unclear, these latest results are presented in the revised Justification of Heights Document rather than in the Daylight and Sunlight Report.

The results included in the submitted documents show that all of 23 homes assessed and their gardens where included, would lose both daylight and sunlight as a result of this development. All the windows at 46A and 46B Taff's Mead Embankment facing the development fall well below BRE acceptable levels. 'Worst case' windows along Pentre Gardens have not been assessed. The shadow images suggest that an even greater number of properties would be negatively impacted if they'd been included in the analysis.

The Committee Report concludes that the development '..is not considered on balance to result in a level of harm to the residential amenity of neighbours sufficient to sustain a refusal on amenity grounds'.

As detailed above, the 'scientific' means used to judge the level of harm has been found lacking in many key areas by both residents and more importantly, by the establishment whose guidelines are used nationwide to assess that harm.

This is a 5/6 storey, square shaped building that will completely dominate its 2 storey pitch roofed, terraced neighbours. Rightacres have had plenty of opportunity but have failed to prove the levels of harm that this development will cause. In their application Rightacres ask 'Are we doing the right thing here?'
Cardiff Council, the only moral answer to that is 'NO'

Parking provision/ access arrangements/ traffic impact

Section 1.2 Access: Pedestrian access is proposed from Taff's Mead Embankment to the south east corner of the site and from Pentre Gardens to the north of the site. Vehicular and cycle access is via the existing vehicle access from Pentre Gardens. Section

8:55 We have serious concerns about the proposals for the car park to be entered via Pentre Gardens. These concerns relate to both safety, health and pollution levels.

The proposed new crossing Section 8:57 will make little difference to the safety of those in Pentre Gardens as it will be on the Taff Mead Embankment. As the car park entrance is right next to 1 Pentre Gardens; where two residents suffer from asthma and have serious respiratory difficulties that may be worsened by the impact and inevitable increase in air pollution from the 57 parking spaces accessed right next to the garden of number 1 Pentre gardens (3 metres distance away). Children use the lane next to the proposed car park entrance to play in as it is safe and has been decorated by a local artist so that it provided an additional play space. The Children in Need sponsored project running in Pentre Gardens will also be compromised due to increase in traffic with cars mounting the pavement to enter the car park an additional safety risk. We also have a community care home on the corner and residents registered as blind who will not be able to walk safely on the compromised and reduced pavement. We strongly suggest that there are only car parking spaces made available to those with disability issues.

Section 8:56 Amenities access, such as having 74 bins outside on the road on Pentre gardens, when being collected, and the safety and health risks involved here are clear. Requirement for refuse vehicles to remain stationary on Pentre Gardens for a long period while collecting large amounts of waste from a 20m section of pavement is impractical and likely to cause chaos for collectors and pedestrians as well as further traffic congestion. No solution to this issue has been proposed within the report.

The ramp cars need to go up and the gates opening and shutting 24 hours a day will provide an unacceptable amount of noise and light pollution for local residents who will be just 3 metres away.

Section 5:2 and 8:53 of the planning officer's report states 'Whilst the amount of car parking is within the Council's standards we would like to see a reduction in spaces given the sustainable location of the site.' We urge a car-free development – with a bare minimum of parking spaces on site - for those who are critically-dependent on motor vehicles - and no resident parking permits for Bottleworks residents as you have already confirmed in the report. These measures in combination with other policies to tackle Cardiff's dangerous and illegal levels of air pollution, would disincentivise private motor vehicle ownership and mitigate traffic increases and air pollution relative to current proposals.

As Cardiff Council have stated in the PLANNING POLICY WALES TECHNICAL ADVICE NOTE 18: TRANSPORT (Residential car

parking) Section 4.15: 'Some car free housing development may be appropriate in locations with good walking, cycling and public transport links and in areas where parking is controlled. On-site cycle and parking provision for those with disabilities will be required if such on-street parking cannot be provided. Planning obligations will have a role to play in ensuring residents do not own cars in such developments. Purpose-built student accommodation is an example where such agreements can be effective. It is essential that, prior to occupation, the future residents should be made aware of the car free status of the development. To ensure this, the role of travel plans, including personal travel planning initiatives such as MODUS20 should be considered by planning authorities.' Cardiff council really must be seen to comply with the policy they initiate. The Council guidance has clearly not been complied with.

Section 8.58 The Transport Assessment (TA) indicates the development would generate a maximum of 21 no. 2-way vehicle movements in the peak hour (equating to no more than a vehicle movement every 3 minutes). This is a seriously out of date report which must be updated as clearly this does not reflect the existing situation in relation to the traffic in the immediate area. The 2014 study that was used for the report did not monitor traffic on Pentre Gardens itself, where the entrance and exit to the proposed car park would be located. Traffic data available is not complete, or able to give a sufficient perspective through time. Cardiff is one of the fastest growing cities in Europe and traffic and pollution growing at a similar rate. Current Highways guidance has not been complied with.

Section 8.60 the idea that given its nature likely to attract residents who are more 'likely not to own/use a car than otherwise might be the case' is potentially laughable as the demographic renting these apartments is likely to be high SES all who will own one or more likely several vehicles. The quality of life in many European cities is affected by the negative impacts of increasing traffic levels ((EU commission report) and car ownership and use has increased over the past 30 years.

Section 8.62 the report states 'reason for refusal on traffic or parking grounds is considered unlikely to withstand challenge.' However, no real evidence to suggest why this cannot be seen as viable challenge has been provided. Evidence would suggest the opposite is true and this should be seen as a key and viable challenge to proposals.

Cause for concern:

The develop has already stated that he will not be selling the properties and they will all be rental units and there will be no concierge managing the property. The implications of this have not

been appropriately considered within the planning officer's report and could present some big issues for the local community, as well residents of the new building.

Another planning condition which must be added is a condition that the developer must not be allowed to use the accommodation as a commercial entity e.g. allowing Air B and B and short term rentals must be stopped. The likelihood of this venue so close to the city centre and the social events (including the rugby ground at the end of the road) being used for e.g. stag and hen parties, (particularly due to the offer of exposed roof terraces and balconies facing properties 1-25 Pentre Gardens) and likely to cause regular excess noise pollution. As the developer categorically stated that no concierge will be in the building, noise pollution will clearly not be monitored.

Short-term lets are clearly contributing to housing shortages and difficult to monitor. Local authorities have to spend a lot of time and money trying to catch the people breaking the rules. The 'private residence only' clause should be a feature of all leases, and properties should not be allowed to be rented out for short term stays via 'Air B and B' or similar short term rental sites. This will be a huge detriment to the community and long term lets (minimum 6 months) should be enforced as part of the terms and conditions of any rentals to establish a sense of community and to maintain peace and responsibility towards maintaining the property and surrounding areas.

There is also great concern that a development of this nature (i.e. rentals with high probability of Air bnb rentals) will exacerbate the sex worker issue along Taff Mead Embankment and push it further into our communities and around the park where children play and live. This will also bring issues such as discarded needles in areas where children play.

The increase in traffic is of great concern with regards to the local children who play in the park and use the open access play sessions there

Our Community:

We have a very strong community. Residents work in collaboration with the parks department and open/close the park every day. We plant in the park and keep it tidy and well kept. As mentioned earlier, free play sessions funded by BBC children in need are run in the park.

We meet with councilors and South Wales Police regularly to tackle local issues, have been part of community projects including Up Front gardens which is aimed at bringing neighbours together, out front and growing edible plants in the garden. There is a committee that works tirelessly for the area. These are a few of the things that makes this area so special.

	<p>The whole community is very worried about how this development will affect us and the way we live. Our amenities such as sunlight and privacy badly affected, resident's house's already get dark early in the day so the morning sunlight is so important. Our roads congested, air and noise pollution increased. Our children's wellbeing and good health compromised. This development simply does not belong here in a residential area.</p> <p>We ask the committee to please consider these important points when making their decision on this matter.</p>
REMARKS:	<p>The report addresses the applicability or otherwise of the Tall Buildings SPG in paras 8.5 to 8.10.</p> <p>In this case the Cardiff Residential Design Guide SPG is relevant. The Infill Sites SPG is intended for smaller infill developments of up to 10 units.</p> <p>The Rightacres image of the view from the rear of Pentre Gardens is one produced at the pre-application stage when the proposals were significantly taller (6/7 storeys). The proposals have subsequently been reduced to a predominantly 5 storey development after pre-application discussions with the LPA and in response to comments made during the statutory pre-application stage.</p> <p>Other matters raised in relation to amenity are extensively covered in the committee report, including the validity of the McCann Daylighting and Sunlighting reports.</p> <p>The daylighting and sunlighting information provided by McCanns is considered adequate to properly assess the impact of the development on the amenity of neighbours.</p> <p>Alleged omissions and factual errors in the report detailed in the representation do not in the view of the case officer materially alter in any way the assessment of the proposals, or the conclusions reached.</p> <p>The type of tenancy and/or future management of the block are not material planning considerations in assessing the application.</p>

PAGE NO. 91	APPLICATION NO. 18/3020/MJR
ADDRESS:	FORMER GREAT EASTERN HOTEL
FROM:	AGENT
SUMMARY:	<p>Picking up on the discussions from the site visit regarding the height and scape of the proposals, the previous planning applications are material, particularly the most recent in 2013 (ref: 13/00013) which was recommended for approval by Planning Committee subject to a S106.</p> <p>The application was in outline, but as confirmed in the committee report details of access, appearance, layout and scale were submitted – with only landscaping reserved for future consideration. The scheme included a three storey element with a</p>

	<p>pitched roof (which would have been higher than the current flat roofed scheme under consideration). The approved drawings are attached and the committee report confirms that:</p> <ul style="list-style-type: none"> • The proposed building is of a similar height to the former public house and vicarage opposite (although it is later clarified that it is 2m higher than the vicarage). The vicarage was also listed at this time. • There was also the previously approved 3 storey outline application recommended for approval in 2005 (ref: 05/2744) • The scheme will not raise and adverse residential amenity implications, including the school <p>We just wanted to raise this so the context and plans can be included in any presentation to Members at Committee next week – in order to demonstrate that what we are proposing is essentially no different (and in fact of a lower scale) to what has been recommended for approval previously by the LPA, and agreed by Planning Committee.</p>
REMARKS:	Noted the plans for planning reference 13/00013, will be shown to committee. However, the outline application reference 05/02744/C did not approve the 3 storey as scale massing was to be determined at reserve matters stage.

PAGE NO. 117	APPLICATION NO. 19/459/MNR
ADDRESS:	30 FISHGUARD ROAD, LLANISHEN
FROM:	Tim Paddock
SUMMARY:	<p>Relevant legislation framework considerations :- Planning Application No 19/00459/MNR, fish and chip shop near a school in a residential area.</p> <p>Regarding this proposal-</p> <p>The primacy of the NPPF, LDP and the grounds for refusal due to residential amenity are well understood and are not necessary to be discussed here.</p> <p>In addition to this material consideration should be given and appropriately weighted regarding-</p> <p>The Public Health Wales Act 2017 and consequent obesity strategy Health Weight Healthy Lives -</p> <p>And importantly the</p> <p>Future Wellbeing of Generations Act (WBFG) -</p> <p>Both of which place a duty on a public body to take action in accordance with the sustainable development principle aiming at achievement of the well being goals.</p> <p>This duty is conferred to a local authority and applicable to individual planning application decisions.</p>

	<p>This duty is to be considered in the light of current evidence such that the public body is expected to be reasonably informed regarding the subject it is making decisions on. These duties have particular regard to health and well being.</p> <p>The proposal actively undermines key well being goals the public body has a duty to achieve:</p> <p>A Prosperous Wales – Effects of proposal are known to lead to a reduced level of individual prosperity as a consequence of obesity and overweight issues.</p> <p>A Resilient Wales - Adverse effects of the proposal on the food environment create an unhealthy human ecosystem reducing population health, resilience and adaptability and increasing levels of population disability and dependence on state support structures and public finances.</p> <p>A Healthier Wales - It is scientifically proven that positioning this proposal in this location is linked to creating the most damaging unhealthy population outcomes we are facing today. Operation of the proposal creates an unhealthy Wales.</p> <p>A More Equal Wales - The operation of the proposal is known to further population inequality in an already disadvantaged area. Negative consequences of operation of the proposal are focused on disadvantaged children and are accumulative.</p> <p>Cardiff Council's Well Being Objectives particularly "Cardiff is a great place to grow up" then places a requirement on the Council to take all reasonable steps to meet these objectives. The WBFG Framework documents have been drawn up to assist public body decision making functions; and are of particular relevance to the local authority decision making processes here requiring prevention of causation of such population ill health outcomes from decision making processes. These framework documents help local authorities carry out their functions in accordance with the act and help the public to ask a local authority to demonstrate how granting planning permission for a takeaway near a school is a reasonable step toward "Cardiff is a great place to grow up" when they are aware it directly undermines the four pillars of the act, is known to be causative of early death and disability and is known to be the single greatest risk of this facing the affected disadvantaged children?</p> <p>The WBFG Act particularly section 5 is worded such that the decision conclusion reached by a public body in this instance needs to be able to demonstrate adherence of the requirements of the act and to the five ways of working as described in the framework tool document provided to local authorities via the Office of the Future</p>
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	<p>Generations Commissioner for Wales. The relevant considerations must be demonstrable showing that the long term impacts have been taken into account in the decision making process. The issues of Prevention and Integration are of particular relevance to the seven well being goals in respect of this proposal and a public bodies responsibility in regarding it.</p> <p>The Future Well Being of Generations Act is known to have recently been directly cited and enacted in Planning Inspectorate decisions.</p> <p>The Public Health Wales Act is specifically mentioned as relevant legislation in current Planning Policy Wales document (P.165)</p> <p>High court decisions have already set precedent for refusing hot food takeaway applications near schools on health grounds in the absence of specific SPG wording.</p> <p>Extracts from the Future Generations Commissioner for Wales submission to the M4 enquiry clearly elucidate the requirements of the new legal framework now in force, by way of example-</p> <p>“I understand that historically it has not been uncommon for the economic benefits to be given precedence but this is one of the reasons why legislation was needed to redress the balance between the different needs and the different core elements leading to decisions which are sustainable in the long-term.”</p> <p>And</p> <p>“The new Act requires public bodies to take holistic decisions and to cease making decisions which harm critical elements of well-being, including social economic environmental and cultural elements.” Furthermore</p> <p>Cardiff Well Being Plan 2018-2023 – Multiple city level outcome indicators are actively adversely affected by operation of the proposal such as- “Percentage of 4-5 year olds who are a healthy weight. Healthy life expectancy at birth (male & female) including the gap between the least and most deprived (National Indicator 2). Percentage of adults eating 5 or more portions of fruit and vegetables a day. how best to tackle health inequalities and reduce the healthy life expectancy gap. Percentage of people aged 65+ who reported their general health as being very good or good.”</p> <p>The Local Development Plan 2006-2026 KP14 Healthy Living states “Cardiff will be made a healthier place to live by seeking to reduce health inequalities through encouraging healthy lifestyles, addressing the social determinants of health This then further clarifies that planning decisions are made within this legislative framework reflecting the direction that ‘health considerations can be</p>
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	<p>material considerations in determining planning applications' (PPW Para. 12.13.8) and accepts that the effect of development on people's health is a key element of sustainable development and its consideration will raise any significant issues which need to be taken into account".</p> <p>The Town and Country Planning Act 1990 Chapter 3 – Places a duty on a local authority to draw attention to certain provisions for the benefit of the disabled. In this instance the proposal is known to be linked to and causative of disability among a vulnerable population group (disadvantaged children). Obesity in childhood is now known to be linked to development of type 2 diabetes resulting in increased disability likelihoods, E.g. loss of leg function or leg and blindness. In this instance this act draws attention to the weighting of material considerations that could prevent harm and disability to an already vulnerable population group already suffering from excessively disabling obese and overweight rates.</p> <p>The Local Development Plan and supplementary guidance such as Cardiff's Planning for Health and Well-being Supporting Planning Guidance issued by the local authority strongly suggest and support objection to and refusal of such a proposal as discussed in prior submissions from objectors and the local health board highlighting "the positioning of hot food takeaways in communities is known to influence the health of communities".</p> <p>Legislature, national and local strategy, policy, guidance, goals and aims regarding health, well being, obesity, equality of opportunity and sustainable development strongly support an approach of objection to and refusal of this proposal by a public body as discussed and evidenced in objection submissions from the Cardiff University Health Board, local schools and local objectors.</p> <p>A public body allowing such a proposal in such a location with such demographics appears to clearly contravene the current legislative framework in force in Wales.</p> <p>A public body refusing such a proposal in such a location with such demographics appears to be supported by the current legislative framework in force in Wales.</p> <p>Relevant evidence regarding weighting of Material Considerations when exercising a Public Bodies health and well being duties regarding processing this application.</p> <ul style="list-style-type: none"> • Cardiff data sets clearly demonstrate clustering of hot food takeaways near schools in equivalent areas of deprivation have led to the highest levels of childhood obesity in Cardiff. While Cardiff data sources and quality create some
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	<p>limitations the association between hot food takeaway clustering, school proximity, deprivation and levels of population weight gain toward obesity has now been demonstrated in equivalent areas (Eg Pearce et al Weight gain in mid childhood and its relationship with the fast food environment 2017 UWE Bristol)</p> <ul style="list-style-type: none"> • Local Authorities in multiple areas now routinely enforce a ban on hot food takeaways near schools and thereby routinely refuse such proposals demonstrating Local Authority capacity to prioritise population health responsibly in planning decisions. • Extracts from the Cardiff Briefing Paper Obesity Hot Food Outlets and Planning in Cardiff include: -“The mapping work suggests that in Cardiff there is a relationship between deprivation, school location and hot food outlet density. In areas with higher childhood obesity, schools are more likely to have hot food outlets within 400m reflecting Fast Fed Children” This proposal will result in clustering of “hot food outlets” near a school which has been identified as at risk from A3 clustering, already having “an hot food outlet” within 400m and already having an obesity level of 4-5 year old children up to 12.9%. 10% is the level used to successfully prohibit hot food take away proposals within 400m of schools in other Local Authority areas. The work done in Cardiff does clearly demonstrate that where clustering of hot food takeaways has been allowed near schools in areas of equivalent deprivation this has already resulted in the highest levels of childhood obesity in Cardiff. Approval of this proposal is thereby known to be linked in a causative fashion to increases in population and childhood obesity levels and is known to be likely to increase local levels of obesity toward the figures in the worst affected areas of the capital. Local school obesity figures are already nearly 30% over the level used to prohibit such proposals in other areas. This fact under the circumstances may confer a duty on the local authority to safeguard an already afflicted vulnerable group from further harm being caused by the proposal. • The local area of the proposal already has the worst obesity levels in North Cardiff. • Parts of England and other capital city areas such as London are already successfully enforcing bans on hot food takeaways within 400m of schools. The available current evidence is clearly sufficient for planners to protect at risk populations on health grounds. • Cardiff Council are aware available data sets only measure children in the 4-5 year age group thereby masking and under estimating the accrued level of damage caused to the school children population by the culminated effect of exposure to hot food take away proximity during developmental years spent in educational facilities. This
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	<p>accrual of harm has now been evidenced in the Bristol health studies into comparable population groups.</p> <ul style="list-style-type: none"> • Current evidence clearly demonstrates poor diet and its longterm consequences related to overweight and obesity is now the biggest cause of early death and disablement . (Ref - https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)30041-8/fulltext) • Cardiff data sets and relevant research thereby demonstrate approving this application will create hot food takeaway clustering near a school in an area of deprivation and this will cause increased rates of obesity and early death and disablement of local school children. • <p>Considering the current evidence the public body are then aware approving the application will increase school children’s overweight and obesity levels resulting in early death and disablement consequence likelihood.</p> <p>Under the Public Health (Wales)Act and Well Being of Future Generations Act a public body cannot use its powers to facilitate a development that is known to generate such negative consequences. Discretionary powers do not extend to knowingly causing population harm, early death and disability.</p> <p>Where such negative consequences will accrue annually in an escalatory fashion as a direct consequence of the proposal’s mode of operation the duty on a public body to prevent such detriment occurring may also be escalated (Ref- Weight gain in mid childhood and its relationship with the fast food environment. UWE. Mathew Pearce, Isabelle Bray, Michael Horswell. – https://doi.org/10.1093/pubmed/fox108).</p> <p>Where the harm caused is a direct consequence of the operation of the proposal the Local Authority is aware that the harm cannot be mitigated by imposing management conditions or obligations. The Local Authority is then aware that any level of approval even temporary causes harm(s). The duties conferred to the Local Authority under the relevant legislation do not permit it to act in a manner that allows, causes or facilitates such harm(s).</p> <p>Risk assessment considerations of some harm(s) caused would include for example:-</p> <p>“The WHO (<i>World Health Organisation</i>), has described the marketing and promotion of fast food outlets and energy dense foods and beverages as causative to obesity” (Briefing Paper Obesity Hot Food Outlets and Planning in Cardiff). The proposal frontage will dominate the food environment marketing and promoting unhealthy choices causative to obesity.</p> <p>“Public bodies including Health Boards and Councils have a</p>
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responsibility to ensure the built environment positively improves health and wellbeing. There is also an obligation to prevent the extent to which an environment promotes obesity, accessibility to unhealthy food outlets, in particular hot food outlets falls within this responsibility”(Briefing Paper Obesity Hot Food and Planning above)

Childhood obesity has been linked to increased incidence of diabetes and associated complications meaning “This is the most devastating and fastest growing health crisis Wales is facing*”. “Already Wales has the highest prevalence of diabetes in the UK**”. (*Diabetes UK)

“Type 2 diabetes is far more common than Type 1, accounting for around 90% of adults with diabetes. ... Obesity is the most significant risk factor, and could amount to 80–85% of the risk of developing Type 2 diabetes. There is growing evidence and concern that the rise in childhood obesity has led to an increase in cases of Type 2 diabetes being diagnosed in younger age groups.

19% of beds in acute hospitals in Wales are occupied by people with diabetes. Over 90% of these patients have Type 2 diabetes.” (Welsh Government Consultation Document Healthy Weight: Healthy Wales)

Conflict of Interest regarding application processing and Local Authority revenue increases may benefit from risk assessment processes to weigh value of fiscal increase against harm caused to population health. The fiscal revenue increase from higher rates appears minimal whereas the risk of harm appears both likely and significant. The fiscal revenue increase is outweighed significantly by the cost to public finances dealing with the harm(s) caused. The fiscal formula is thereby unsustainable and creates and unsustainable unhealthy population. Financial risk assessment of the proposal long term harm to public finances may thereby make approval of the application unaffordable and unlawful. Legislature does not permit known development of unsustainable populations in Wales by a public body for short term commercial gain.

The application should not proceed in an area which is outside of Local Development Plan defined areas as suitable for hot food takeaway areas. The proposal is located in an area that the Local Development Plan defines as unsuitable for hot food takeaway usages and hence is unlikely to be approved according to in force planning guidance.

The application cannot proceed in a building with lease restrictions prohibiting hot food takeaway usage from occurring in the retail units. Any amendment of the lease restrictions creates risk for the local area by the local authority facilitating a known harm. The

	<p>application cannot thereby proceed without active administrative facilitation by the Local Authority agreeing to amending or changing the lease terms of the premises. While lease terms may be of reduced relevance to planning decision material considerations an administrative action by a public body to facilitate such a known harm would be relevant to the Well Being of Future Generations (Wales) Act 2015 and thereby restricted.</p> <p>The application's proposal cannot proceed without proactive facilitation by the council.</p> <p>The council has a conflict of interest in receiving increased rates income by using its powers to approve this proposal.</p> <p>The council has a conflict of interest in receiving increased rates income by using its powers to proactively facilitate and support such a proposal such that it can be passed for approval.</p> <p>An amendment of relevant premises lease restriction or approval of a proposal outside of LDP defined suitable areas would be direct Local Authority facilitation not passive decision making. This creates risk of harm to the local area which the local authority is responsible for.</p> <p>A decision making conclusion that differs from historic planning decisions consistently refusing hot food takeaway applications in this retail unit block may imply the Local Authority is now renegading on known and understood responsibilities and directly facilitating known harm(s) to vulnerable population groups. Prioritising a conflict of interest at the expense of population health and public body duties is not a position that is defensible or tenable under current legislation.</p> <p>The legislature in force thereby rightfully suggests a local authority should not allow approval of this proposal.</p> <p>Application of current legislation would thereby rightfully restrict and prevent a local authority from actively facilitating such a proposal such that it can approve this or a similar proposal, or a similar temporary proposal.</p> <ul style="list-style-type: none"> • Supporting Planning Guidance in force in Cardiff clearly states that this proposal should not be approved and any such application will likely be refused. (Ref (CCC) Food and Drink Leisure Uses Supplementary Guidance , particularly sections 3.2 and 4.23) <p>Legislature, Guidance, Policy, National Plans, Local Development</p>
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	<p>Plans, National and Local Strategic Aims, Goals, Indicators and plans can then be seen to consistently guide a public body toward refusal of this proposal. Consequently risk of approval outweighs risk of refusal considerably for both the public body and the affected population group. The weighting of the risk where approval is known to be causative of such early death and disability likelihoods to disadvantaged children is very significant.</p> <p>While the specific wording prohibiting positioning of hot food takeaways near schools is not included in the local authority current Supporting Planning Guidance documents, the cumulative effect of Welsh legislature, adopted policies, strategies goals and current knowledge, would confer a duty on the Local Authority to refuse any proposal known and shown to be causative to such harm(s).</p> <p>Particularly this duty will be conferred with enhanced weighting and priority where the harm(s) are expressed on a vulnerable group such as disadvantaged children.</p> <p>Particularly this duty will be conferred with enhanced weighting and priority where the harms are focused on a food environment the local authority is responsible for and requires disadvantaged children with limited autonomy to be exposed to throughout key development years.</p> <p>Applicants right to Appeal a refusal regarding right to live etc.</p> <p>As a holder of a ten year lease the applicant has a long term interest and a corresponding right to live. The right to live and freedom of choice in livelihood are almost semi sacrosanct concepts within planning law and general law and are consequently rightly protected and safeguarded with respective priority.</p> <p>In law free choice is rightfully empowered and general law rightfully restricts and prevents this where the free choice of one party causes harm to another party.</p> <p>In particular law restricts and prevents this when the free choice of one party causes harm to another party such as a vulnerable group or individual(s) (such as disadvantaged children).</p> <p>In this instance rightful application of the law during any appeal would presumably then respect the free choice and right to live of the applicant to carry out retail activities in a retail unit.</p> <p>Rightful application of the law would not permit a change of use from a retail unit into a hot food takeaway usage where this is shown and known to cause harm to others.</p>
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Specifically the law would not support a change of use proposal from a retail unit to a hot food takeaway use where this is shown and known to cause harm to a vulnerable group such as children, living in a deprivation demographic area at high risk of obesity, already experiencing high obesity levels.

Particularly the law would not support this change of use proposal where the harm caused is linked to the early disability and death of affected vulnerable children.

(NB – In this instance there may also be some relevant consideration regarding the limited autonomy of a vulnerable group who are instructed to attend the school area by the state and to spend time in a food environment area controlled by state planners. The limited autonomy of the group and their subsequent experiential dependence on planning decisions may confer greater protections for this group by the Local Authority under other rights, charters, international laws etc. This is not fully discussed here both for brevity and also as the Local Authority legal department are bound to be well versed in such issues which are obviously a very relevant consideration with very significant legal weighting.

Briefly though extracts from the United Nations Convention on the Rights of the Child(UNCRC)make it very difficult to see how any appeal process could overturn a refusal without contravening the UNCRC itself.

For example it should be noted that under article 6 of the UNCRC: 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

The UN's Committee on the Rights of the Child in their General Comment on Article 24 the United Nations Convention on the Rights of the Child:

“Children’s exposure to “fast foods” that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled.”

Then-

General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*

	<p>“The best interests of the child shall be a primary consideration... by public administrative authorities”</p> <p>1A6 “(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen. “</p> <p>IV. Legal analysis and links with the general principles of the Convention</p> <p>A. Legal analysis of article 3, paragraph 1 1. “In all actions concerning children” (a) “in all actions”</p> <p>17. Article 3, paragraph 1 seeks to ensure that the right is guaranteed in all decisions and actions concerning children. This means that every action relating to a child or children has to take into account their best interests as a primary consideration. The word “action” does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures.</p> <p>18. Inaction or failure to take action and omissions are also “actions”, for example, when... authorities fail to take action to protect children from neglect or abuse.”</p> <p>2. The child’s best interests and the right to life, survival and development (art. 6)</p> <p>42. States must create an environment that respects human dignity and ensures the holistic development of every child. In the assessment and determination of the child’s best interests, the State must ensure full respect for his or her inherent right to life, survival and development.</p> <p>Committee on the Rights of the Child General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*</p> <p>2. The Committee interprets children’s right to health as defined in article 24 as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health.</p> <p>IV. Obligations and responsibilities</p> <p>A. State parties’ obligations to respect, protect and fulfil</p> <p>71. States have three types of obligations relating to human rights, including children’s right to health: to respect freedoms and entitlements, to protect both freedoms and entitlements from third parties or from social or environmental threats, and to fulfil the</p>
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entitlements through facilitation or direct provision. In accordance with article 4 of the Convention, States parties shall fulfil the entitlements contained in children's right to health to the maximum extent of their available resources and, where needed, within the framework of international cooperation

(h) Child-rights impact assessment (CRIA)

99. As mentioned above, the adoption of all measures of implementation should also follow a procedure that ensures that the child's best interests are a primary consideration. The child-rights impact assessment (CRIA) can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children

Such extracts clearly elucidate that any legislative or public body process regarding this proposal will be legally compelled to prioritise the best interests of the child and their ongoing health as a primary consideration.

Material considerations in any appeal process may include-

- The known consequence of allowing hot food takeaways near schools in areas of equivalent deprivation demographics and the linked harm to school children populations.
- The demonstrated benefit of prior planning policy and decision making to refuse and limit hot food takeaways in these areas near these at risk schools and the benefit on school child population health seen in the arc of north Cardiff compared to the arc of south Cardiff where more hot food takeaways have been allowed near schools and higher levels of childhood obesity have now been recorded.
- The knowledge that such planning decisions are one of very few methodologies available to local authorities to enable and safeguard opportunity for healthy populations.
- The knowledge that Wales currently has population overweight and obesity levels that are the worst in the UK, among the worst in Europe and ~ 5th worst in the world.
- The knowledge that poor diet has become the biggest cause of early death and disablement globally and obesity and overweight issues are already the biggest cause of avoidable death of Welsh women.
- The knowledge that operation of the proposal will be likely causal of harm with linked effects of early death and disablement to school children (a vulnerable group) and a local community of a disadvantaged socio economic area.
- Likely concluding that the right to live of the applicant does allow retail activity in a retail unit but does not allow a change of use known to cause and exacerbate such demonstrable harm(s) to the local population particularly to children.
- Such a conclusion respects the rights of all parties and is in

accordance with general principles of law and free choice; which defend free choice up to the point where harm is caused to others and defends others at the point where one parties free choice knowingly causes harm to them.

- Such a conclusion respects and upholds the Local Authorities duties regarding Health and Well being
- Such a conclusion respects the fact that local school children obesity statistics are already well over 10% - A figure already utilised in other Local Authority areas to effect a ban on hot food takeaways within 400m of a school. The conclusion protects children known to be at risk from exposure to exasperated harm and its consequence while attending state educational facilities.

It is difficult to see any way an appeal process would able to overturn a local authority decision to refuse this application as the decision reached would have to uphold respect and respond to the relevant legislature; the requirements of which are achieved by refusal and actively undermined by approval of the application.

Public right of appeal to an approval decision and Local Authority liability risk issues

While legal challenges to local authority planning decisions are rare and rarely successful, as a public benefit case establishing case law for new legislation this case would likely qualify for legal aid.

The Local Authority risk of legal challenge and liability for any associated harm(s) could be exasperated where proactive facilitation of harm(s) has occurred: -

The Local Authority has amended restrictive lease terms of the premises in order to allow a harmful proposal to be approved.

The Local Authority has allowed a proposal outside of designated suitable areas as defined by its LDP

The Local Authority has amended its LDP to extend or increase designated suitable areas ignoring current evidence and health and well being related public body decision making responsibilities during its actions.

Where the Local Authority receives a financial incentive in increased revenue through allowing a type of usage it has historically refused and restricted.

Where a Local Authority receives an increase in revenue by allowing or supporting or proactively facilitating a proposal knowingly exploiting population health with material harms.

Where a Local Authority has knowingly exploited school child footfall and health as an asset for financial gain.

Any such instances may increase the Local Authority risk of liability

for harm(s) caused and legal challenges regarding decision making processes and their long term consequences.

The prospect of individual future claims for damages being attributed to the local authority as liable for that damage would in terms of financial risk to the local authority appear to be significant as the local authority are both aware of and responsible for the likelihood of the risk occurring.

Appendix –

Some relevant case law and planning decision examples and extracts -

“Delegated Decision Report

Application no - 2018/2309/FUL

Location: 7 The Precinct, Killay, Swansea, SA2 7BA

Proposal: Change of use from butchers (Class A1) to hot food cafe (Class A3).”

“In conclusion and having regard to all material planning considerations, the proposed use of the premises as a restaurant (Class A3) is considered to be an unsatisfactory form of development which undermine the retail function of Killay District Centre resulting in an unacceptable impact upon the vitality, viability and attractiveness of the centre contrary to UDP Policy ECNR and Supplementary Planning Guidance – District Centres, Local Centres and Community Facilities, October 2010.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act").

In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

**RECOMMENDATION
REFUSE”**

Furthermore

High Court decisions quashing retail to hot food takeaway change of use cases summarise clearly, demonstrating applicable legal precedent even without the requirements of the WBFG Act.

“The Law

19. In determining a planning application the local planning authority

"shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations": Town & Country Planning Act 1990, Section 70 (2). There is a presumption in favour of the development plan, set out in Section 38 (6) of the Planning and Compulsory Purchase Act 2004. That provides that - "(6) for the purpose of any [planning] determination to be made the determination must be made in accordance with the plan unless material considerations indicate otherwise."

20. The principles for addressing material considerations were set out by Laws LJ in R (On Application of Jones) v North Warwickshire District Council [2001] EWCA Civ 315; The Times, March 30, 2001.

There Laws LJ said that the operative statute may provide a lexicon of relevant considerations to which attention had to be paid but if the statute provided no such lexicon - or at least no exhaustive lexicon - the decision maker had to decide for himself what he would take into account. In doing so he had obviously to be guided by the policy and objects of the governing statute, but his decision as to what he would consider and what he would not consider was itself only to be reviewed on conventional Wednesbury grounds (paragraph 20).

21. In R (On Application of Kides) v South Cambridgeshire District Council [2002] EWCA Civ 1370, [2003] JPL 431, [2003] P & CR 19, the Court of Appeal addressed what was a material consideration in the planning context. Jonathan Parker LJ said: "121. In my judgment a consideration is 'material', in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision-maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues."

It is trite law that the weight to be attached to any material consideration is a matter for the decision maker, subject to Wednesbury unreasonableness: Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759; R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council [2010] UKSC 20, [70].

22. Promoting social objectives may be a material consideration in the planning context. Planning controls in order to promote social objectives are considerations which can relate to physical land use.

Whether a social objective is relevant in a particular case turns on the circumstances. As long as the promotion of the social goal is lawfully within the planning sphere it matters not that it falls elsewhere as well.

*23. In **Stringer v Ministry of Housing and Local Government** [1971] WLR 1281, [1971] 1 All ER 65, Cooke J said: "It may be conceded at once that the material considerations to which the Minister is entitled and bound to have regard in deciding the appeal must be considerations of a planning nature. I find it impossible, however, to accept the view that such considerations are limited to matters relating to amenity. So far as I am aware, there is no authority for such a proposition and it seems to me wrong in principle. In principle, it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration."*

The Government's Planning Policy Statement 1: Delivering Sustainable Development of 2005 refers to promoting, amongst other things, personal well-being and to the need for planning authorities to seek to achieve outcomes which enable social, environmental and economic objectives to be effected together.

*24. In its correspondence with the claimant's solicitors the council referred to **Westminster City Council v Great Portland Estates** [1985] AC 661. There, the House of Lords held that the test of what is a material consideration in the planning context was whether it served a planning purpose relating to the character of the use of land. However Lord Scarman, with whom the other law lords agreed, said (page 670 E to F):*

"It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as to the background to the consideration of character of land use. It can, however, and sometimes should be given direct effect as an exception under a special circumstance. But such circumstances when they arise will be considered not as a general rule but as exceptions to a general rule to be met in special cases."

*That passage was cited in **Newport Borough Council v Secretary of State for Wales** [1998] ELR 174, [1998] JPL 377, where the Court of Appeal held that it was a material error of law to hold that a genuinely held public perception of danger from a proposed development, albeit that it was unfounded, could never amount to a valid ground for refusal."*

(Please note the above extracts are exempt from requirements of the WBFG Act. Considering the above in light of the requirements of the WBFG Act the future health and well being of affected population groups then very clearly becomes a material

consideration within the sphere of influence and responsibility of the decision maker directly relevant to the land use. Subject to a Wednesbury test of reasonableness a change of land use from retail to hot food takeaway near a school must necessarily encounter health and well being of the school child population as a material consideration in planning decision making processes. It can be noted here that the Planning Inspectorate have now cited the WCFG Act in recent decisions, thereby further emphasising such considerations as material considerations in planning decision making processes).

Reference can also be made to planning inspectorate decisions quoting WCFG Act as a material consideration in determining decisions e.g. Appeal Ref: APP/M6825/H/18/3202863 –

“The recently enacted Well Being of Future Generations (Wales) Act 2015 (the WCFG Act) places a duty on certain public bodies (including the Welsh Ministers and the Planning Inspectorate on their behalf) to do things in pursuit of the economic, social, environmental and cultural well-being of Wales in a way that accords with the sustainable development principle through aiming to achieve the specified well-being goals. One of the goals set out in the WCFG Act is a Wales of vibrant culture and thriving Welsh language. The description of the goal is a society that promotes and.... which encourages people to participate in the arts, sports and recreation¹. It follows that in carrying out their duties the Welsh Ministers and Planning Inspectorate should seek to achieve, amongst others, this goal. This would include work relating to determining appeals.”

“I find that allowing the proposal.... contrary to the local strategy set out in the adopted LDP, would not accord with the duty imposed on public bodies within the WCFG Act to achieve the well-being goal”

“I have taken into account all other matters raised but none outweigh my findings above. I conclude that the appeal should be dismissed.”

Here the WCFG Act and achievement of its goals is clearly significant as a material consideration and is indicated to outweigh other matters in the view of the planning inspectorate decision maker.

The importance on the WCFG Act in planning inspectorate decisions is again reiterated in Appeal Ref: APP/Q6810/A/18/3210628 -

“Conclusions

14. Notwithstanding my favourable conclusion for the appellant on

	<p>living conditions this factor alone does not outweigh the harm to the character and appearance of the area and the protected tree.</p> <p>15. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WCFG Act). In reaching my decision, I have taken into account the ways of working set out at section 5 of the WCFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WCFG Act.</p> <p>16. I conclude that the appeal should be dismissed.”</p> <p><i>We are then able to see that the WCFG Act ways of working and goals are now considered determinant material considerations in planning decision making processes.</i></p> <p>Furthermore there are many examples of cases where despite all other elements of a proposal being found favourable, adverse impact on residential amenity and neighbourhood character are considered sufficient reason for refusal. E.g, Committee report extract below - Durham County Council Application No – DM/16/00759/FPA:</p> <p>“CONCLUSION Proposed as a mixed use A3 restaurant and A5 Hot food takeaway, the change of use would take place within a predominantly residential area that would re-use vacant commercial premises, whilst the proposed awnings are considered acceptable and appropriate addition to the premises frontage. The re-use of the vacant building and job creation add weight in favour of the proposals, whilst the highways and parking arrangement and Environment Health statutory requirements are considered to be met. However the impacts on the amenity and quality of life of nearby residents of a hot food takeaway being located in close proximity are considered to significantly outweigh the aspects in favour of the development.</p> <p>As such the proposal is considered to be contrary to Part (i) of Policy R19 of the District Local Plan on the basis of unacceptable impact upon the amenity of neighbouring residents.</p> <p>RECOMMENDATION That the application be refused for the following reason:</p> <ol style="list-style-type: none"> 1. The proposed restaurant and hot food takeaway is
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	<p>considered to have an adverse impact upon the amenity of nearby residential properties through disturbance brought by late evening noise, disturbance and general activity. The proposal is therefore contrary to Point (I) of Policy R19 of the saved Chester –le-Street District Local Plan and Paragraph 123 of the NPPF.”</p> <p>It should be noted that neighbourhood disturbance is a very prominent and significant concern expressed by a clear majority of local residents’ objections to this proposal. As such the reasons for refusal on residential amenity basis are strong and well founded.</p>
REMARKS:	Noted