

## LOCAL MEMBER OBJECTION

COMMITTEE DATE: 15/03/2017

APPLICATION No. 17/03102/MJR APPLICATION DATE: 21/12/2017

ED: **LLANISHEN**

APP: TYPE: REMOVAL OF CONDITIONS

APPLICANT: WYG PLANNING

LOCATION: TRAVIS PERKINS TRADING CO LTD, 1 MALVERN DRIVE,  
LLANISHEN, CARDIFF, CF14 5DR

PROPOSAL: REMOVAL OF CONDITIONS 5, 6, 7, 16 AND 21 OF  
14/00283/DCO

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**RECOMMENDATION 1:** That, subject to relevant parties entering into a deed of variation to the **SECTION 106** agreement within 6 months of the date of this resolution, unless otherwise agreed by the Council in writing, in respect of matters detailed in section 9 of this report, outline planning permission be **GRANTED** subject to the following conditions:

1.
  - A. Approval of the details of the access, layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
  - B. Plans and particulars of the reserved matters referred to in condition 1A above, relating to the access, layout, scale and appearance of any buildings to be erected and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved.
  - C. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
  - D. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of the last of the reserved matters to be approved, whichever is the later.

Reasons:

  - A. In accordance with the provisions of Article (3)1 of the Town and Country Planning (General Development Procedure) Order 1995.
  - B, C and D. In accordance with the provisions of Section 92 of the Town and Country Planning Act 1990.
2. The details submitted for approval in compliance with condition 1 of this permission shall provide for the storage of waste/recycling and its collection in accordance with guidance contained in the Council's Supplementary Planning Guidance : Waste and Collection and Storage

Facilities 2007 (or any subsequent revision of the guidance) unless otherwise agreed in writing by the local planning authority.

Reason: To secure an orderly form of development and to protect the amenities of the area.

3. The details submitted for approval in compliance with condition 1 of this permission shall provide for the parking of vehicles and bicycles in accordance with guidance contained in the Council's Supplementary Planning Guidance Access, Circulation and Parking Standards 2010 or any subsequent revision of the guidance) unless otherwise agreed in writing by the local planning authority.

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.

4. No development shall take place until a scheme for the drainage of the site and any connection to the existing drainage system has been submitted to and approved in writing by the local planning authority. Prior to the submission of the drainage details, ground permeability tests shall be undertaken to ascertain whether sustainable drainage techniques can be utilised and the results of the tests shall be incorporated in the submitted scheme. No part of the development shall be occupied until the scheme is carried out and completed as approved.

Reason: To ensure an orderly form of development.

5. **Condition removed – Number retained for consistency**

*The buildings hereby approved shall meet the BRE Code for Sustainable Homes (Version 3) Level 3, and shall obtain a minimum of 1 credit under Ene 1 (Dwelling Emissions Rate).*

*Reason: To ensure that the development is constructed in accordance with national planning sustainable building standards.*

6. **Condition removed – Number retained for consistency**

*Construction of the dwelling units hereby permitted shall not begin until an 'Interim Certificate' has been submitted to the Local Planning Authority certifying that a minimum Code for Sustainable Homes (Version 3) Level 3 and a minimum of 1 credit under Ene 1 (Dwelling Emission Rate) shall be achieved.*

*Reason: To ensure that the development is constructed in accordance with national planning sustainable building standards.*

7. **Condition removed – Number retained for consistency**

*Prior to occupation of the individual dwelling units hereby permitted, a Code for Sustainable Homes (Version 3) Level 3*

*'Final Certificate' shall be submitted to the Local Planning Authority, certifying that a minimum Code for Sustainable Homes (Version 3) Level 3 and a minimum of 1 credit under Ene 1 (Dwelling Emissions Rate) has been achieved for the dwelling(s).*

*Reason: To ensure that the development is constructed in accordance with national planning sustainable building standards.*

8. Any topsoil (natural or manufactured), or subsoil, to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation to be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Reason: To ensure that the safety of future occupiers is not prejudiced.

9. Any aggregate (other than virgin quarry stone) or recycled aggregate material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation to be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, verification sampling of the material received at the development site is required to verify that the imported aggregate is free from contamination and shall be undertaken in accordance with a scheme agreed with in writing by the Local Planning Authority.

Reason: To ensure that the safety of future occupiers is not prejudiced.

10. Any site won recycled aggregate material shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, sampling of the material received at the development site to verify that the recycled material is free from contamination shall be undertaken in accordance with a scheme and timescale to be agreed in writing by the local planning authority.

Reason: To ensure that the safety of future occupiers is not prejudiced in accordance with policy 2.63 of the Cardiff Unitary Development Plan.

**11. Discharged under application ref: 17/00988/MJR, dated 20/02/2018.**

*Prior to the commencement of the development an assessment of the nature and extent of contamination shall be submitted to and approved in writing by the Local Planning Authority. This assessment shall be carried out by or under the direction of a suitably qualified competent person\* in accordance with BS10175 (2011) Code of Practice for the Investigation of Potentially Contaminated Sites and shall assess any contamination on the site, whether or not it originates on the site.*

*The report of the findings shall include:*

- (i) a desk top study to identify all previous uses at the site and potential contaminants associated with those uses and the impacts from those contaminants on land and controlled waters. The desk study shall establish a 'conceptual site model' (CSM) which identifies and assesses all identified potential source, pathway, and receptor linkages;*
- (ii) an intrusive investigation to assess the extent, scale and nature of contamination which may be present, if identified as required by the desk top study;*
- (iii) an assessment of the potential risks to:*
  - human health,*
  - groundwaters and surface waters*
  - adjoining land,*
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,*
  - ecological systems,*
  - archaeological sites and ancient monuments; and*
  - any other receptors identified at (i)*
- (iv) an appraisal of remedial options, and justification for the preferred remedial option(s).*

*\*All work and submissions carried out for the purposes of this condition shall be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document ' Land Contamination: A guide for Developers' (2012), unless the Local Planning Authority agrees to any variation.*

*A 'suitably qualified competent person' would normally be expected to be a chartered member of an appropriate professional body (such as the Institution of Civil Engineers, Geological Society of London, Royal Institution of Chartered*

*Surveyors, Institution of Environmental Management) and also have relevant experience of investigating contaminated sites.*

*Reason: To ensure that information provided for the assessment of the risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems is sufficient to enable a proper assessment in accordance with policy 2.63 of the Cardiff Unitary Development Plan.*

**12. Discharged under application ref: 17/00988/MJR, dated 20/02/2018.**

*Prior to the commencement of the development, a detailed remediation scheme and verification plan to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, controlled waters, buildings, other property and the natural and historical environment, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.*

*All work and submissions carried out for the purposes of this condition shall be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document 'Land Contamination: A guide for Developers' (July 2006), unless the Local Planning Authority agrees to any variation.*

*Reason: To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy 2.63 of the Cardiff Unitary Development Plan.*

13. The remediation scheme approved by condition 12 shall be fully undertaken in accordance with its terms prior to the occupation of any part of the development unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

Within 6 months of the completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to

and approved in writing by the Local Planning Authority. All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document 'Land Contamination: A guide for Developers' (July 2006), unless the Local Planning Authority agrees to any variation.

Reason : To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy 2.63 of the Cardiff Unitary Development Plan

14. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it shall be reported in writing within 2 days to the Local Planning Authority, all associated works shall stop, and no further development shall take place unless otherwise agreed in writing until a scheme to deal with the contamination found has been approved.

An investigation and risk assessment shall be undertaken in accordance with the requirements of condition 11 (above), and where remediation is necessary a remediation scheme and verification plan shall be prepared in accordance with the requirements of condition 12 and submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to and approved in writing by the Local Planning Authority in accordance with condition 13 (above).

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy 2.63 of the Cardiff Unitary Development Plan

15. **Discharged under application ref: 17/00988/MJR, dated 20/02/2018.**

*Prior to the commencement of any development works, a scheme to investigate and monitor the site for the presence of gases\* being generated at the site or land adjoining thereto, including a plan of the area to be monitored, shall be submitted to the Local Planning Authority for its approval.*

*Following completion of the approved monitoring scheme, the proposed details of appropriate gas protection measures to ensure the safe and inoffensive dispersal or management of gases and to prevent lateral migration of gases into or from land surrounding the application site shall be submitted to and*

*approved in writing to the LPA. If no protection measures are required than no further actions will be required.*

*All required gas protection measures shall be installed and appropriately verified before occupation of any part of the development which has been permitted and the approved protection measures shall be retained and maintained until such time as the Local Planning Authority agrees in writing that the measures are no longer required. 'Gases' include landfill \*gases, vapours from contaminated land sites, and naturally occurring methane and carbon dioxide, but does not include radon gas. Gas Monitoring programmes should be designed in line with current best practice as detailed in CIRIA 665 and or BS8485 year 2007 Code of Practice for the Characterization and Remediation from Ground Gas in Affected Developments,.*

*Reason: To ensure that the safety of future occupiers is not prejudiced in accordance with policy*

**16. Condition removed – Number retained for consistency**

*Vehicular access to the site shall be provided from a point to the west of the existing bus gate on Malvern Drive.*

*Reason: A means of access at this point would be preferable in terms of highway safety.*

17. No development shall take place until plans showing details of the proposed floor levels of any building in relation to the existing ground level and the finished levels of the site shall be submitted to and approved in writing by the local planning authority. The development shall be constructed and completed in accordance with the approved details.

Reason: These details are not included with the application and are required to ensure an orderly form of development.

18. The details submitted for approval in compliance with condition 1 shall have particular regard to the preservation of the amenities and privacy of the occupiers of the adjoining properties.

Reason: To ensure that the privacy and amenities of the occupiers of the adjoining properties are protected.

19. This consent relates to the application as supplemented by the information contained in the letter from the agent dated 30<sup>th</sup> April, 2014 and the attached illustrative plan ref 09 dated 23<sup>rd</sup> April, 2014, together with the e-mail communications from the agent dated 6<sup>th</sup> June, 2014.

Reason: The information provided forms part of the application.

(This has been superseded by Reserved Matters application ref: 17/01301/MJR)

20. This permission does not give approval to the layout of the

development as shown in the indicative illustrative plan submitted in support of the application.

Reason: For the avoidance of doubt as the plans are for illustrative purposes only and issues of layout, scale, landscaping and appearance will need to be fully addressed in accordance with the Council's guidance on residential design at the reserved matters stage.

21. **Condition removed – Number retained for consistency**

*The development of shall include an area open space to be provided at the western end of the site, adjoining the existing public open space area, as shown for illustrative purposes on drawing 09, submitted in support of the application. The open space shall be available at all times for public access and there shall be no means of enclosure erected to separate the area from the adjacent exiting public open space.*

*Reason: To provide a satisfactory level of open space for the benefit of future occupiers in accordance with Policy 31 of the adopted City of Cardiff Local Plan and Supplementary Planning Guidance: Open Space (2008 including May 2011 update).*

22. Any existing accesses to the site which become redundant as a consequence of the proposed development shall be re-instated as footways prior to the beneficial occupation of the development in accordance with details that shall be approved by the Local Planning Authority.

Reason: In the interests of pedestrian safety and convenience.

23. The application hereby approved shall not accede 121 units of accommodation.

Reason: The development, including financial contributions, have been assessed on the basis of this number of units, in accordance with policy KP7 of the adopted Cardiff Local Development Plan 2006 -2026.

**RECOMMENDATION 2:** The contamination assessments and the affects of unstable land are considered on the basis of the best information available to the Planning Authority and are not necessarily exhaustive. The Authority takes due diligence when assessing these impacts, however you are minded that the responsibility for

- (i) determining the extent and effects of such constraints and;
- (ii) ensuring that any imported materials (including, topsoils, subsoils, aggregates and recycled or manufactured aggregates / soils) are chemically suitable for the proposed end use. Under no circumstances should controlled waste be imported. It is an offence under section 33 of the environmental Protection Act 1990 to deposit controlled waste on a site which does not benefit from an appropriate waste management license. The following must not be imported to a development site:

- Unprocessed / unsorted demolition wastes.



- Any materials originating from a site confirmed as being contaminated or potentially contaminated by chemical or radioactive substances.
  - Japanese Knotweed stems, leaves and rhizome infested soils. In addition to section 33 above, it is also an offence under the Wildlife and Countryside Act 1981 to spread this invasive weed; and;
- (iii) the safe development and secure occupancy of the site rests with the developer.

Proposals for areas of possible land instability should take due account of the physical and chemical constraints and may include action on land reclamation or other remedial action to enable beneficial use of unstable land.

The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land can be considered free from contamination.

**RECOMMENDATION 3:** To protect the amenities of occupiers of other premises in the vicinity attention is drawn to the provisions of Section 60 of the Control of Pollution Act 1974 in relation to the control of noise from demolition and construction activities. Further to this the applicant is advised that no noise audible outside the site boundary adjacent to the curtilage of residential property shall be created by construction activities in respect of the implementation of this consent outside the hours of 0800-1800 hours Mondays to Fridays and 0800 - 1300 hours on Saturdays or at any time on Sunday or public holidays. The applicant is also advised to seek approval for any proposed piling operations.

## 1. **DESCRPITION OF PROPOSED DEVELOPMENT**

- 1.1 Outline Planning Permission (ref: 14/00283/DCO) was granted, subject to conditions and a s106 legal agreement, for the residential development of the application site. Permission is now sought to remove conditions 5, 6, 7 (Code for Sustainable Homes), condition 16 (access) and condition 21 (Open Space).
- 1.2 This application should be read and considered in conjunction with reserved matters application 17/03101/MJR which will also be put before committee for consideration.

## 2. **DESCRPITION OF SITE**

- 2.1 The application site comprises approximately 0.8 ha of land which was formally occupied by a builders' merchants (Travis Perkins). The existing buildings on the site have been demolished with the site now comprising of a large area of hardstanding enclosed by a palisade fence, approximately 2.4m in height.

- 2.2 A portion of the site along its eastern perimeter is occupied by an area of informal landscaping and a small number of mature trees, with other trees being dotted along the remaining boundaries.
- 2.3 The site is bounded by Malvern Drive to the south, from which it is accessed, and Smith Road. Malvern Drive and Smith Road are separated by a bus gate which is located just to the west of the existing entrance into the application site. The vehicular entrance into the site is located to the east of the bus gate.
- 2.4 The surrounding area is mixed in character, primarily comprising residential and commercial uses.
- 2.5 To the north of the site lies a large residential area of houses and flats accessed via Ashbourn Way and developed in recent years on former employment land by Bellway Homes and Persimmon Homes. The northern boundary of the site adjoins three and four storey flats at Tatham Road and their associated car parking/amenity areas.
- 2.6 To the west and south west lies a further large area of residential development comprising a mix of houses and flats which was formerly occupied by the AWE Royal Ordnance Factory. Immediately adjoining the western boundary of the site lies an area of public open space incorporating a playground, which was provided in association with the residential developments referred to above.
- 2.7 To the south of the site, on the opposite side of Malvern Drive lies a development of four storey 'ipad' apartments on Pentland Close and a cleared business site which has planning permission for residential development.
- 2.8 A number of industrial/warehouse units and offices occupy land to the east and south east of the site, on the opposite side of Ashbourn Way and Malvern Drive, forming part of Cardiff Business Park.
- 2.9 Ty Glas Railway halt is located approximately 170 metres to the south of the site on the Coryton to Radyr line.
- 2.10 The topography of the site is relatively level with a slight fall in a north-south direction. Previous development cutting into the site to allow level access from Malvern Drive, results in embankments along its northern, eastern and western boundaries.

### 3. **SITE HISTORY**

- 3.1 18/00198/MJR – Discharge of Condition 4 (Drainage) of 14/00283/DCO – Under Consideration.
- 3.2 17/03101/MJR – Submission of details for approval of access, appearance, landscaping, layout and scale for no. 121 dwellings pursuant to outline consent 14/00283/DCO – Under Consideration

- 3.3 17/00988/MJR – Discharge of Conditions 11 (Contamination), 12 (Remediation Scheme) and 15 (Gas Investigation) of 14/00283/DCO – Approved.
- 3.4 14/00283/DCO – Residential development and associated development (including demolition of existing buildings) Approved.
- 3.5 Applications at the site relate primarily to the builders yard (Class B8) including the erection of a new shopfront, fencing and external decorations (local planning authority ref. 89/2242N) and change of use of the forecourt to storage area (local planning authority ref. 91/1390N and 91/1068N).

#### 4. **POLICY FRAMEWORK**

- 4.1 Planning Policy Wales Edition 9 (November 2016).
- 4.2 Technical Advice Notes (TAN's)
- TAN 12: Design.  
TAN 18: Transport.
- 4.3 Relevant policies of the Adopted Cardiff Local Development Plan (2006-2026) include:
- KP5: Good Quality and Sustainable Design  
KP6: New Infrastructure  
KP7: Planning Obligations  
KP8: Sustainable Transport  
KP16: Green Infrastructure  
T1: Walking and Cycling  
T5: Managing Transport Impacts  
T6: Impact on Transport Networks and Services  
C5: Provision for Open Space Outdoor Recreation, Children's Play and Sport
- 4.4 The following Adopted Supplementary Planning Guidance is also relevant:
- Planning Obligations (2017)
  - Residential Design Guide (2017)
  - Green Infrastructure (Nov 2017)
- 4.5 Following the adoption of the Cardiff Local Development Plan, many existing Supplementary Planning Guidance documents are no longer linked to adopted development plan policies. However, where existing SPG is considered consistent with the new LDP policy framework, it will continue to be material to the Development Management process. The following Supplementary Planning Guidance is considered relevant to the determination of this application as it is either adopted or considered consistent with LDP policies KP5, T5 and W2 and can be used to help inform the assessment of relevant matters –

- Access, Circulation and Parking Standards (January 2010);

## 5. INTERNAL CONSULTEE RESPONSES

- 5.1 The Operational Manager, Transportation states that the submitted Transport Assessment indicates that the traffic impact (assuming the use of an access point to the east of the bus gate) would not result in any undue concerns on the network. In addition, the bus gate is now enforced via cameras, and there should be no issues regarding vehicles attempting to get through the bus gate and causing damage. As such, he raises no objection to the proposed removal of condition 16.
- 5.2 The Operational Manager, Parks and Open Space states that the outline scheme included provision of an additional area of land to form part of the existing Watkins Square open space. Although the option of being able to extend the existing open space was attractive, Parks would in principle accept a reserved matters submission with the site fully developed for housing, and improvements being made to the existing open space in lieu of this, providing the payment below is agreed. As such, he raises no objection to the removal of the condition 21.

### Open Space Provision

These comments relate to the current LDP (C5 Provision for Open Space, Outdoor Recreation, Children's Play and Sport; KP16 Green Infrastructure), and the 2017 Planning Obligations Supplementary Planning Guidance (SPG), supported by policies set out in the 2008 SPG for Open Space which set the Council's approach to open space provision.

The Council's LDP requires provision of a satisfactory level and standard of open space on all new housing/student developments, or an off-site contribution towards existing open space for smaller scale developments where new on-site provision is not applicable.

Based on the information provided on the number and type of units and on site amenity space provision, a financial contribution of £173,372 would be required towards improvements to **Watkins Square Open Space** as a result of the proposed development.

- 5.3 As the removal of the conditions sought as part of this application would result in change to the outline planning application, a deed of variation is required to the section 106 agreement to reflect this changes made and ensure that the application remains policy compliant. As such, the following comments have been received from the following internal consultees.
- 5.4 The Housing Strategy Officer (Enabling) supports the development of this site for 100% affordable housing, given the high levels of need for affordable housing in the area. However, in the event that the site and/or units are not purchased by a Housing Association for social rented accommodation, then an affordable housing contribution would be sought in line with the current planning policy as outlined in the Planning Obligations – SPG (2017).

5.5 The Director of Education and Lifelong Learning raise no objection to the application proposal subject to the revised financial contribution proposed.

5.6 The Group Leader Neighbourhood Regeneration raises no objection to the application subject to the financial Communities Facilities contribution remaining as previously agreed.

## 6. **EXTERNAL CONSULTEE RESPONSES**

6.1 None undertaken

## 7. **REPRESENTATIONS**

7.1 Local Members have been consulted on the application. Councillor Bale has raised an objection to the proposed development on the following grounds;

- The amended plans and assessments incorrectly state the local 86 bus service runs every 60mins during the day. Cardiff Bus have cut this service to just one bus every hour and a half now even though many elderly residents rely on the bus service more than the train due to their concessionary bus passes.
- There is considerable loss of open space on the new plans, facing the square and playground. The original outline plans would have seen the perimeter of the Square made symmetrical. This public open space is in need of further investment to improve the drainage off the grass and provide better facilities for the local community.
- I have not seen any evidence that the applicant has put in place any measures to prevent seagulls on the roof of the new buildings. This has been a long standing problem in this area, perhaps due to the proximity of Memory Lane Cakes, and therefore the design of the roof spaces needs to minimise this risk as it will lead to considerable noise nuisance for existing and new occupants to the development site.
- The height of the development should not lead to loss of light or privacy for existing nearby residents.

In addition, I would also wish to welcome the commitment to provide 100% affordable and/or social housing on the site as there is a significant shortage in north Cardiff at present.

7.2 Neighbouring and nearby occupiers have been notified of the application. The application has also been advertised by the display of site notice. No objections have been received to the application.

## 8. **ANALYSIS**

- 8.1 The key planning considerations in the determination of this application are the acceptability of the removal of conditions and the requirements of the revised S106 agreement.

### **Removal of Conditions**

#### 8.2 **Conditions 5, 6 & 7 - Code for Sustainable Homes**

A letter from the Minister for Housing and Regeneration, dated 05 June, 2014 sets out the procedure for dealing with conditions relating to code for sustainable homes, this letter states the following;

*“Development Management - All planning applications need to be determined in accordance with the adopted development plan unless material considerations indicate otherwise. National planning policy in the form of PPW and TANs are such considerations in this process. An adopted LDP may contain specific policies on a strategic site requiring higher sustainable buildings standards, these policies should continue to be given the due weight afforded to them by law. Any applications determined after the 31 July 2014, including Section 73 applications which might seek to remove extant conditions on planning permissions requiring the relevant Code for Sustainable Homes / BREEAM levels to be achieved, should be assessed in accordance with the policy changes and any existing adopted LDP policy which may require a higher standard.”*

A further letter from the Welsh Government Chief Planner, dated 31 July, 2014 which states the following:

*“The [9th] edition of PPW incorporates amendments to Section 4.12, ‘Planning for sustainable buildings’ withdrawing the national planning policy requirement for sustainable building standards and Technical Advice Note (TAN) 22: Planning for Sustainable Buildings has now been cancelled.”*

- 8.3 Having regard to national advice detailed above, and given that there are no particular policies within the adopted Local Plan which would seek to retain the Code for Sustainable Homes Conditions, their removal is considered acceptable.

#### 8.4 **Condition 16 - Vehicular Access**

The Operational Manager, Transportation accepts the content of the submitted Transport Assessment, in terms of the resulting traffic impact on the local network resulting from a revised access location (assuming an access point to the east of the bus gate). He also notes that the bus gate between Smith Road and Malvern Drive is enforced by cameras thereby deterring vehicles attempting to pass through it, causing damage or creating conflict

with an alternative site access. Taking this into consideration, the removal of condition 16 is considered acceptable in highways terms. The proposed development would remain policy compliant as a result of the removal of this condition.

## 8.5 Condition 21 - Open Space

Condition 21 required that an area of land along the western edge of the site be provided as Public Open Space and integrated into the adjacent Watkins Park Open Space. The committee report for the outline planning application states the following;

*'Public open space provision is to be provided by extending the existing open space area which directly adjoins the western boundary of the application site, as indicatively shown on the illustrative layout plan. The development would enable the 'rounding off' of the pos, increase the public surveillance of this area and remove the incongruous relationship which currently exists between the park and the employment site. The transfer of the area to the Council would be subject to the approval the approval of its detailed design and payment of an appropriate commuted sum for its future maintenance and management.'* (Para 8.20)

Whilst the provision of this area of land for POS was agreed as part of the outline planning application, the inclusion of this space was not fundamental to the positive determination of the application.

It is considered that a reserved matters scheme which proposes development on this particular area of land, as is the case under reserved matters ref: 17/01301/MJR (considered simultaneously with this application), could still effectively round off the adjacent park through creating a strong built edge and active frontage along its eastern boundary. Whilst the size of the park would remain unaltered through such an approach, it is considered that a financial contribution in lieu of the provision of this additional space would allow for improvements to be made to the existing park making it more useable, permeable and generally attractive. This approach is considered to be acceptable.

As such, subject to the provision of a financial contribution in lieu of the provision of this space being provided towards enhancement to the existing park as part of the deed of variation to the s106, the application proposal is considered policy compliant in terms of open space provision.

## 8.6 Other Matters Not Considered Above

Councillor Bales' comment with regard to the adjacent open space are acknowledged. It is however considered that a financial contribution towards improvements to the park, in lieu of the provision of the additional open space required as part of condition 21 (open space), would represent an acceptable and policy compliant alternative.

9. **S106 - Deed of Variation - Head of Terms**

9.1 A deed of variation will be required to the S106 agreement to reflect the revised development proposal resulting from this application and application ref: 17/03101/MJR.

9.2 The deed of variation should reflect the requirement for the area of open space towards the western edge of the site, previously agreed as being transferred to the council, from being required, with a financial contribution made in lieu of the provision of this space.

9.3 Given the increased number of units proposed (see application ref: 17/03101/MJR), the financial contribution sought have been amended as follows:

- Community Facilities £25,000
- Parks £173,372
- Highways and Transportation £22,000
- Economic Development £50,000
- Education £66,369
- Affordable Housing Development to comprise of 100% affordable housing

9.4 The deed of variation will need to reflect that in the event that the site and/or units are not purchased by a Housing Association for social rented accommodation, then an affordable housing contribution would be sought in line with the current planning policy as outlined in the Planning Obligations – SPG (2017).

9.5 Given circumstances particular to this application and that of application ref: 17/03101/MJR, a reserved matters scheme for the site containing 100% affordable housing, it is considered that a reduced Education contribution would be acceptable in this instance given the revised breakdown of units now proposed and the likely number of school places required as a result.

9.6 The Community Facilities, Economic Development and Highways and Transportation contributions would remain the same as that previously agreed.

9.7 Having regard to policy and legal tests, it is considered that the requested contributions meet the necessary requirements. The agent has confirmed that their client is willing to enter into an agreement to secure these contributions.

10. **Conclusion**

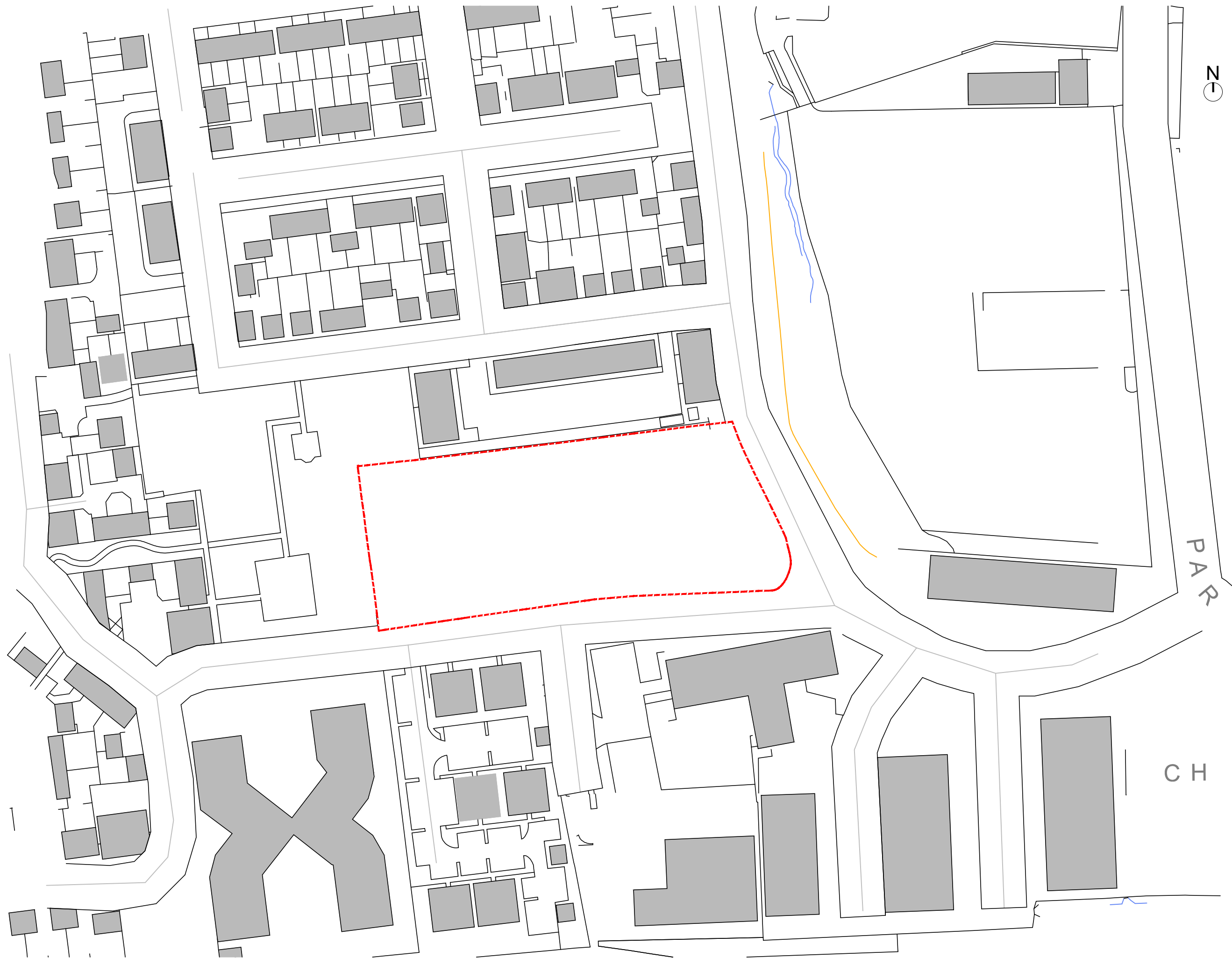
10.1 Subject to the signing of a Deed of Variation to the S106 agreement in line with para 9.1 – 9.5 above, it is considered that this application proposal would remain policy compliant notwithstanding the proposed removal of conditions



5, 6, 7, 16 & 21. It is therefore recommended that this application be approved.

10.2 As this is a Section 73 application, in accordance with case law the previous conditions have been re-imposed to ensure compliance.

10.3 An additional condition (Condition 23) has been added which limits the numbers of units to ensure compliance with the S106.



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