LOCAL MEMBER OBJECTION

COMMITTEE DATE: 17/10/2018

APPLICATION No. 18/01462/MNR APPLICATION DATE: 25/06/2018

ED: CAERAU

APP: TYPE: Variation of conditions

APPLICANT: Mr Oakley

LOCATION: THE CAERAU, BISHOPSTON ROAD, CAERAU, CARDIFF,

CF5 5DZ

PROPOSAL: VARIATION OF CONDITIONS 2 AND 12 OF 17/00406/MNR

(GRANTED ON APPEAL APP/Z6815/A/17/3191660) TO ALLOW THE SUBSTITUTION OF DRAWINGS AMENDING

THE DESIGN, REDUCING THE SCALE OF THE

DEVELOPMENT AND MINOR AMENDMENTS TO THE

EXTERNAL LAYOUT

RECOMMENDATION 1: That planning permission be **GRANTED** for the carrying out of the development in accordance with planning permission reference 17/00406MNR (appeal decision reference APP/Z6815/A/17/3191660) without complying with conditions 2 and 12 but subject to the following conditions:

- 1. C01 Statutory Time Limit
- 2. The development shall be carried out in accordance with the following approved plans:
 - Location Plan
 - 202R7B Amended Elevations
 - 18103-100-P2 Vehicle access plan

Reason: For the avoidance of doubt as to the extent of the permission.

3. The development hereby approved shall be used only for purposes within Class A1 of the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument amending, revoking or re-enacting that Order) and for no other purpose whatsoever.

Reason: For the avoidance of doubt and to ensure that the use does not prejudice the amenities of the area or compromise the objectives of local and national planning policy, in accordance with policies KP5, EN13 and R6 of the Cardiff Local Development Plan.

4. Notwithstanding the information submitted with the application, prior to the first occupation of the commercial unit hereby approved a plan

indicating the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed as approved before the building is occupied.

Reason: In the interests of visual and residential amenity and the prevention of anti-social behaviour, in accordance with policies KP5 and C3 of the Cardiff Local Development Plan.

- 5. There shall be no arrival, departure, loading or unloading of delivery vehicles outside the hours of 08.00 to 20.00 Monday to Saturday and 10.00 to 16.00 on Sundays, or at any time on Bank Holidays. Reason: To ensure that the amenities of occupiers of nearby properties are protected, in accordance with policies KP5 and EN13 of the Cardiff Local Development Plan.
- 6. No member of the public shall be admitted to or allowed to remain on the premises between the hours of 23.00 and 07.00 on any day.

 Reason: To ensure that the amenities of occupiers of nearby properties are protected, in accordance with policies KP5 and EN13 of the Cardiff Local Development Plan.
- 7. Prior to the installation of fixed plant on the site a noise assessment shall be carried out and submitted to the Local Planning Authority to ensure the noise emitted from fixed plant and equipment on the site achieves a rating noise level of background -10dB at the nearest noise sensitive premises when measured and corrected in accordance with BS 4142: 2014 (or any British Standard amending or superseding that standard). Reference should be made to the report provided by Acoustics and Noise Ltd as part of the application (report reference 1706078 dated 4 July 2017), where a background noise assessment has been conducted to provide scope towards a future rating level.

Reason: To ensure that the amenities of occupiers of nearby properties are protected, in accordance with policies KP5 and EN13 of the Cardiff Local Development Plan.

8. Prior to the commencement of development, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall comprise proposed finished levels, hard surfacing materials, proposed and existing services above and below ground level, a scaled planting plan, plant schedule, topsoil and subsoil specification, tree pit section and plan view (if appropriate), planting methodology and aftercare methodology. The landscaping shall be carried out in accordance with the approved details.

Reason: To maintain and improve the appearance of the area in the interests of visual amenity, in accordance with policy KP5 of the Cardiff Local Development Plan.

9. Any trees, plants, or hedgerows which within a period of five years from the completion of the development die, are removed, become seriously

damaged or diseased, or become (in the opinion of the Local Planning Authority) otherwise defective, shall be replaced in the current planting season or the first two months of the next planting season, whichever is the sooner, unless the Local Planning Authority gives written consent to any variation.

Reason: To maintain and improve the appearance of the area in the interests of visual amenity, in accordance with policy KP5 of the Cardiff Local Development Plan.

- 10. The cycle parking facilities shown on the approved plans shall be provided 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 in accordance with policies KP5 and T5 of the Cardiff Local Development Plan.
- 11. The car parking and manoeuvring areas shall be laid out in accordance with the approved details before the development is brought into beneficial use and be thereafter maintained and retained at all times for those purposes in association with the development.
 - Reason: To make provision for the parking of vehicles clear of the roads so as not to prejudice the safety, convenience and free flow of traffic, in accordance with policy T5 of the Cardiff Local Development Plan.
- 12. The junction between the site and the highway shall be constructed in accordance with the details shown on Drawing Ref 18103-100-P2 prior to the retail development being brought into beneficial use. Reason: To ensure that the use of the proposed development does not interfere with the safety and free flow of traffic passing along the highway abutting the site, in accordance with policy T5 of the Cardiff Local Development Plan.
- 13. Prior to the construction of any part of the building above foundation level, samples of the external finishing materials shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. Reason: To ensure that the finished appearance of the development is in keeping with the area in accordance with policy KP5 of the Cardiff Local Development Plan.

RECOMMENDATION 2: The developer is advised that no surface water and/or land drainage run-off shall be permitted to connect (either directly or indirectly) with the public sewerage network. The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must

also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of www.dwrcymru.com. Some public sewers and lateral drains may not be recorded on maps of public sewers because they were originally privately owned. The presence of such assets may affect the proposal. In order to assist in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water on 0800 085 3968 to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

RECOMMENDATION 3: The developer may be required to contribute under sections 40 - 41 of the Water Industry Act 1991 towards the provision of new off-site and/or on-site water mains and associated infrastructure. Detailed site layout plans should be sent to Dwr Cymru Welsh Water Developer Services, PO Box 3146, Cardiff CF39 0EH.

RECOMMENDATION 4: The applicant must contact:

Wales and West Utilities, Wales and West House, Spooner Close, Celtic Springs, Coedkernow, NEWPORT NP10 8FZ

Tel: 029 2027 8500 www.wwutilities.co.uk

to discuss their requirements in detail <u>before any works commence</u>, as their apparatus may be at risk during construction works. Should diversion works be required, these will be fully chargeable.

RECOMMENDATION 5: The applicant is advised that a commercial contract is required for the collection and disposal of all commercial waste. By law (Environmental Protection Act, 1990, section 34) all commercial premises have a duty of care to ensure that their waste is transferred to and disposed of by a registered waste carrier. Owners or developers of commercial developments/properties who require Cardiff County Council to collect and dispose of their waste can contact the commercial services department on 029 20717500.

RECOMMENDATION 6: The applicant is advised that it is considered best practice to have a Site Waste Management Plan for demolition projects. Materials should be reused and recycled as much as possible. Further information is available in the Council's "Waste Collection and Storage Facilities" Supplementary Planning Guidance.

RECOMMENDATION 7: In the interests of crime prevention and site security, it is recommended that this development be built to Police specified "Secured by

Design" standards as promoted by South Wales Police. Information on these standards is available on the website www.securedbydesign.com. particular it is recommended that: the retail units should be fitted with door sets that comply with PAS24 or security rating LPS 1175 SR1; laminated glazing to a minimum of 6.4mm should be fitted to all shop fronts in areas where persons are likely to come in contact with glazing; consideration should be given to fitting a monitored alarm system which is compliant with the latest version of the National Police Chiefs Council (NPCC) Alarms Policy; all hard landscaping features such as coping stones, pavers etc. and street furniture should be securely fixed so that it cannot be removed and used for criminal purposes: consideration should be given to the fitting of CCTV both internally and externally to identify person(s) entering or leaving the premises and to protect the shop frontage. The CCTV system should be capable of providing evidential quality imagery to at least recognition standards and be operated in accordance with the Data Protection Act. Any roller shutters (N.B. these may require planning permission) should have a minimum security rating of LPS 1175 SR1, Higher risk premises will require higher security rated shutters i.e. SR2-5. To achieve a Secured by Design accreditation it will be necessary for the applicant to meet with the South Wales Police Design out Crime officer and discuss how a safe and secure environment can be achieved.

RECOMMENDATION 8: The developer is advised that the street tree adjacent to the site on Bishopston Road will need to be protected during the full course of development by a tree protection box, details of which should be agreed with the Council prior to works commencing.

1. DESCRIPTION OF PROPOSED DEVELOPMENT

1.1 This application seeks amendments to the proposals recently granted planning permission on appeal for the demolition of the former Caerau public house and the erection of a single storey building containing 3 commercial (A1 retail) units. The amendments sought are a reduction in the footprint of the building (from 13m x 41m to 13m x 38m) and changes to the external layout comprising relocation of the vehicular access around 5m further from the eastern boundary (bringing it more in line with its existing position), widening of the access from 6.6m to 9m, changes to the radii on the access to allow safe entrance for large delivery vehicles, removal of a former vehicle crossover and reinstatement of the footway and kerbline to match the existing, provision of suitable tactile surfacing and dropped kerbs at the footway crossing points and relocation of a displaced parking space alongside the eastern boundary. There are no changes proposed to the width or height of the building and the elevational treatment remains the same as approved. Also, the whole of the approved retail space is now intended to be occupied by a single operator rather than being split into three smaller units.

2. **DESCRIPTION OF SITE**

2.1 The site is located at the junction of Heol Ebwy and Bishopston Road, adjacent to a roundabout, with houses to the rear and eastern side and a row of three storey shops/flats on the opposite side of Bishopston Road. The existing row of

commercial premises comprises a barber shop, a betting office, a supermarket, a newsagent's/gift shop and a fish and chip shop.

2.2 The building to be demolished is a two storey former public house with single storey extensions to the sides, including a bookmaker's premises. It is bounded by a low brick wall and railings and has a car park to the eastern side with access onto Bishopston Road. Trees overhang the site from gardens to the rear. The pub is in a poor state of repair and has been vacant for around 5 years.

3. **SITE HISTORY**

- 3.1 17/00406/MNR Take down public house building and construct three retail units with related car parking facility. Refused. Permission granted on appeal.
- 3.2 06/02822/W Change of use of vacant betting shop into proposed kitchen ancillary to existing public house and alterations.
- 3.3 06/01072/W Alterations to convert existing business premises, previously used as a bookmakers into a catering establishment (cafe/diner) mon-sat 07.00-15.00 and 17.00-19.00, Sunday 12.00 16.00.
- 3.4 99/01400/R Extension to public bars incl. family room, disabled facilities and skittle alley.
- 3.5 98/00417/R Refurbishment of exterior, internal alterations and landscaping works.
- 3.6 89/00655/R Extension to existing bookmakers office.
- 3.7 88/02112/R Extension to lounge bar and internal refurbishment works.

4. **POLICY FRAMEWORK**

4.1 Cardiff Local Development Plan 2006-2021:

KP5 (Good Quality and Sustainable Design);

EN13 (Air, Noise, Light Pollution and Land Contamination);

T5 (Managing Transport Impacts);

C3 (Community Safety/Creating Safe Environments):

W2 (Provision for Waste Management Facilities in Development).

4.2 Supplementary Planning Guidance:

Waste Collection and Storage Facilities (October 2016).

Cardiff Infill Sites (November 2017).

Managing Transportation Impacts (Incorporating Parking Standards) (2018).

4.3 Planning Policy Wales (November 2016):

- 1.2.3 It is not the function of the planning system to interfere with or inhibit competition between users of and investors in land or to regulate development for other than land use planning reasons.
- 3.1.4: Factors to be taken into account in making planning decisions (material considerations) must be planning matters; that is, they must be relevant to the regulation of the development and use of land in the public interest, towards the goal of sustainability. The planning system does not exist to protect the private interests of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. When determining planning applications local planning authorities must take into account any relevant view on planning matters expressed by neighbouring occupiers, local residents and any other third parties. While the substance of local views must be considered, the duty is to decide each case on its planning merits.
- 4.4.3: In contributing to the Well-being of Future Generations Act goals, planning policies, decisions and proposals should (inter alia):
 - Promote resource-efficient and climate change resilient settlement patterns that minimise land-take and urban sprawl, especially through preference for the re-use of suitable previously developed land and buildings.
 - Promote access to employment, shopping, education, health, community, leisure and sports facilities and open and green space, maximising opportunities for community development and social welfare.
 - Foster social inclusion by ensuring that full advantage is taken of the opportunities to secure a more accessible environment for everyone that the development of land and buildings provides.
- 4.11.9 The visual appearance of proposed development, its scale and its relationship to its surroundings and context are material planning considerations. Local planning authorities should reject poor building and contextual designs. However, they should not attempt to impose a particular architectural taste or style arbitrarily and should avoid inhibiting opportunities for innovative design solutions.
- 4.11.11: Local planning authorities and developers should consider the issue of accessibility for all.
- 4.11.12: Local Authorities are under a legal obligation to consider the need to prevent and reduce crime and disorder in all decisions that they take.
- 7.1.3 The planning system should support economic and employment growth alongside social and environmental considerations within the context of sustainable development.
- 8.4.2: Local Authorities should ensure that new developments provide lower levels of parking than have generally been achieved in the past. Minimum parking standards are no longer appropriate.
- 12.7.3: Adequate facilities and space for the collection, composting and recycling of waste materials should be incorporated into the design of any development.
- 4.4 Technical Advice Note 12 Design (March 2016).
- 4.5 Welsh Government Circular 016/2014: The Use of Planning Conditions for

Development Management (October 2014).

2.4 Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73.

5. INTERNAL CONSULTEE RESPONSES

- 5.1 Transportation: The revised drawing shows that the HGV can manoeuvre into and out of the proposed service area without the wheels over-running onto the footway, although it may be difficult for it to manage this at times when other vehicles are parked adjacent to the access on Bishopston Road. As such, and noting the existing consent for the scheme, it is considered that the highway access condition can be discharged, subject to being implemented as per the plan.
- 5.2 Pollution Control (Noise & Air): No objections to the amendments.
- 5.3 Parks Development: A highway tree is located outside the property on Bishopston Road but this doesn't appear to be affected by the development. The amended layout plan indicates new trees within the highway but no details of these are provided so I presume these are only indicative. No other comments.
- 5.4 Waste Strategy & Minimisation Officer: My previous comments are still relevant ("Plans indicating the proposed bin stores have been noted and are acceptable. Refuse storage must thereafter be retained for future use"). Waste Management has no further observations or objections.

6. **EXTERNAL CONSULTEES RESPONSES**

None

7. **REPRESENTATIONS**

- 7.1 The application has been advertised by site notice and neighbour notification. 17 individual objections have been received, which are summarised as follows:
 - 1) The development would be detrimental to long standing local businesses:
 - 2) There is no need for further retail developments in the area but there is a need for housing, a park or a doctors' surgery and chemist;
 - The planning permission was granted for three units, not one. There will be fewer jobs created. The original application was a ploy to get a single large unit and was an underhanded way to achieve the developer's goals.

- 4) There is no economic justification for the development as the existing shops do not have enough trade. Many people will boycott the new shop.
- 5) There will be disturbance in the evenings.
- 6) There will be too much extra traffic.
- 7) Cars will be parked on the roads causing a health and safety issue.
- 7.2 Councillors Peter Bradbury and Elaine Simmons oppose the application and make the following comments:

"The original condition reads *Prior to the commencement of development, details of the junction between the access road and the highway shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the development being brought into beneficial use.*" The developer has not done this but instead is trying to bypass this process. This is wrong and we would ask it be turned down.

Secondly Condition 2 is clear that the plans submitted as part of the original application are what Planning was granted by the Inspectorate. These alterations (even though they reduce the foot print) are significant and therefore fresh planning should be applied for. I want the committee to consider these matters."

8. ANALYSIS

- 8.1 This is an application made under Section 73 of the Town and Country Planning Act 1990 (as amended), which relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. Section 73 states that "On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and— (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."
- 8.2 Consideration can therefore be given only to the question of the relevant conditions. The substance of the development has been considered previously and planning permission has been granted on appeal by the Planning Inspectorate. The Council cannot use this application as an opportunity to re-visit the matter of the acceptability of the principle of the development.
- 8.3 The amendments to the proposal that are for consideration are a) the alterations to the dimensions of the building and b) the changes to the layout of the access and car parking arrangements. The amendment from three units to one is not for consideration as permission is not required to amalgamate the units no condition was attached to the planning permission to prevent such an

amendment and there is no material change in the use of the building as the single unit will still be class A1 (retail). Circular 016/2014 advises that there are circumstances in which it would be appropriate to impose conditions to control the number or size of retail units to prevent the development being subdivided into a large number of outlets (or vice versa), if the effect of such a change would be to change significantly the nature of the retail development to one that would not have been given permission. However, in this case the Inspector in granting permission for this development did not consider it necessary to impose such a condition and to do so at this stage would be unreasonable. Any restrictions on the size of the units should have been imposed at the time of the granting of permission for the development if determined to be necessary. Furthermore, the overall amount of retail floorspace is being reduced and was already too small to require a retail impact assessment or to have any significant impact on any existing designated shopping centres.

- With regard to the alterations to the dimensions of the building, the reduction in width will have no adverse impact on the appearance of the development or on the amenities of nearby residents. The building will be 5m further from the side boundary of 112 Bishopston Rd, maintaining an appropriate visual gap between the commercial and residential developments. The reduction in scale should be welcomed, since, although the Planning Inspector did not concur, one of the reasons that the Council refused the original application was that the massing and bulk of the development were considered excessive. There will be no changes to the height of the building or its finishing materials, which have already been determined to be acceptable. Landscaping, boundary treatment, cycle parking and waste storage also remain unaltered.
- 8.5 Regarding the changes to the layout, the reduction in building width and relocation of the access means that delivery vehicles will also be several metres further away from the side boundary of 112 Bishopston Road, the nearest residential property. Although there will now be 2 car parking spaces close to the boundary, it is considered that there will be no increase in disturbance to residents of that property as cars already park in this location and did so when the public house was in operation. The location of the delivery and access area a little further away from residential properties should be welcomed, since the Council was previously concerned that neighbouring residents could be disturbed by customers and by delivery vehicles arriving at and leaving the premises
- 8.6 The overall number of car parking spaces provided for the development remains acceptable: the maximum vehicular parking standard for an A1 development of this size would be 12 spaces (i.e. 1 per 40 square metres) and the proposed layout plan shows 12 spaces, including one disability space. Following the submission of additional information and an amended plan showing vehicle tracking details for an articulated delivery vehicle, Highways/Transportation officers have confirmed that the parking layout, re-positioning of the access and changes to the junction are acceptable. It should be noted that it may be difficult for a delivery vehicle of the size shown on the tracking diagram to access the site at times when other vehicles are parked close by on Bishopston Road; however, this would also be the case

were the existing consent implemented and large vehicles could also have delivered to the site when the building was formerly in use as a public house. It would be unreasonable to add a condition controlling the size of delivery vehicle to be used as no such condition was considered necessary by the Planning Inspector when the appeal was allowed (such a condition would also be extremely difficult to enforce) therefore it will be for the occupier of the retail unit to determine the appropriate size of delivery vehicle for this site.

- 8.7 With regard to the objections received from residents, all of these issues relate to aspects of the development that have already been addressed and which are not the subject of this application, which is a Section 73 application relating only to conditions of the existing planning permission. The issues raised by the objectors cannot be re-considered at this time.
- 8.8 The comments submitted by Councillors Peter Bradbury and Elaine Simmons are noted; however, the submitted details of the junction between the access road and the highway are considered acceptable by Highways officers therefore there is no justification for refusing to amend this condition, and the applicant has followed the correct procedure in applying for an amendment to the planning conditions rather than submitting a fresh planning application as the proposed amendments are not "major material" amendments in that they do not significantly alter the previously approved scheme (for example by proposing an alternative use, making the development much larger, significantly altering the design of the building or locating it in different position within the site where it might affect neighbouring residents). The decision as to whether the application is determined by the Planning Committee rests with the Chair in this instance.
- 8.9 Since the proposed changes represent an acceptable reduction in the scale of the proposed building and an acceptable amendment to the details of the access, and there will be no additional impact on the amenities of neighbouring residents or detrimental effect on highway safety, it is recommended that the conditions of the planning permission be altered to refer to the amended plans.

9. OTHER CONSIDERATIONS

9.1 Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

9.2 Equality Act 2010

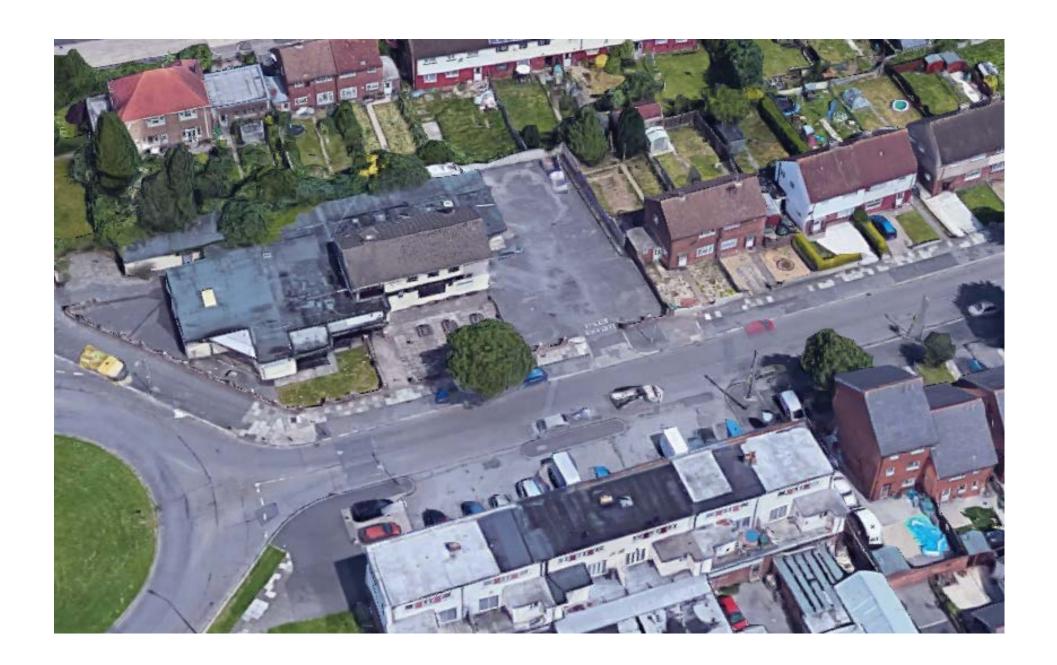
The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the

determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

9.3 Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 places a duty on the Welsh Ministers (and other public bodies) to produce well-being objectives and take reasonable steps to meet those objectives in the context of the principle of sustainable development. 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 WBFG Act), has been considered and account has been taken of the ways of working set out at section 5 of the WBFG Act in the determination of this application, and it is considered that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the well-being objectives referred to in section 9 of the WBFG Act.





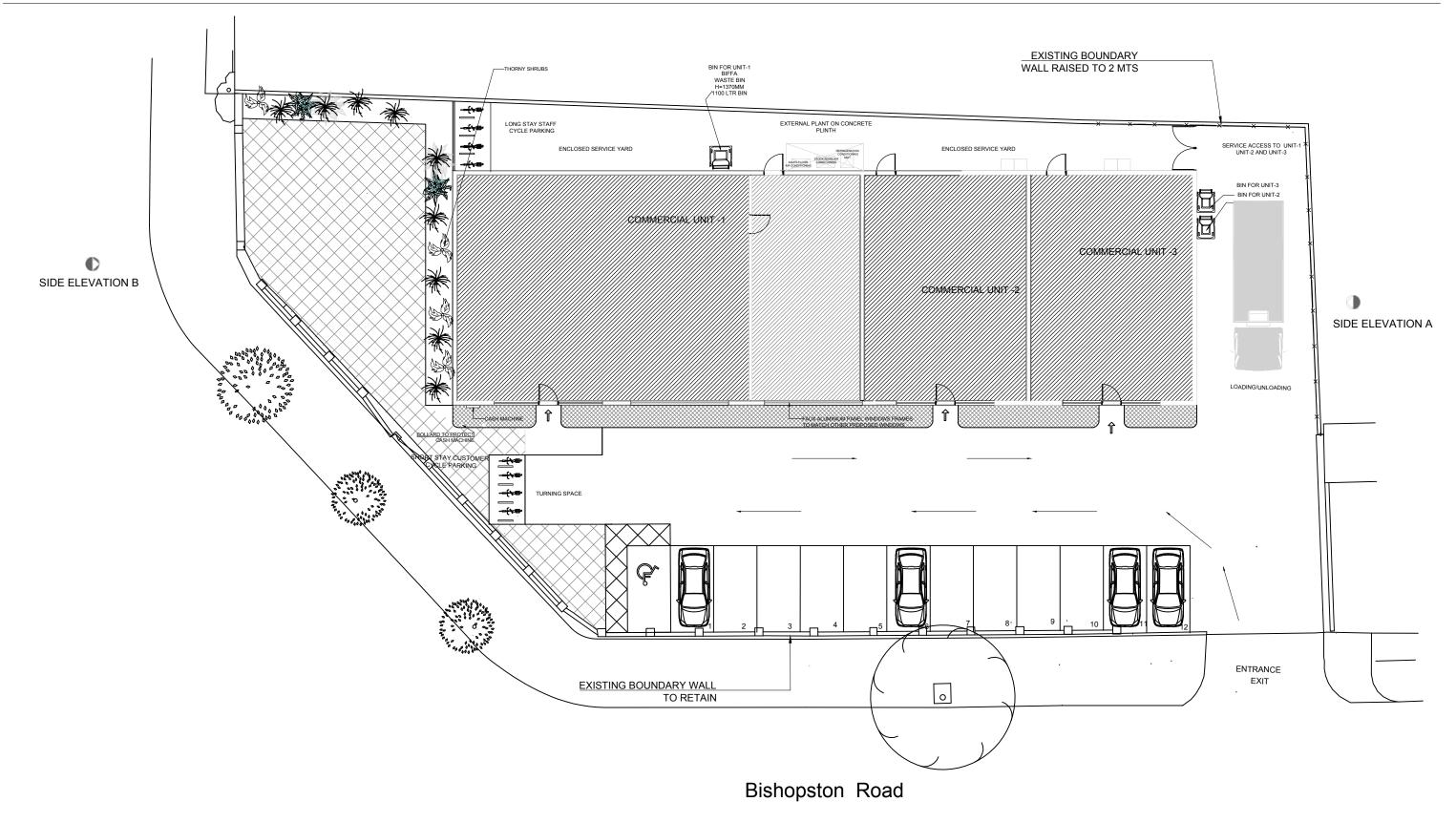






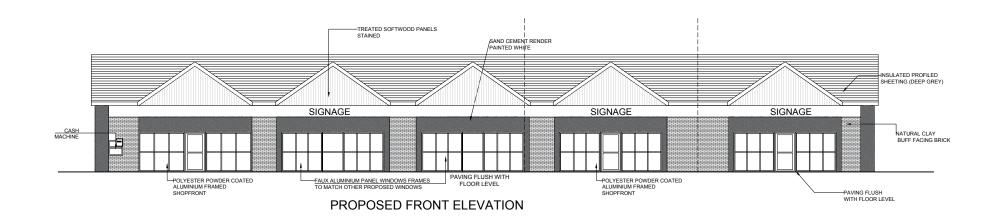


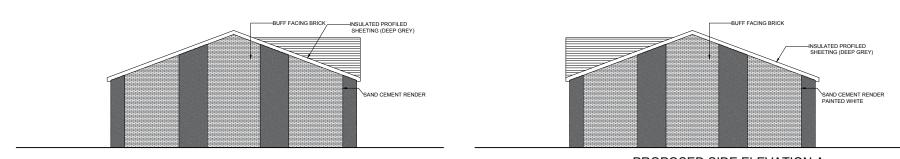




PROPOSED GROUND FLOOR PLAN

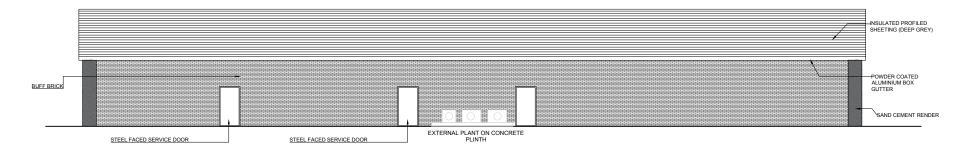
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		201 R7	KG	Tel: 029 20 761 950 Fax: 029 20 761 950
				Email: info@skdesigns.org.uk





PROPOSED SIDE ELEVATION B

PROPOSED SIDE ELEVATION A



PROPOSED REAR ELEVATION

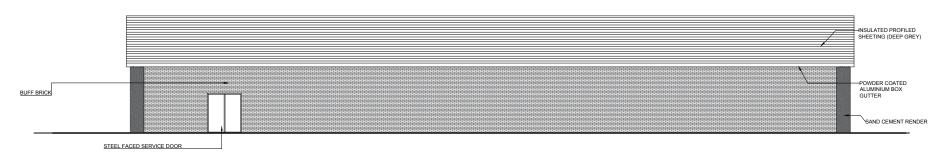
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FRONT ELEVATION



SIDE ELEVATION B



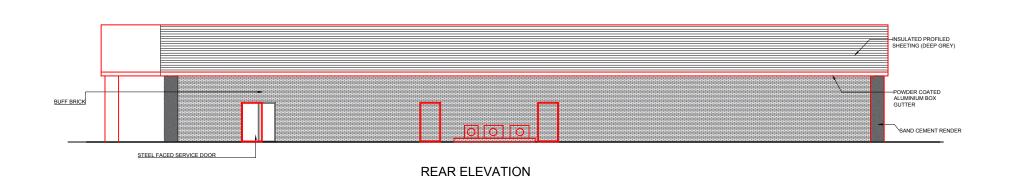
REAR ELEVATION

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Project: THE CAERAU			
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FRONT ELEVATION





RED INDICATES APPROVED ELEVATION

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