

PETITION AND LOCAL MEMBER OBJECTION

COMMITTEE DATE: 08/12/2022

APPLICATION No. **22/01636/MNR** APPLICATION DATE: 26/09/2022

ED: **RHIWBINA**

APP: TYPE: Full Planning Permission

APPLICANT: Snails Deli

LOCATION: LAND TO THE REAR OF CANOLFAN GARDEN AND
SHEDS BETWEEN 238 PANTBACH ROAD AND HEOL
Y BONT, RHIWBINA, CARDIFF, CF14 6LX

PROPOSAL: RETENTION OF STORAGE CONTAINER FOR SNAILS
DELI

RECOMMENDATION 1: That planning permission be **REFUSED** for the following reasons:

1. The industrial appearance of the storage container, including its scale, form and materials, and its siting forward of the building line to Heol Y Bont, are out of keeping with the residential character, quality and pattern of development in the surrounding area, resulting in an insensitive and obtrusive feature in the street scene which is detrimental to visual amenity and the character of the area, contrary to policy KP5(i) of the Cardiff Local Development Plan.
2. The storage container, by virtue of its scale, form, materials, siting forward of the building line to Heol Y Bont and projection above the adjacent boundary wall, is unneighbourly and detrimental to the amenities of residents of 1, Heol Y Bont in that it is unsightly and obtrusive when viewed from that property, contrary to policy KP5(x) of the Cardiff Local Development Plan.

RECOMMENDATION 2 : That the Chief Legal and Democratic Services Officer be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 to secure the removal of the unauthorised storage container.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 The application seeks planning permission for the retention of a metal shipping container measuring 6.1m (l) x 2.44m (w) x 2.59m (h) which is

used for the storage of non-food items such as furniture and seasonal decorations for the 'Snails' delicatessen / restaurant at 6-8 Beulah Road. The container abuts the boundary with 1, Heol-Y-Bont on the north eastern side and is set back by around 3.5m from the highway. The container has been painted black and a trellis for climbing plants has been attached to the south western side along with troughs in which to grow food produce for the use of Snails Deli.

2. **DESCRIPTION OF SITE**

- 2.1 The application site is a 5.7m wide x 16.5m long (approx.) driveway located between the side boundary of the dwellinghouse at 1, Heol-Y-Bont to the east and a vacant site surrounded by hoardings which formerly accommodated a commercial building with associated car park (now demolished) to the west. At the rear of the driveway is a single storey detached garage building. The site is also used for bin storage and was formerly also a staff parking area for the commercial premises at 6 Beulah Road, to which there is pedestrian access directly from the application site via the side of the garage.

3. **SITE HISTORY**

- 3.1 07/02357/W - Change of use of ground floor to mixed shop/restaurant/gallery use (sui generis).
- 3.2 09/00363/W - Removal of condition 2 of 07/2357/W to allow the mixed shop/ restaurant/ gallery use (sui generis) to extend throughout the ground floor of 6 - 8 Beulah road. Variation of conditions 3 and 4 of 07/2357W: condition 3 – to extend the opening hours from 7:30 am to 11pm Monday to Saturday (to be closed on Sundays); condition 4 – to allow outside dining within the area to the rear of 8 Beulah Road shown on drawing no A-P-S-001.
- 3.3 10/01583/DCO - Removal of condition 20 of planning permission 09/00363/W (permission restricted to one year only).
- 3.4 18/01758/MNR – Variation of conditions 4 (opening hours), and 16 (external dining area doors) and removal of conditions 14 (external dining area), 17 (means of enclosure) and 18 (number of diners) of 09/00363/W. Refused - increased noise and disturbance to residents of properties close to the site on Heol-Y-Bont and Beulah Road; noise / disturbance also affecting residents over a longer period of time.

4. **POLICY FRAMEWORK**

- 4.1 *Cardiff Local Development Plan 2006-2021:*

KP5 (Good Quality and Sustainable Design).

4.2 *Planning Policy Wales (Edition 11 – February 2021):*

2.2 All development decisions, either through development plans policy choices or individual development management decisions should seek to contribute towards the making of sustainable places and improved well-being

3.4 Meeting the objectives of good design should be the aim of all those involved in the development process and applied to all development proposals, at all scales.

3.6 Development proposals must address the issues of inclusivity and accessibility for all.

3.9 The layout, form, scale and visual appearance of a proposed development and its relationship to its surroundings are important planning considerations.

3.11 Local authorities are under a legal obligation to consider the need to prevent and reduce crime and disorder in all decisions that they take.

3.12 Good design is about avoiding the creation of car-based developments. It contributes to minimising the need to travel and reliance on the car, whilst maximising opportunities for people to make sustainable and healthy travel choices for their daily journeys.

3.16 Planning authorities should through a process of negotiation seek to improve poor or average developments which are not well designed, do not take account of their context and consider their place, or do not meet the objectives of good design. Where this cannot be achieved proposals should be rejected. However, they should not attempt to impose a particular architectural taste or style arbitrarily and should avoid inhibiting opportunities for innovative design solutions. If a decision maker considers that a planning application should not be approved because of design concerns they should ensure that these reasons are clearly articulated in their decision and justified with sufficient evidence.

3.21 The planning system must consider the impacts of new development on existing communities and maximise health protection and well-being and safeguard amenity.

6.4.5 Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity.

4.3 *Technical Advice Note 12 - Design (March 2016).*

4.4 *Future Wales- the National Plan 2040.*

It is considered that the proposed decision is in accordance with the 11 key outcomes to be achieved by the planning system as set out in 'Future Wales – The National Plan 2040'.

5. **INTERNAL CONSULTEE RESPONSES**

None.

6. **EXTERNAL CONSULTEES RESPONSES**

None.

7. **REPRESENTATIONS**

7.1 The application was publicised via the Council's website and by means of neighbour notification letters. In total 9 letters of representation and a petition of more than 50 signatures have been received to date, objecting on the following summarised grounds:

1. The container is unsightly and out of keeping with the appearance and character of surrounding properties and the residential character of the street.
2. The container is overbearing.
3. Noise is created daily by the container doors being opened and closed and by staff moving the contents around.
4. The container has already caused structural damage to the adjacent wall, is too close to enable proper maintenance and may affect the wall's stability.
5. New fencing has been erected which now blocks what was a clear view for a neighbouring property to safely pull out of their drive.
6. The container impedes convenient access for the collection of the bins from the Flower Lodge's bin store. This has caused an increase in noise and disturbance in the early hours of the morning when the bins are collected.
7. Retention of the container would set a precedent for future developments of the same character in this area.
8. The container is used to store the applicant's household goods and furniture, not items associated with 'Snails' as stated in the application.
9. The area is poorly maintained, is extremely unkempt and dangerous. The permanent siting of the container will only make it more dangerous.
10. Snails are storing used cooking oil in the bin store which should only be used to store bins.
11. The applicant only leases the driveway - who takes on responsibility for the container should their lease come to an end?

7.2 In addition 3 representations have been received from residents of Beulah Road and one from the owner of the adjoining vacant site, supporting the proposal for the following summarised reasons:

1. The area is a business area and the container has improved the appearance of the area. It can hardly be seen from the road. The hoarding around the old NatWest building is much more of a concern.
2. Storage containers are “on trend” and used by schools, cafes and even as housing options.
3. The trellis planting with seasonal food crop for the shop is a great eco/enviro stance.
4. The container deters people from using the permissive path, which has improved privacy for 4A Beulah Road and led to a reduction in dog fouling.
5. Snails is a credit to the area as a community hub. As a keystone business in the village, the viability of Snails is integral to the success of all the business in Rhiwbina. The container is integral to the development of the business.
6. The container is a secure form of storage, and with a recent spate of break-ins this is of real concern to businesses.
7. It is not accessed frequently but is used to store seasonal furniture.

8. **ANALYSIS**

8.1 The principal issues in the determination of this application are the effect of the development on the character and appearance of the area and on the amenity of neighbouring occupiers.

8.2 LDP policy KP5 seeks to ensure that new development responds ‘*to the local character and context of the built and landscape setting so that layout, scale, form, massing, height, density, colour, materials, detailing and impact on the built and natural heritage are all addressed within development proposals*’. In this case, although partly screened from the east by the side boundary wall of number 1 Heol y Bont, the container still projects above the top of the wall and is also highly visible when approaching the site from the west along Heol Y Bont. Attempts have been made to soften its appearance using a trellis and planters and by painting it black but the container still has a very obvious ‘industrial’ appearance which detracts from its surroundings and is inappropriate in this suburban residential area.

8.2 The siting of the container is also out of keeping with the pattern of development in the surrounding area, being located well forward of the building line formed by the houses on the north side of Heol Y Bont. This also increases its prominence within the street scene and is contrary to the

guidance set out in the 'Infill Sites' SPG (paragraph 3.16) which states that: *'Development should seek to respond to the prevailing building line that is created by the main frontages of houses, taking into account how the buildings are set back from the street and any rhythms or patterns of existing development, or protrusions.'*

- 8.3 LDP policy KP5 also seeks to ensure that *'no undue effect on the amenity of neighbouring occupiers'* results from development. In this case, the storage container not only detracts from the visual appearance of the neighbouring residential property at 1, Heol-Y-Bont but it is also considered to be detrimental to the amenities of residents of that property in that it is sited immediately adjacent to their side boundary, extends along the boundary for some distance and projects above the wall, creating an obtrusive feature which can be seen from the entrance to the house, the driveway, the outdoor amenity space at the side/front of the house and the first floor front elevation windows.
- 8.4 The applicant seeks to justify the retention of the container by referring to the 2.6m hoarding around the adjacent site and the likelihood of that site being developed in the future, stating that *'In comparison, with the likely future development of the adjacent site, this proposed development is insignificant in terms of its scale, appearance and is acceptable in its context'*. However, this is not considered to constitute adequate justification – there is no planning permission for the redevelopment of the adjoining site: planning officers recommended approval of a 3 storey mixed retail and residential development in 2017 (reference 17/00208/MNR) but the application was refused by the Planning Committee and a subsequent appeal was dismissed, the Inspector finding its scale and massing and its overbearing impact on neighbours unacceptable. It is therefore by no means likely that a development of the scale of that previously proposed will be constructed on the adjoining site in the future.
- 8.5 The applicant also proposes that a hydrangea and rosemary hedge will be planted either side of the existing gateway entrance to soften the appearance of the storage facility. However, no details of this have been submitted for consideration and in any case the need to retain a wide, gated opening at this point coupled with the restricted height that these species of plant would achieve even when mature means that the proposed hedge would do little to mitigate the harmful visual impact of the container.
- 8.6 A number of objections, including a petition, have been submitted and are detailed in section 7 of this report. I would offer the following comments in response to the points raised by the objectors:

1. It is acknowledged that the container is unsightly and out of keeping with the appearance and character of surrounding properties and the residential character of the street, and this constitutes one of the recommended reasons for refusal of the application.
2. The overbearing impact on the adjoining residential property is discussed above. The detrimental impact on the amenities of neighbouring occupiers caused by the obtrusive nature of the container constitutes the second recommended reason for refusal.
3. There will be a certain amount of noise generated by the opening and closing of doors and movement within the container but this is relatively infrequent and not severe enough to constitute a nuisance to neighbours or grounds for the refusal of planning permission.
4. This is a private legal matter between the landowners and is not a material planning consideration. Planning permission would not confer the right to cause damage to another person's property.
5. The container is set far enough back from the highway (i.e. around 3.5m) to allow adequate visibility for vehicles using the adjoining driveway. Planning permission is needed for boundary structures more than 1m in height adjacent to a highway and it appears that a new screen fence has been added to the top of the existing wall between the container and the highway but this does not form part of this application and will have to be considered separately on its own merits.
6. This does not constitute grounds for the refusal of planning permission. Other obstacles, that do not need planning permission, could be placed in this area. If the Flower Lodge has rights of access to and from its bin store across this land then interference with these rights is a legal matter between the parties involved. It is not a material planning consideration. Also, if excessive noise caused by bins being collected at unsociable hours is causing a nuisance to neighbouring residents, this would be a matter for Environmental Health officers to investigate.
7. Retention of the container may alter the character of this part of Heol-Y-Bont but it would not necessarily set a precedent for future developments of the same character in this area as each proposal would have to be considered on its own merits.
8. The nature of the goods stored in the container is not relevant to the consideration of this application.
9. The maintenance of the site in a safe and tidy condition is the responsibility of the site owner – this is separate to material planning considerations.
10. The nature of items stored elsewhere in the vicinity of the container is not relevant to the determination of this application.
11. Planning permission is linked to the land and not to a particular applicant therefore the landowner, whoever that may be, is ultimately responsible for development on their land. There may be

legal obligations on tenants etc. but these are not material planning considerations.

- 8.7 In response to the points made in support of the application:
1. The container is located on Heol-Y-Bont, which is not a 'business area' but is a residential street. The container is readily visible from the highway. It cannot be compared with the hoarding around the 'Nat West' site (which is within the Local Shopping Centre) which is a temporary hoarding erected around a demolition site for safety purposes.
 2. The fact that storage containers are used in other locations for various purposes does not make this particular container in this particular location acceptable.
 3. Seasonal vegetables could be grown on the site without the need to retain the storage container.
 4. The 'permissive path' is not a public footpath and is for the use of Snails patrons only, as is stated on a sign on the gate leading onto the site. If this is causing security or littering issues for neighbours, then this is a matter that should be addressed by the landowner – it is not necessary to place a container on the site to prevent problems occurring.
 5. It is highly unlikely that Snails would go out of business if the container was removed. Other methods of storing furniture could be used.
 6. There are other ways to store furniture securely. The fact that the container is considered to be secure does not override considerations of visual and residential amenity.
 7. Residents living adjacent to the container have noticed it being accessed regularly, and it would not be possible to control the frequency of access via a planning condition.
- 8.8 In conclusion, the container is considered to be detrimental to the visual amenity and character of the area and to the amenities of neighbouring residents, contrary to policy KP5 of the Cardiff Local Development Plan which requires all new development to be "of a high quality, sustainable design and make a positive contribution to the creation of distinctive communities, places and spaces by" (inter alia) "responding to the local character and context of the built and landscape setting so that layout, scale, form, massing, height, density, colour, materials, detailing and impact on the built and natural heritage are all addressed within development proposals; ensuring no undue effect on the amenity of neighbouring occupiers and connecting positively to surrounding communities." For these reasons, it is recommended that this application be refused and that the Chief Legal and Democratic Services Officer be authorised to issue an Enforcement Notice under Section 172 of the Town

and Country Planning Act 1990 to secure the removal of the storage container from the site.

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.

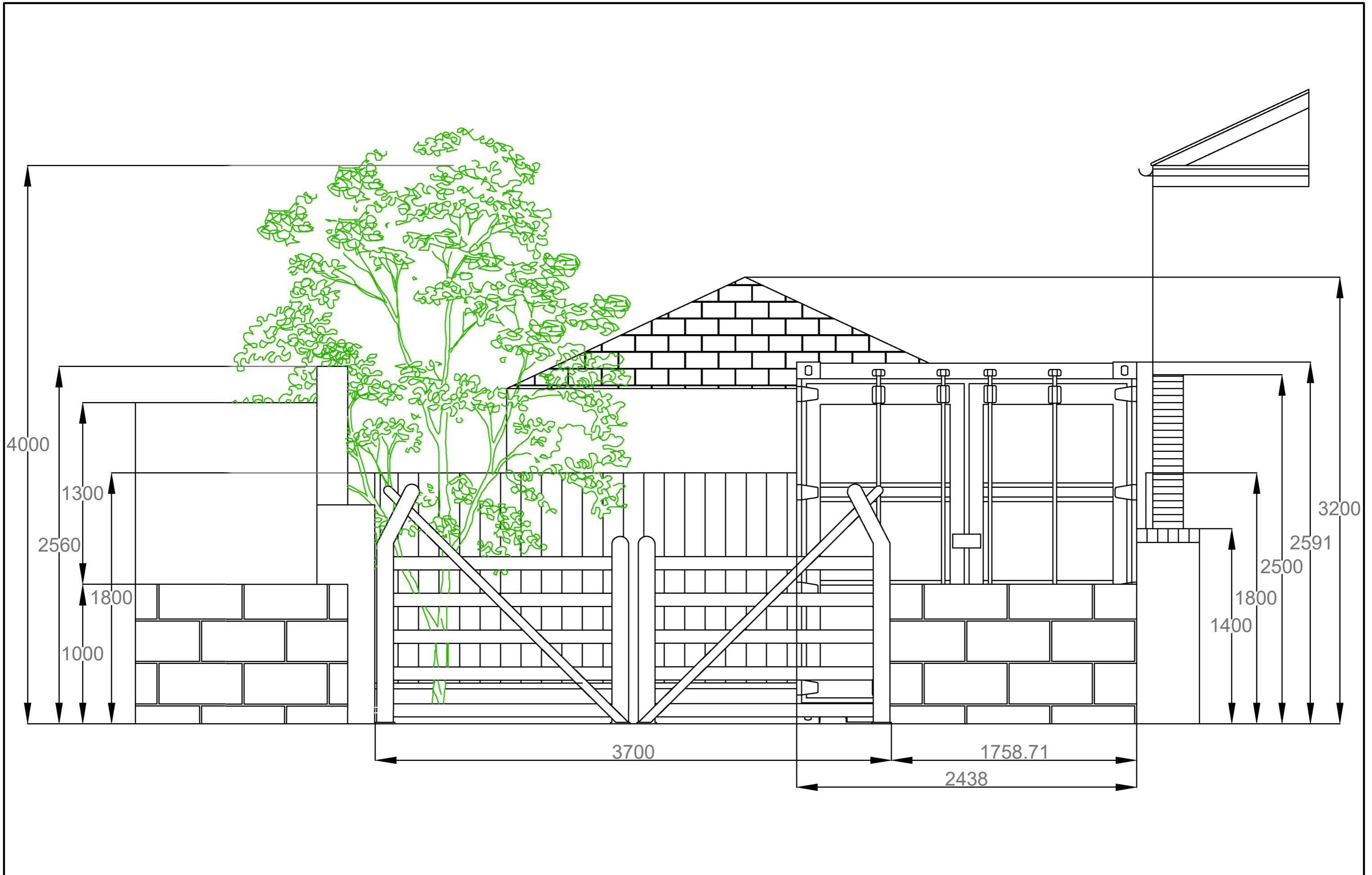
9.3 *Environment (Wales) Act 2016*

The Environment (Wales) Act 2016 imposes a duty on the Local Authority to seek to maintain and enhance biodiversity in the proper exercise of its functions. and in doing so to promote the resilience of ecosystems. It is considered that the proposed development does not have any significant implications for, or effect on, biodiversity.

9.4 *Well-being of Future Generations (Wales) Act 2015*

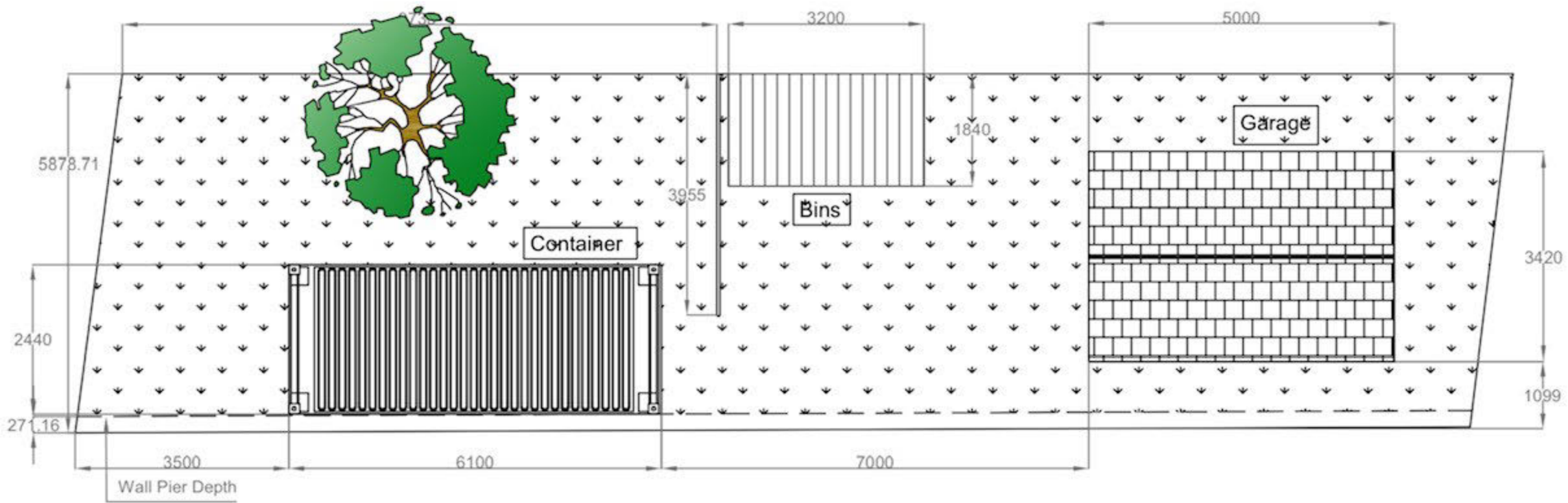
The Well-being of Future Generations (Wales) Act 2015 places a duty on the Welsh Ministers (and other public bodies) to produce well-being objectives and take reasonable steps to meet those objectives in the context of the principle of sustainable development. The duty to improve the economic, social, 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.





DRAWN BY:	GARETH JOHN	DATE:	07/09/2022	TITLE:	CONTAINER LOCATION	DRAWING NO:	
SCALE:		SHEET SIZE:	A4	UNITS:	MM	DRAWING REV:	

Snails Driveway Detail.pdf



DRAWN BY: GARETH JOHN	DATE: 23/08/2022	TITLE: CONTAINER LOCATION	DRAWING NO:
SCALE:	SHEET SIZE: A4	UNITS: MM	DRAWING REV:



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SITE SAFETY
KEEP OFF
NO ENTRY
NO PARKING
NO STOPPING

SITE SAFETY
KEEP OFF
NO ENTRY
NO PARKING
NO STOPPING





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