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SYLWADAU HWYR

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**Dyddiad ac amser
y cyfarfod** DYDD MERCHER, 18 MEDI 2019, 1.30 PM

Os gwelwch yn dda gweler ynghlwm Cynrychiolaeth Atodlen hwyr a dderbyniwyd mewn perthynas â cheisiadau i gael ei benderfynu yn y Pwyllgor Cynllunio hwn

Late Reps - 18.09.19 (*Tudalennau 1 - 22*)

Mae'r dudalen hon yn cael ei adael yn wag yn fwriadol

LATE REPRESENTATIONS SCHEDULE
PLANNING COMMITTEE – 18th SEPTEMBER 2019

PAGE NOS. 1, 24, 34 & 43	APPLICATION NO. 19/01370/MNR, A/19/00057/MNR, A/19/00058/MNR & A/19/00059/MNR
ADDRESS:	FORMER THE TY GLAS, 75 TY GLAS AVENUE, LLANISHEN, CARDIFF, CF14 5DX
FROM:	Tim Paddock, 49 Fishguard Road, LLanishen
SUMMARY:	Petition of 69 signatories submitted objecting to the proposals on the basis of loss of residential amenity which cannot be mitigated by S106 payments.
REMARKS:	Noted and addressed within report
PAGE NOS. 1, 24, 34 & 43	APPLICATION NO. 19/01370/MNR, A/19/00057/MNR, A/19/00058/MNR & A/19/00059/MNR
ADDRESS:	FORMER THE TY GLAS, 75 TY GLAS AVENUE, LLANISHEN, CARDIFF, CF14 5DX
FROM:	Cllr Shaun Jenkins (Local Ward Member LLanishen)
SUMMARY:	<p>Petition of 181 names, unsigned, submitted objecting to the proposals on the basis of impact upon residential amenity of the proposed 'drive-thru', totem pole signage and banners.</p> <p>It is contended that the outlet should be located on a designated retail park, not wedged between a leisure centre, older people's accommodation and a primary school.</p>
REMARKS:	Noted and addressed within report
PAGE NOS. 1, 24, 34 & 43	APPLICATION NO. 19/01370/MNR, A/19/00057/MNR, A/19/00058/MNR & A/19/00059/MNR
ADDRESS:	FORMER THE TY GLAS, 75 TY GLAS AVENUE, LLANISHEN, CARDIFF, CF14 5DX
FROM:	Tim Paddock, 49 Fishguard Road, LLanishen

SUMMARY:	<p>Petition of 17 names, unsigned, objecting to the proposals due to the proximity to school, community leisure and recreation areas and older persons homes causing <i>'causative of congestive and a olfactory marketing nuisance'</i>.</p> <p>A Wednesbury Grounds' survey of 36 names, unsigned, submitted of persons that do not think it is acceptable to approve a 'drive through hot food takeaway this near to a school, a leisure centre and an older persons home'.</p>
REMARKS:	Noted and addressed within report
PAGE NOS. 1, 24, 34 & 43	APPLICATION NO. 19/01370/MNR, A/19/00057/MNR, A/19/00058/MNR & A/19/00059/MNR
ADDRESS:	FORMER THE TY GLAS, 75 TY GLAS AVENUE, LLANISHEN, CARDIFF, CF14 5DX
FROM:	Owner/Occupiers of 1, 3, 7, 8, 9, 14, 18, 19, 21, 26 & 35 Llys Faith and 1, 4, 10, 23, 29, 42, 44, 47 & 48 Llys Isan.
SUMMARY:	Objections to the proposal on the grounds that the increased traffic, 24 hour opening, litter and proximity of the proposal to schools and leisure facilities would have an adverse impact.
REMARKS:	Noted and addressed within report
PAGE NOS. 1, 24, 34 & 43	APPLICATION NO. 19/01370/MNR, A/19/00057/MNR, A/19/00058/MNR & A/19/00059/MNR
ADDRESS:	FORMER THE TY GLAS, 75 TY GLAS AVENUE, LLANISHEN, CARDIFF, CF14 5DX
FROM:	Tim Paddock, 49 Fishguard Road, LLanishen
SUMMARY:	A brief summary of some of the comments are provided below the comments in full are attached as an appendices.

	<p>Reference to an application (ref: 19/00459/MNR) and its relevance to the current applications under consideration in respect of harm to residential amenity and health of the community is raised.</p> <p>Given the responsibilities under the Well-being of Future Generations Act, inherent implied obligations of the UN Convention on the Rights of the Child, Equality Act and the Human Rights Act, it seems procedurally improper for a local authority to recommend approval to such a proposal close to a school and older persons residential homes. The harm posed by the proposal is unacceptable and the authority has a duty to protect persons from harm.</p> <p>Decisions made in the past policy and legislative environment do not permit new practices that are outside of the current legislative framework. The planning committee is entitled to restrict usage to the established custom and practice of the site. (i.e. restaurant not takeaway, not drive through).</p> <p>That the recommendation ignores Policies on Health and Well-being and suggests that there are no controls over the drive through takeaway.</p>
<p>REMARKS:</p>	<p>The committee will recall that the application (ref: 19/00459/MNR) was for change of use to a Take Away (A3) and was refused on the basis that it was within a primarily residential area outside of an existing district or local centre and it would result in nuisance an loss of amenity to residents.</p> <p>The current application is in an area of mixed use and may lawfully provide the sale of food for consumption on the premises of hot food off the premises and the matters under consideration are those which are applied for and not the premise of the sale of food.</p> <p>The existing lawful use of the premises is a material consideration and, in planning terms, the premises may be utilised for the sale of food for consumption on and off the premises without restriction upon hours. The development applied for (i.e. drive through) may, however, be controlled so far as such controls are reasonable. The report has taken into consideration the relevant matters.</p> <p>Consideration has been given to all relevant policies,</p>

	however, the recommendation is with regard to the development applied for and not matters which are not subject to this application.
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Tim Paddock

James Clemence
Head of Planning Cardiff County Council
County Hall
Cardiff
CF104UW

49 Fishguard Rd,
Llanishen,
Cardiff,
CF145PQ

17/9/2019

Dear James,

Re Application No's – 19/00057/MNR, 19/00058/MNR, 19/00059/MNR, &19/01370/MNR

Location- 75 Ty Glas Avenue, Cardiff CF14 5DX

A great deal of information by a great many objectors was recently submitted to the planning department regarding

Application No – 19/00459/MNR

Proposal – Change of use of ground floor from retail to an A3 takeaway and installation of flue.

Location- 30 Fishguard Rd, Llanishen, Cardiff, CF145PQ.

I would like to cite this information as relevant to the current applications proposed for 75 Ty Glas Avenue and ask the council to make reference to the content of these submissions (particularly including the ones I submitted myself which I request you to read and consider) in consideration of the above proposals for Ty Glas Avenue.

Given the amount of information submitted to the Local Authority regarding the inherent risk of harm and detriment to residential amenity and health of the community it is surprising to see the Local Authority here recommending approval of the above Ty Glas Avenue applications.

Given the harm caused to nearby school children and the awareness of this harm the local authority now has it is disappointing to see the local authority here recommending approval of the above Ty Glas Avenue applications.

Given the awareness the local authority now has of its responsibilities under the Well Being of Future Generations Act, inherent implied obligations of the United Nations Convention on the Rights of the Child, and the Human Rights Act, it seems procedurally improper for a local authority to recommend a planning committee to approve such harmful proposals so close to a school and older persons residential homes (containing individuals with significant care and health needs).

Recommending approval of a 24hr drive through hot food take away situated between a school, community leisure and recreation centre and an older person's home in the country with the highest childhood obesity rates in Europe is not a reasonable action. As a public body you have a duty to these children and that duty must take primacy in your decision making actions. The discretion with which your authority is used must be reasonable and as you are aware of the harms posed to

children and residential areas by this proposal I submit that in this instance your decision to recommend approval is not reasonable.

As you know I tried testing this supposition by asking strangers in the nearby Ty Glas retail park if they think your approval is reasonable (using a Wednesbury Grounds Submission form). So far 100% of individuals have decided it is not reasonable. I have not yet found one individual willing to say it is reasonable. I am happy to provide you with some blank forms so you can independently verify this situation. The retail park is a great place to test the supposition as it is right next to the proposed venue, I expect however if you were to simply ask your colleagues around the office to complete the form you would likely get similar results. (If you can cajole a few to circle yes on the form it will give a better defence and extrapolate debate. From what I experienced on the streets though the tide has definitely turned on this issue, the younger people were particularly vociferous in their objections to the proposals). So in trying to test this out so far it appears no rational person proximally considering the issue considers it is a reasonable decision to recommend approval of these applications for 75 Ty Glas Rd.

I submit that when we consider application of the Well Being of Future Generations Act to this decision making process we have to concede that currently many of the aspirations of the act are here already apparent in this very well spatially planned community and that approval of the 75 Ty Glas Avenue proposals significantly harms, deteriorates and actively undermines all pillars of this act by targeting a known source of harm on schoolchild and community leisure facility footfall.

The harms affected children will experience as a consequence are both severe and likely causative of early disablement and death. The harms are foreseeable and immediate in their accruing consequences from the onset of trading of the proposal. The local authority has been informed of this and is aware.

I submit that a local authority decision making process has a duty to protect children from exposure to these known harms.

In making a recommendation to the planning committee a local authority decision maker is still a public body bound by the respective laws of that decision making process. In this instance the decision to recommend for approval of a known source of harm appears to be at odds with the requirements of the respective legislation. Consequently the approval recommendation made to the planning committee is presumably procedurally improper.

Considering the following extract of the Planning Officers report -

“8.1.2 The application site lies within the defined settlement boundary within an area of mixed use and the principle of the use of the premises for the provision of food and drink for consumption on or off the premises is established and lawful. It must, therefore, be recognised that the principle of the use is not a matter for consideration the existing premises may be utilised by any party for the provision of food and drink without substantial restriction, including upon opening hours, and to attempt to control this existing lawful use is beyond the scope of the application.”

Decisions made in a now past policy and legislative environment do not permit new practices that are now outside of the current legislative framework. The planning committee

is entitled to restrict usage to the established custom and practice of the site i.e. restaurant not takeaway, not drive through. The planning committee can implement conditions at its discretion in consideration of the character of the area and the health and well being of surrounding community and children. The Planning Committee is encouraged here to think it is powerless in these matters which is misguided and procedurally incorrect. In consideration of a current application regarding this site the planning committee must be empowered to consider within the current legislative environment; it is not bound by decisions made under a now past legislative environment. Subsequently any current application for usage can and should be based on restaurant usage without inappropriate extrapolation and refocusing activity on drive through takeaway usage. To encourage the planning committee that they are not able to limit refocussing of the site on takeaway activity is misguided and inappropriate. The known health risks and harmful consequences of the proposal considered in the current legislative framework make it an irrational decision to advocate approval of refocusing the site on drive through take away activity. Usage can and should be restricted to existing use of the site without any drive through or additional takeaway service hatch adaptations. The Planning Committee are entitled to consideration of the character and health of the wider community and area and it is improper for an officers report to suggest otherwise. The different principles of use between a restaurant and a drive through takeaway are significant and require consideration. To recommend otherwise is to fail to take account of factors which ought to have been taken into account, in fact a material factor that should have been considered and could change the decision making outcomes. The report encourages the Planning Committee to consider that they are powerless in the question of considering the difference between a restaurant and a drive through takeaway. The Planning Committee is not powerless and they are entitled to consider and restrict the differences between a restaurant format and a drive through takeaway format and their consequential impacts on health, amenity, and character of the area.

The Planning Committee is entitled to refuse development of a drive through takeaway facility in such close proximity to a school, community leisure and recreation areas, and older persons specialist accommodation. To suggest otherwise is improper, misguided and incorrect.

Additionally in the following extract of the officers report –

“8.6.3 Notwithstanding that the premises benefits from an existing lawful use and that the use of the premises is not material to consideration of this application given the comments received in respect of the potential negative impacts of the proposal on the health of the local population and proximity to local schools it should be noted that current National and Local Planning Policy contain no specific policies in this regard.”

I am disappointed that the LPA appears to have dismissed evidence in relation to harm to health on the basis that in the circumstances it was not a material planning consideration as the LPA’s SPG “Planning for Health & Wellbeing” makes provision for refusing consent on this ground. I submit that the view expressed in the report is misconceived in that “Planning for Health and Well-being” contains numerous references to the promotion of healthy lifestyles. In particular, para 1.4 says “Local

planning policy has a crucial role to play in ensuring the opportunities exist for people to be able to make healthier lifestyle choices and address health inequalities". At para 3.1 it says "The gap in life expectancy, inequalities in health, *rising obesity (my emphasis)* low physical activity levels and the impact of environmental inequalities on population health has strengthened the understanding of the importance of the built environment in promoting health". It goes on "Location, density and mix of land uses can have far reaching effects on how individuals live their lives and access to public services, employment, local fresh food, and open green spaces are all imperative for healthy lifestyles". A grant of planning permission here reinforces a widening gap in life expectancy, inequalities in health, rising obesity, targeting of physical activity and school areas with fast food takeaway marketing, and negatively impacts the built environment and consequent population health outcomes.

At 3.6.6, under Considerations that developers should take into account when submitting development proposals to help promote healthy lifestyles, the guidance continues "Access to a food environment that promotes healthy eating is known to improve health, support the maintenance of a healthy weigh and reduce the risk of developing long term chronic conditions." It goes on "Additionally, the provision of retail units selling fruit and vegetables and restricting the positioning of hot food takeaways in communities is known to influence the health of communities".

Whilst the SPG does not expressly enunciate a policy prohibiting the location of hot food takeaways within a specified distance of a school, it is submitted that the evidence put before the local authority coupled with the guidance quoted above clearly justifies treating the proximity of the Applicant's premises to the Coed Glas school as a material planning consideration in the application for permission to develop a new expanded hot food take-away facility known to pose a hazard to impressionable children.

Case law has said that any consideration which relates to the use and development of land is capable of being a planning consideration. I submit that the known foreseeable and immediate risk to life expectancy posed by proposals like the Applicant's should, in the light of the Wellbeing and Future Generations (Wales) Act, mean that health and wellbeing ought to be an issue considered by an LPA in any application to locate a hot food takeaway in close proximity to a school in Wales.

Here the planning committee are encouraged to conclude they have no capacity to consider negative health impacts of a planning application that negatively affects health. This is improper. The current legislative and policy environment expressly requires consideration of health and well being within such decision making processes and the wording of the SPG's allows it. Consequentially the decision making process here fails to take account of factors which it ought to have taken into account. The proposition here that such considerations

cannot influence a decision is not coherent. The report's recommendation to approve changing a sites usage from restaurant to drive through takeaway focussed business model and to consider this as not material to consideration of the application(s) and then suggest health and local impacts should be discounted is unreasonable, improper and actively undermines proper application of health and well being legislation in Wales.

There is a big difference between a drive through takeaway and a restaurant and the Planning Committee is entitled to consider this and its impacts on the local character, health and well being of the area and population.

Additionally in the following extract of the officers report –

“8.6.5 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 Councils 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”

The local authority have been informed by multiple sources that these proposals will be causative of harm to children who have a protected characteristic and are being unfairly targeted by the proposals. The targeting of child school footfall and olfactory marketing of take away products is here discriminatory toward children having harmful effects on their lives and health in an exploitative fashion. Targeting of school, child leisure and recreation, and residential areas with hot food takeaway extrapolation is no longer supported by the legal framework guiding planning decisions. It is incorrect to inform the Planning Committee “the proposed development does not have any significant implications for or effect on persons who share a protected characteristic”.

An affected child exploited while at a Welsh school with a protected characteristic (age) is then predisposed to a life of discrimination and early demise. Where this is caused by being forced to spend time in a food environment they have no choice or control over (school area) the responsibility on a local authority to protect the life of the child and protect them from discrimination is relevant to these applications and the Planning Committee should not be informed there are no significant implications where the proven consequence of the proposal results in discrimination against affected individuals as a consequence of where they spent their childhood years (protected characteristic age) when they should have been protected by the responsible public bodies.

Additionally in the following extract of the officers report –

8.6.6 Well-Being of Future Generations Act 2016 - Section 3 of this Act imposes a duty on public bodies to carryout sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact on the achievement of wellbeing objectives as a result of the recommended decision.

Perhaps this paragraph was copy and pasted in accidentally without checking what it means?

The Local Authority cannot hope to rationally defend this position. You are here advocating putting a 24hr drive through hot food takeaway right outside a primary school and right next to community leisure and recreation areas? You are the capital of the most obese nation in Europe, perhaps this is your new childhood obesity policy? Put a 24hr drive through outside every primary school in a drive to try and become the capital of the biggest nation not just in Europe but in the world? You are here presumably either misguided or knowingly undermining the principles of the Well-Being of Future Generations Act 2016? You currently have the highest childhood obesity rates in Europe. More children will suffer early disablement and death from the consequences of this than in any other country. Yet you propose to put a 24 hour drive through hot food takeaway next to a primary school; having already put a fish and chip shop next to their high school. You are here making the choices that will effect generations with consequential accrual of harms. Yet you propose to encourage the planning committee to ignore health and well being in their decision making and tell them “that there would be no significant or unacceptable impact on the achievement of well being objectives as a result of the recommended decision”. You are here proposing to predispose parental choice for generations to come toward a known harm causative of the most dire and terminal ill affects particularly focused on and harmful to children in this socio economic area.

The Local Authority report statement here is misleading. You have been made aware of the harms. You are proposing to extrapolate and re-focus a restaurant site into a drive through takeaway through an unfettered and irrational planning recommendation that is causative of generational harms and is not supported by the legislation in force at the time the decision is being made.

The recommendation put before the planning committee is here irrational and unreasonable in nature, having failed to consider health factors appropriately or proportionally and misleading the planning committee in terms of both the impacts of and duties toward health and well being in this decision making process.

I submit that in consideration the discretion of authority exercised in this decision making process is unreasonable.

The Local Authority have failed to take account factors that ought to have been taken into account, and

The decision to recommend approval is so unreasonable that no reasonable authority would ever consider imposing it.

The Local Authority report could perhaps be interpreted as an attempt to fetter the power of the planning committee implying they are unable to consider health and well being issues as relevant and failing to take into account health matters that ought to have been taken into account then asserting legislative compliance where this is clearly not the case and the associated harm and lack of legislative compliance has been well evidenced.

This is procedurally improper and the recommendation is contrary to the duties of the Well-Being of Future Generations Act 2016, the implied duties of the United Nations Convention on the Rights of the Child, The Equality Act 2010 and the Human Rights Act.

The associated submissions regarding this topic have clearly evidenced the risk to life.

Notably –

following extract from research paper Pearce et al 2017 (UWE) Weight gain in mid-childhood and its relationship with the fast food environment.

“Main findings of this study

We found that children who have greater access to fast food outlets are more likely to gain significant amounts of weight between Reception and Year 6 The data suggests that children who have greatest accessibility to fast food outlets have an 89% increase in the odds of increasing their weight by more than 50 percentile points compared with those children with least accessibility to fast food outlets”.

The risk posed by the proposal is thereby demonstrable.

The best interests of the child are thereby served by refusal of the application.

The conclusion of the research validates the objection submissions made regarding health during this decision making process and echoes with the objectives of the Well Being of Future Generations Act reinforcing the validity of refusal of such applications in such areas.

The conclusion of this research offers a good summary of discussion regarding the topic and states clearly the current conclusion that the consequence of such applications approval is considered causative of obesity and overweight outcomes in school aged children.

“Conclusion

Whilst it is commonly assumed that fast food outlets contribute to the obesity epidemic, recent evidence has not necessarily supported this stance. This study lends support to the theory that the built environment may play an important role in the development of obesity. To our knowledge this is the first study to demonstrate an association between weight gain in children and proximity to fast food outlets. It is widely acknowledged that the causes of obesity are not fully understood. Shaping the environment to support more favourable conditions to lead a healthy lifestyle is likely to be important if we are to be successful in tackling the obesity epidemic. To develop effective interventions, we will need to understand how children and their families interact with the neighbourhood and environment. It is unclear whether recent political efforts to restrict fast food outlets will have an impact on obesity. However, this research supports the supposition that fast food outlets are associated with weight gain in children. If the relationship is causal, then strategies designed to influence the number of fast food outlets in neighbourhoods are likely to have a positive effect on population health.”

Recent research has now also linked obesity to increased cancer likelihoods now showing that “Obesity is the biggest preventable cause of cancer after smoking in the UK” (Cancer Research UK)

The planning committee is entitled to consider the above in light of the Well Being of Future Generations Act regarding a proposal to site a 24 hour drive through take away next to a primary school in an area already suffering from an obesity epidemic. The report should not have indicated otherwise and alleged compliance with the legislation where the authority was already aware of the above summarised incidence of negative outcomes caused by the proposal.

Additionally the Local Authority is already aware that poor diet is now responsible for more avoidable deaths and early disability than any other risk factor (Ref The Lancet – Health effects of dietary risks in 195 countries, 1990 – 2017- a systematic analysis for the global burden of disease study 2017)

“This study provides a comprehensive picture of consumption of 15 dietary factors across nations and quantifies the potential impact of suboptimal intake of each diet component on chronic disease mortality and morbidity among 195 countries. Additionally, this study characterises the relationship between diet and development and evaluates the trends in the burden of disease attributable to diet from 1990 to 2017. High intake of sodium, low intake of whole grains, and low intake of fruits were the leading dietary risk factors for deaths and DALYs globally and in many countries.

Implications of all the available evidence

This study highlights the need for improving diet at the global, regional, and national level. The findings inform priorities for population-level interventions to improve diet.”

(NB DALYs = Disability Affected Life Years)

The Local authority is then aware of the risk to life of the proposal.

Furthermore-

The Local Authority are aware that commercial pressures to situate hot food takeaways near school areas (particularly in this socio demographic area) are linked to increasing overweight and obesity levels in affected school child populations. Ref - Breifing Paper Obesity, Hot Food Outlets and Planning in Cardiff (CCC &PHW).

Being then aware of the severity of the risk (early death and disability of the affected child) and the increased likelihood outcomes of childhood obesity (affecting the population in a foreseeable and imminent (from the time trading commences) fashion) the decision making process must be allowed to properly consider the risk to life inherent in the proposal.

Particularly considering –

Positive obligation to protect life in case of known risks

The Human Rights Act 1998 incorporated specified rights under the European Convention on Human Rights and Freedoms into UK law. By s. 6(1) it is unlawful for a public authority to act in a way incompatible with a Convention right. The LPA is a public authority as is an Inspector at an appellate tribunal. In this instance the children attending the Coed Glas school passing and repassing the proposal premises and their parents enjoy relevant Convention rights. Where a relevant article of the Convention is engaged on the facts in a planning issue the Convention right will be a material consideration for the LPA and any appellate tribunal.

Accordingly it is submitted that a further reason why the issue relating to the health of the children of Coed Glas is a material consideration arises from the engagement of Articles 2 and 8 of the European Convention on Human Rights (ECHR) which respectively read:

Art 2 – Right to life

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:(a) in defence of any person from unlawful violence;(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Art 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

It is submitted both these articles are engaged. It is accepted it is for the deciding officer to attach such weight as it or s/he thinks fit in all the circumstances. It is suggested that where risk to life is evidenced and likelihood of risk is increased as a demonstrated outcome of the proposal the weighting of such considerations must be reasonable and in this instance in recommending approval it is not.

Art 2(1) enjoins States not only to refrain from unlawfully causing death, but also to take appropriate steps to safeguard the lives of those within their jurisdiction in certain cases ([LCB v United Kingdom \(1999\) 27 E.H.R.R. 212](#)). The positive duty to act in a manner calculated to protect life encompasses the adoption of reasonable steps by the state or its officials to address risks to human life stemming from hazardous activities, predictable natural calamities and in other defined circumstances. After the event remedies for breach are not sufficient – reasonable preventative measures are called for. Positive obligations have a growing importance in the jurisdiction of the European Court of Human Rights

(ECtHR) but the Court has declined to develop any general theory of positive obligations. An evolutive approach is taken. With the much increased awareness of the threat to life and demands for health care which obesity poses it is submitted to expect a state to take reasonable preventative measures in its land use and planning controls to mitigate this danger is not disproportionate.

Art 8(1) is a right qualified by Art 8(2). Private life includes physical being and integrity and can clearly contemplate debilitating illness substantially interfering with quality of life. For the same reasons as given under Art 2, to expect a state's land use and planning control system to exercise reasonable preventative controls to prevent the location of an activity which poses a serious threat to health of a vulnerable group, in this case minors attending school, in a place where it is known the activity will have its maximum adverse effect on the health of an at risk socio economically disadvantaged vulnerable group, is not disproportionate.

The Human Rights Act and the Well Being of Future Generations Act does empower Planning Committees to consider these issues as a material consideration and sufficient grounds for refusal.

The Human Rights Act and the Well Being of Future Generations Act does empower Planning Committees to consider these issues as a material consideration and restrict the site to existing custom and practice usage of restaurant activity without development of drive through facilities and takeaway service hatches.

Furthermore –

I would like to mention the important issue of Olfactory Marketing to ensure the Planning Committee are aware of this.

Regarding the proposed use of filters to prevent pollution, it is suggested we can all attest without reference that there is a difference between pollution levels and smell levels and that flue filters do not mitigate olfactory marketing of takeaway foods and that a takeaway area always smells like a takeaway area for a very wide radius around it. The World Health Organisation explicitly refers to marketing of fast foods as “causative” of obesity. Olfactory marketing is a well-known technique often deployed in supermarkets to encourage increased purchase of particular items. We suggest that the Planning Committee is well within its rights to consider that the smell of such proposals takeaway operation is still apparent even where flue systems are used to control pollution and thus this smell would constitute olfactory marketing causative of obesity affecting a very wide radius and having a clear negative effect on residential amenity throughout a very large number of other properties and on a school commuting route. Of particular concern is that the school itself is directly in the path of the prevailing wind and thus its entire ventilation system is subject to infiltration by wafts of Olfactory Marketing honed smells. The planning committee is entitled to consider the olfactory disturbance of this proposal as a reason for refusal. It subjects school children to ongoing olfactory marketing causative of obesity throughout the entirety of their school

career. This is unfair and predisposes their choice and capacity to exert pressure on parents to satisfy a predisposed appetite for takeaway produce.

Olfactory Marketing may be considered particularly effective where it wafts intermittently on the breeze thus stimulating the basic innate psychologies of the hunter gatherer instinct to go find that source of food smell. The radius olfactory disturbance thus caused by the proposals is thus considerable and includes the school premises. The marketing pressure exerted on school children is thus unfair predisposing them to disabling life outcomes. The choice of the children is being here made by the planning committee under a misguided recommendation for approval.

Furthermore –

Regarding Traffic

Usage rates of this area are far higher than other areas (e.g. Llanishen leisure centre busiest in Cardiff) and vehicle usage figures utilised to calculate traffic issues are likely to be an underestimation of actual usage. A situation of severe congestion can easily occur as it will only take about a seven car tailback from the site to block Ty Glas Avenue entirely. As soon as ~ 7 cars tail back from the site entrance the next car trying to turn left is unable to and blocks half of Ty Glas Avenue. When more than two cars are then also trying to turn right and are unable to do so the other side of Ty Glas Avenue is then also blocked. At this point Ty Glas Avenue is entirely blocked and its clearance rate is restricted to the takeaway service speed of a drive through takeaway service hatch (Approx 3-6 minutes per car space I think). Ty Glas Avenue is a major thoroughfare and its throughput affects other major intersections across the North of Cardiff. This application thereby compromises the transport network of North Cardiff costing far more in lost time to others than it contributes through employed time of staff. Having seen planning errors of these sort compromise major thoroughfares in other counties I am keen to not see the irreversible nature of these mistakes replicated here.

The application creates a situation where an excess of only 10 drive through customers can congest an entire arc of the city.

The Planning Committee are entitled to consider this as a material consideration sufficient to refuse development of a new drive through takeaway service in this location.

Constant queueing vehicles outside specialist older persons (with care needs etc) residential balconies and ventilation openings will be emitting constantly increased levels of exhaust emissions. Older individuals commonly experience breathing difficulties and chronic lung conditions given that the lungs are the most delicate cellular structures of the human body exposed to external elements. Exhaust fumes are known to be linked to development of asthma and are detrimental to children (in school) and fit healthy adults. To older frail persons with chronic lung conditions ongoing exposure to car fumes would be tortuous in the most abhorrent fashion, every breath an ongoing irritation and deepening deterioration.

We should respect our elders.

The Planning Committee are entitled to consider this as a material consideration sufficient for refusal of a drive through takeaway development.

In conclusion then I respectfully submit that the planning committee should refuse the applications for 75 Ty Glas Avenue being particularly minded to prohibit any further development of new takeaway activities such as drive through facilities so near to a school, leisure and recreation areas, older persons accommodation and at risk residential areas. Such applications are no longer supported by the current policy environment.

Thanks

Yours Sincerely,

Tim Paddock

PAGE NOS. 91 & 134	APPLICATION NOS. 18/02601/MJR &18/02602/MJR
ADDRESS:	32 CATHEDRAL ROAD, PONTCANNA
FROM:	Mark Drakeford AM
SUMMARY:	<p>I am writing to you regarding the above referenced planning application, on behalf of my constituent Nerys Lloyd-Pierce.</p> <p>Ms Lloyd-Pierce has contacted me to raise particular concerns about the threat to some mature copper beech trees as a result of this planning application. In Ms Lloyd-Pierce's view, the necessary protections are not in place to ensure these trees remain in place.</p> <p>I would be grateful for any details you are able to provide regarding the protection of trees in this vicinity of this planning application, which might be able to offer reassurance on this matter.</p>
REMARKS :	Matters relating to the loss of trees as part of the application proposal, as well as replacement provision, have been considered 5.1 & 8.11 of the Committee Report.

PAGE NOS. 91 & 134	APPLICATION NOS. 18/02601/MJR & 18/02602/MJR
ADDRESS:	32 CATHEDRAL ROAD, PONTCANNA
FROM:	Louise Gray
SUMMARY:	<p>I'm writing to protest about the proposed felling of the mature beech tree in the grounds of 32 Cathedral Road, Pontcanna, Cardiff CF11 9UQ.</p> <p>I attended the site visit on 18th March and listened to the presentation from the case officer to the planning committee. It seemed to me that the case for keeping the tree was not well represented to the committee.</p> <p>They were told that the tree only had ten years of life left. That seemed really odd and in fact Cardiff Council's own tree and vegetation officer said <i>"There are plenty of years left for this tree and it is showing no signs of decline, we reckon the tree is between 80 and 100 years old and should be categorised as an A class tree, most desirable for retention. ... Giving the tree a 10 year life span is frankly absurd."</i></p>

	<p>The case officer said the tree was crowding out trees planted along the road. In fact the extensive canopy of the beech tree extends the tree cover of the street and adds to the beauty of the area.</p> <p>The proposal will include the planting of new saplings as if that will make up for the loss of the mature tree. A tree like this big beech absorbs carbon and provides enough oxygen for 18 adults. Saplings will take many decades to have the same air cleaning power.</p> <p>The applicants want to remove this tree for their convenience, because it will complicate the building process. That's not a good enough reason. If Cardiff City is serious about meeting climate and clean air targets, removing a beautiful healthy mature tree obviously makes no sense.</p> <p>Surely the copper beech in question could easily be preserved with a planning condition. The developer wishes to fell it because it is expedient to do so, no more than that.</p> <p>The tree represents a significant amenity in a Conservation Area. If Cardiff Council is serious about meeting climate and clean air targets, granting permission for the felling of a beautiful healthy mature tree makes no sense.</p>
<p>REMARKS:</p>	<p>Committee will be aware that the site visit to No. 32 Cathedral Road was undertaken on a pre-emptive basis and therefore prior to the committee report being released.</p> <p>During the site visit the comments of the Planning Officer, as is the case with all site visits, was focused on describing the application proposal and ensuring members are aware of the local context. As the application proposal at No. 32 seeks the removal of trees, including the Copper Beech, this was simply acknowledged during the site visit.</p> <p>The merits, or otherwise, of the proposed development were not discussed by officers at the site visit. The application will be considered in full during the Planning Committee meeting.</p> <p>Members of the Planning committee who attended the site visit will be aware that no mention was made of the remaining lifespan of the Copper Beech Tree or of any other trees on the application site or adjacent highway. It was acknowledged that the lime tree located along Sophia Close directly adjacent to the Copper Beech, had not grown to the extent of the other limes along the street due in part to the</p>

	<p>suppression of the Copper Beech.</p> <p>With regard to air quality, the comments of the Council's Air Quality Officer is contained in paragraph 5.8 of the Committee Report and further considered under paragraph 8.13.</p> <p>The comments of the Council's Tree Officer are contained in paragraph 5.1 of the committee report and are not those sited in the late representation.</p> <p>The application proposal includes the removal of the Copper Beech, as well as other trees from the site and adjoining highway. The removal of these trees, along with the replacement provision, has been considered fully under paragraphs 5.1 and 8.11 of the Committee Report.</p> <p>The applicant's motives for the proposed removal of the Copper Beech tree is not a material consideration in the determination of this planning application.</p>

PAGE NOS. 91 & 134	APPLICATION NOS. 18/2601/MJR & 18/2602/MJR
ADDRESS:	32 CATHEDRAL ROAD, PONTCANNA
FROM:	Nerys Lloyd-Pierce
SUMMARY:	Question to the Council's Tree Officer; If Planning Committee grants planning permission, does that mean the tree has no further protection?
REMARKS:	Tree Officer Response If planning permission is given and following such permission all 'pre-commencement' planning conditions are discharged (i.e. those conditions that require matters to be agreed and approved before development is commenced), then the beech could be removed without the need for further consent, but only if the planning permission is being implemented, not as a one-off act. Otherwise, removal would require approval via a Conservation Area notice.

PAGE NO. 143	APPLICATION NO. 19/00016/MJR
ADDRESS:	637 COWBRIDGE ROAD EAST, CANTON, CARDIFF
FROM:	Operational Manager, Transportation

SUMMARY:	With regards the access into the site it is not clear what if any vehicles will use this in the future (e.g. deliveries, maintenance), and it is noted that the latest plans appear to show 3 bollards across the entrance. If the access is not to be used they would prefer for it to be stopped up.
REMARKS:	<p>Condition 6 revised and additional conditions 24 and 25 included as follows:</p> <p>6) Prior to occupation of the flats hereby approved, undercover and secure cycle storage shall be provided to accommodate at least 27 cycles in accordance with drawing numbered A-00-100E and an additional cross-sectional drawing showing level access to the cycle parking from the highway has been submitted to and approved by the Local Planning Authority. The cycle parking and approved access shall thereafter be retained. Reason: To ensure that secure and under cover cycle parking facilities are provided to encourage other modes of transport over the private car, in accordance with Policy T5 of the Local Development Plan.</p> <p>24) Prior to construction (excluding demolition) information relating to the proposed vehicle strategy for the ground floor area and details of an amended crossover junction between the site the highway shall be submitted to and approved in writing by the Local Planning Authority, to include (as necessary) details of any bollards, surfacing improvements, clearance from the building above, amended crossover and reinstatement of footway. Those details shall be implemented prior to the development being put into beneficial use. Reason: To ensure that the use of the proposed development provides adequate vehicle and pedestrian access, in accordance with Policy T5 of the Local Development Plan.</p> <p>25) The ground floor area shall not be used for parking of resident's vehicles. Reason: For the avoidance of doubt.</p>

Mae'r dudalen hon yn cael ei adael yn wag yn fwriadol