

DELEGATED REPORT

Application No: P/20/0262

Site Address: Merthyr Motor Auctions
Pant Road
Dowlais
Merthyr Tydfil
CF48 3SH

Development: Removal of condition H attached to appeal decisions APP6410/C/95/508749 and APP6410/C/95/508750, which currently restricts the use of the floodlighting (Removal of Condition Application)

Case Officer: Marlene Ferreira

Site Visit: 10th November 2020

Application Expiry Date: 24th December 2020

Consultation reply date expired: 18th February 2021

APPLICATION SITE

The application site relates to the lower yard at Merthyr Motor Auctions (MMA), located in the area of Dowlais. The lower yard is situated to the southern part of the site and can be accessed via the main entrance, off Pant Road to the north or via the secondary access, off Victoria Street to the south. This part of the MMA site is bound by residential properties to the east (located at a significantly higher level) and west, and a public footpath which runs along the southern and eastern boundaries of the site. To the north, the site adjoins the upper yard area serving the MMA site. The application site appears to be used for the parking and storing of vehicles which are pending auction.

The site lies within the settlement boundary – Primary Growth Area, as designated within the Merthyr Tydfil Replacement Local Development Plan (LDP) 2016-2031.

PROPOSED DEVELOPMENT

In February 1997 an inspector allowed an appeal (APP6410/C/95/508749 and APP6410/C/95/508750), quashed the enforcement notices and granted planning permission for the storage, parking and valeting of vehicles in association with the adjacent car auction premises. Permission was also granted for engineering works.

Condition E of the decision states:

'no activity shall take place on the site before 08:00 hrs or after 18:30 hrs on weekdays and Saturdays, nor at any time on Sundays or Public Holidays (the sole exception to this condition being in the event of a transporter arriving whilst the auction activities are being undertaken in the upper yard, such transporter shall be permitted to enter the lower yard for the purpose of parking only).'

Condition H of the decision states:

'details of any proposed floodlighting shall be submitted to and approved in writing by the Local Planning Authority before the lighting is installed, and any such floodlighting as may be approved, shall be used solely during the authorised hours specified in condition e above.'

This application seeks planning permission to remove condition H, which restricts the operation of the floodlights located in the southern part of the site and to update the details of the floodlighting previously approved to replace the 8 existing luminaires with 4 Meyer Monospace luminaires and modify one column to measure 4.5 metres in height (as opposed to 6 metres in height). The applicant has stated that the application is required to ensure security cameras have adequate light to function and assist in the prevention of theft, vandalism and other crime in this part of the site.

The existing luminaires (2 LED floodlights per each of the four existing columns) are currently installed on 6 metre high columns at a tilted angle of approximately 60° and located alongside the western hedgerow/tree boundary. The Meyer Monospace luminaires (one luminaire per existing column which uses LED technology that has no UV component and a selected colour of 2700k warm) would have a flat glass and asymmetric distribution designed to be installed in a horizontal position, resulting in no upward light. Three of the luminaires would be installed on the existing columns at a height of 6 metres, whilst the most southern column (closest to Victoria Street) would be modified to allow for the installation of the luminaire at a height of 4.5 metres, to further reduce light spillage. The existing hedgerow along this boundary would not be affected/alterd in any way as a result of this proposal.

The application has been supported by:

- Planning Supporting Statement, October 2020 (received on 29th October 2020);
- Jacobs, MMA Environmental Lighting Impact assessment, 22nd January 2019 (received on 29th October 2020);
- BE Ecological Ltd, Ecological Assessment, Issue 2 1VB, August 2019 (received on 29th October 2020);
- A petition of 333 signatures and 14 letters of support from surrounding residents submitted with the application (received on 29th October 2020);
- MMA – Lower Yard Hedging, January 2021 (Additional Information received on 15th January 2021);
- Qoda Light, 2463.R9 – MMA Lighting Report (Amended Information received on 8th March 2021).

It should be noted that this application is similar to that submitted in 2014 (planning application P/14/0258), approved on 18th November 2015. This decision was subsequently challenged following a Judicial Review (JR).

The JR took place on 25th April 2016 between The Queen of the Application of Thomas (Claimant) and Merthyr Tydfil County Borough Council (Defendant) and Merthyr Motor Auctions (Interest Party). A judgment was reached as noted below:

On 6 May 2016, HHJ Jarman QC (sitting as a Deputy Judge of the High Court) granted the judicial review claim on Grounds 1 and 2. Specifically,

- a. in respect of Ground 1 that the delegated report failed to consider the need to protect the natural environment, retain dark skies and prevent glare and respect the amenity of neighbouring land uses.*
- b. in respect of Ground 2 that there was an absence of reasons in the delegated report as to the need for unrestricted floodlighting at the premises in light of Mr Thomas' submission that the high security fence and 24 hour CCTV surveillance reasonably met that need.*

Following this decision, planning application P/14/0258 was not re-determined as the applicant withdrew the application on 5th December 2019.

PLANNING HISTORY

The most recent and relevant planning/appeal history relating to this part of the MMA site is referred to below:

- **P/14/0258** - Removal of condition h attached to appeal decisions APP6410/C/95/508749 and 508750 which currently restricts the use of the floodlights – Application Approved: 18th November 2015 –Decision Quashed: 6th May 2016 – Application Withdrawn: 5th December 2019.

As discussed above, the decision relating to P/14/0258 was quashed under ground 1 (in relation to the failure to have regard to issues of dark skies) and ground 2 (in relation to the failure to give adequate reasons in respect of need).

In respect of ground 1, the Judges' comments and conclusions have been summarised below:

Paragraph 36 - *'In my judgement there is sufficient reference in the case officer's report to the national policies, and in particular, the need to balance the provision of lighting to enhance safety and security with the need to protect the natural and historic environment, including wildlife, retain dark skies where appropriate, prevent glare and respect the amenity of neighbouring land uses and reduce carbon emissions associated with lighting. The cited paragraph of PPW neatly encapsulates the balancing exercise which in my judgement the council had to undertake in respect of this particular application.'*

Paragraph 40 - 'Having found that national policy was sufficiently set out in the report, it must also be considered whether sufficient regard was had to it in the present case. The fact that it is sufficiently set out gives rise to the expectation that proper regard was had to it. However, on close analysis of the remainder of the case officer's report, I have come to the conclusion that in one important aspect a material consideration was omitted.'

Paragraph 41 - 'In dealing with light pollution and the loss of amenity due to light spillage, the report made clear that these impacts were assessed on the site visit to Mr Thomas' property. The conclusion was that light spillage/glare of the floodlights into the bedrooms and garden was minimal (emphasis added). This is hardly surprising because Mr Thomas himself in his earlier email to the council accepted that this was the case. He referred to such effect in his letter of objection, without using the word minimal, but he also went on under other considerations to mention the reduction of the view of the night sky and sky glow.'

Paragraph 42 - 'Although he referred to this in terms of his property, that is a factor which needs consideration in my judgment from the perspective of viewers from other homes, and indeed from other viewpoints in the area such as paths, roads, the chapel of rest, playground and undeveloped ground nearby. As Miss Dring accepted, there is no express indication in the report that this was considered, and in my judgment such indications as there are tend to show the contrary. In dealing with any impact in this regard reference is made to the fact that the floodlights are facing downwards and located at least 2 metres from the boundary with nearby residents. This strongly suggests that what was still being contemplated was the light spillage/glare into nearby homes (and in particular) that of Mr Thomas) rather than pollution of the night sky. This conclusion is reinforced by the reference in the last paragraph in the report to harm to neighbouring residents from light/spillage glare, and no other harm associated with light pollution.'

Paragraph 43 - 'In my judgment, what was required by the paragraph of PPW cited in the report is not just consideration of that aspect of light spillage/glare, but the need to protect the natural environment, retain dark skies where appropriate, prevent glare and respect amenity of neighbouring land uses. In my judgement that wider need was a material consideration which ought to have been weighed in the balance and, in that wider sense, it was not. To that very limited extent ground 1 is made out.'

In respect of ground 2, the Judges' comments and conclusions have been summarised below:

Paragraph 44 - '...in my judgment, it is clear that need was considered. It was considered on very scant information put forward by Merthyr Motor Auctions, but it was a conclusion which in principle was open to the council. However, what is missing is an explanation as to why that conclusion was reached in light of Mr Thomas' points that the high security fence and the 24 CCTV surveillance did reasonably meet that need.'

Paragraph 45 - 'The reasons for a decision must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues, and in particular must not give rise to substantial doubt whether the decision maker erred in law...'

Paragraph 46 - In my judgment the issue of need for unrestricted floodlighting at the premises was a principal controversial issue and the absence of reasons does give rise to a substantial doubt as to whether the council made an error in law in this regard and

substantially prejudices Mr Thomas in his understanding on how the required balance was struck.'

- **P/13/0074** – Retention of 2no. lamp posts, housing CCTV cameras and P.A. system – Approved: 2nd May 2013

- **P/12/0022** – Demolish part of building and construct a two-storey extension – Approved: 5th April 2012

- **P/09/0142** – Removal of condition e (hours of operation of Planning Inspectorate's appeal decision APP6410/C95/508749) – Refused: 17th December 2009

- **P/08/0093** – Erection of single storey car and van valeting building – Approved: 5th August 2008

- **APP6410/C95/508749 and APP6410/C95/508750** – Appeal against enforcement notices served for the unauthorised storage, parking and valeting of vehicles in association with the adjacent car auction premises and engineering works – Appeal allowed and enforcement notices quashed – Approved: 21st February 1997.

CONSULTATION

Head of Engineering	No objection.
Planning Division's Ecologist	No objection.
Environmental Health Manager	No objection.
Natural Resources Wales (NRW)	No objection.

PUBLICITY

In accordance with the Town and Country Planning (Development Management Procedure) Order (Wales) 2012, letters were sent to nearby occupiers and 6 site notices were displayed within the vicinity of the site. Support letters/emails and objection letters/emails have been received in respect of this application.

- SUPPORT LETTERS/EMAILS

A total of 3 letters/emails in support of this application have been received (from two separate residents).

With regards to the letters/emails in support of this application, the comments raised have been summarised below:

- I have no objection to the planning application whatsoever. As Merthyr Council and Local Police are well aware of the continuous trouble in and around Penywern Lane;
- We've had numerous items stolen and the alcohol and drug abuse that continues to go on in this area is worrying as a parent;

- Even though the lights would not illuminate the lane, just them being on in that area would be a deterrent in my opinion as the lane is dark and a safe haven for these people at the moment;
- I live directly above the site, the company have never caused me any problems or disruption or noise and therefore have no reasons to object to any planning for lights;
- The lane from Dowlais to Penywern is a magnet for undesirables and therefore I would hope that the lighting would act as a deterrent and make the area safe;
- I live close to the MMA site and believe the lighting will improve security in this area helping the business protect their vehicles;
- Crime in this area is a problem and the lights here will help to prevent vandalism and crime around the public pathway when it's dark.

- OBJECTION LETTERS/EMAILS

A total of 8 letters/emails of objection to the application have been received (from two separate residents).

5 letters and a report by Bioscan (the first of which also includes 5 letters of objection and a copy of a report by Bioscan which were submitted by the resident/agent relating to application P/14/0258) have been received from an agent on behalf of one resident.

3 letters have been received from one other resident.

With regards to the letters/emails objecting to this application, the concerns raised have been summarised below:

Letter dated 26th November 2020 from Richard Buxton Solicitors

This letter of objection included a report by Bioscan of October 2019 as well as previous letters of October 2014, September, 2015, May 2016, June 2019 and October 2019

- (a) The 26 November 2020 letter of objection alleged that a grant of permission would likely cause an unacceptable adverse environmental impact to residents due to increased light pollution and environmental harm such as noise, fumes and air pollution in the immediate area. The report by Jacobs (Jan 2019) refers to only light emissions and does not discuss incidental, consequential effects of allowing increased lighting of this area. Specifically, it was said,

"While it is accepted that Condition (e) of the 21.2.97 does limit activity within the lower yard, the implication is that the operator will seek to relax the provisions of Condition (e) to provide increased use of the Lower Yard; this much is evident by the last round of correspondence on application P/14/0258 by the applicant which referred to use by reference to a compulsory purchase order. As far as we are aware, that purported intended use, while inappropriate, hasn't gone away. The Council will be aware of the problems of noise, fumes and light pollution nuisance arising from the Lower Yard in the past and that this has previously resulted in a finding of private nuisance against the operator by the High Court in October 2012 and upheld by the Court of Appeal in July 2013: see e.g. Thomas v Merthyr Tydfil Car Auctions Ltd [2014] Env LR 4".

(b) There is no justified reason to grant permission. The justification in respect of allowing cameras to function properly is 'illogical' since infra-red cameras work in the dark. The 'reflective decals' can be converted or parked in a way that won't affect the cameras. Appropriate management of the site would prevent unacceptable environmental harm. The support letter from Western security does not suggest that having the lights on is the only way forward. The use of high quality CCTV, which is widely available, would be acceptable.

- There were a series of logs submitted with the previous application. This stated that when being called out to disturbances at the lower yard, employees 'could not see any intruders: too dark' which confirms that the area, at present, is dark and should remain so. Our client is not aware of reports of burglaries or thefts at the times mentioned and has had no contact with the police in this respect.

(c) The proposal is contrary to the Local Plan and SPG Note 4: Sustainable Design – paragraph 11.7.2 that states that *'Places that do not require access at night can be left unlit in order to discourage the presence of victims and potential offenders. Security lighting can be used to alert others of unauthorised access'*. The applicant does not need access to this area at night since employees will only be working during the permitted hours of operation allowed under Condition (e).

- Section 6.8.1 of Planning Policy Wales states that there is a need to balance the provision of lighting to enhance safety and security to help in the prevention of crime and to allow activities like sport and recreation to take place with the need to *'protect the natural and historic environment including wildlife and features of the natural environment such as tranquillity; retain dark skies where appropriate; prevent glare and respect the amenity of neighbouring land uses; and reduce the carbon emissions associated with lighting'*.

(d) *'The question of the application of national policy was a key consideration by the High Court and discussed in the judgment that quashed the earlier permission decision: see R (Thomas) v Merthyr Tydfil County Borough Council [2017] Env LR 3. In particular, the HHJ Milwyn Jarman QC explained that national policy provided the need to protect the natural environment, retain dark skies where appropriate, prevent glare and respect the amenity of neighbouring land uses. The suggestion in the reports provided with the application is that other light sources will be mean that this additional light source will only make a bit more difference. This avoids the unacceptability of the cumulative effect of light pollution'*.

(e) The proposal would not protect wildlife and features of the natural environment, i.e. tranquillity. There was concern under the previous application that the removal of condition (h) would adversely impact on bats. The wildlife consultant at the time, recommended conditions limiting the floodlight operation times. The letter from Bioscan of 24 October 2019 explained that the report by BE Ecology Ltd of August 2019 is inadequate and could mislead the Council in terms of the ecological status of the site and the local environment. The letter from Bioscan concluded:

'The submitted survey information on bats is subject to significant limitations, both in terms of less than adequate temporal scope and effort, and it therefore falls a long way short of the minimum standards expected by reference to incumbent industry standards (the Bat Survey Guidelines). A clear purpose of the setting of those standards is to ensure local planning authorities can make decisions on the basis of adequate certainty, including in regard to compliance with applicable case law.'

In this case, and as a direct consequence of the survey shortfalls, I consider that the planning authority is not furnished with adequate information on the potential use of the site by bats, both in terms of the range of species and in terms of temporal variation across the year.

This might matter less if the application was not for a type of land use change that can have particularly acute consequences for bats – and in particular rarer species such as lesser horseshoe. This is extremely light-sensitive, known to roost nearby, and the local population may be functionally linked to a European Site. These factors increase the significance of the sub-standard approach to survey and assessment that has been followed, and would provide potential grounds to challenge the legal robustness of any decision to grant permission for this scheme’;

- ‘We and our client share the concerns of Bioscan and we need not remind the Council of the very high standard to be attained to be certain that there will be no adverse impact of a proposal on biodiversity. Indeed, recent video footage of bats taken very simply from by our client in his garden confirms that bat activity in the site immediately behind the Lower Yard is extensive and should have been explored in much more detail...The concern about biodiversity is shared by the Welsh Government, the UK Parliament and the European Union. The tragedy of significant and increasing loss in biodiversity has recently been highlighted in the State of Nature Report 2019 that found once again a serious decline in species across the UK. Put bluntly, the approach by BE Ecological Ltd and the unnecessary activity sought by the applicant only has negative impacts on biodiversity, the environment and society’.

- ‘The light intrusion from the proposal will adversely affect the local sense of tranquillity and amenity. While it is accepted that the locality is not an E1 (intrinsically dark area) it is properly assessed as E2 being low district brightness, and of village or relatively dark outer suburban locations. This should be maintained and, if possible, the Council should be working to help reduce night pollution in the locality. The operator’s lighting consultant suggests that artificial lighting comes from nearby streetlights and that the light pollution from the operator’s site will be negligible. This approach is unacceptable. Simply because one environmentally adverse activity is present, is no reason to cause another. Indeed, the opposite is true and avoiding the adverse effect of the cumulative impacts of additional artificial lighting is the correct approach. It may well be that the Council should be working to reduce adverse light pollution locally by e.g. enacting a policy that turns off public lighting at night and/or installs low emission lighting. If so, then the grant of permission to facilitate increased light pollution, sky glow and glare would be unreasonable’.

- ‘The proposal is contrary to policy and law relating to tackling climate change. PPW 10, notes at section 2.24 and 2.25 an important series of criteria to be considered in relation to decision-making including having regard to who will suffer impacts, ensuring ecosystems are improved and moving to a low-carbon economy.

2.24 Planning authorities should ensure that social, economic, environmental and cultural benefits are considered in the decision-making process and assessed in accordance with the five ways of working to ensure a balanced assessment is carried out to implement the Well-being of Future Generations Act and the Sustainable Development Principle. There may be occasions when one benefit of a development proposal or site allocation outweighs others, and in such cases robust evidence should be presented to support these decisions, whilst seeking to maximise contributions against all the well-being goals.

2.25 Key factors in the assessment process include:

- *who will benefit and suffer any impacts from the proposal;*
- *what are the short and long-term consequences of the proposal on a community, including its composition, cohesion, character, how it functions and its sense of place...;*
- *will important features of the natural and built environment be protected and enhanced;*
- *are the environmental impacts of development on health and amenity limited to acceptable levels and the resilience of ecosystems improved;*
- *is environmental protection for people and natural resources, property and infrastructure maximised and environmental risks prevented or appropriately managed; ...*
- *will the depletion of non-renewable resources be minimised, waste prevented and the efficient and most appropriate use of materials made and re-use and recycling promoted;*
- *will the causes and impacts of climate change be fully taken into account through location, design, build, operation, decommissioning and restoration; and*
- *does it support decarbonisation and the transition to a low carbon economy'.*

Re-submitted representations

Attached to the letter (Richard Buxton) dated 26th November 2020 was correspondence submitted in respect of application P/14/0256. In summary, this correspondence raises the following concerns:

- The removal of condition (h) is likely to cause a nuisance to residential amenity. The need for the extension of floodlighting is contrary to the limited use of the lower yard, i.e. storage, parking and valeting. The reasons put forward do not justify the likely adverse impact upon residential amenity. It is likely that should permission for floodlighting be granted, this will inevitably be a pre-cursor to increased activity in the lower yard. The High Court and Court of Appeal have already determined in nuisance proceedings culminating in 2013 that the immediate locality was such that the nuisance activity from Merthyr Motor Auctions (MMA) was unacceptable. Any extension to these conditions will potentially erode the protection that is in force in limiting the working hours at the lower yard site area.

- The screening between the boundary of Rhosbren Fach and MMA is mostly deciduous trees. The boundary and floodlighting is very close to this property and is visible despite full foliage of trees. The loss of leaves in autumn/winter would increase this impact.

- There is no justified reason to remove condition h. The premises already have a modern CCTV system and a high security fence which extends around the whole perimeter of MMA. A safe working environment is already assured by enabling the lighting to be used until 18:30 hours.

- Any use of the floodlights after 18:30 would most certainly be a statutory nuisance due to unwanted light intruding into properties and reducing the view of the night sky and the visibility of the stars. It would also have an impact on the wider environment, influence the night sky, the visual amenity and wildlife. Appropriate measures need to be taken to limit

their affect and a careful approach is needed when dealing with external lighting which affects ecology.

- There is evidence of bats in the area as they have been seen in the late evening.
- It appears that the 'Countryman Wildlife Consultancy' falls short of the high standards expected by Directive 2001/42/EC. Survey reports and mitigation plans are required for development projects that could affect protected species. NRW advises local planning authorities that there is a need to assess planning applications that affect bats.
- Bat biologists have interpreted a bat's behaviour in response to light levels as predator avoidance, when there is actually ample evidence to show that their own eye physiology guide's them to exploit low light levels and avoid disorientating bright light. The general feeling of experts is, within the months of May to October, areas used by bats should not be illuminated outside after 8:30pm and the lighting of buildings should be limited to special occasions.
- Technical Advice Note 5 (TAN) – Nature Conservation and Planning (2009) states that protected species is a material consideration when considering planning applications. The TAN seeks to prevent harm to protected species and that a survey is submitted to assess the impact upon species before a planning application is determined. Should the survey indicate an adverse impact upon protected species, the application should be refused. It also states that a license may be required prior to proceeding with development. As such, insufficient information has been submitted under this application and the development may result in the loss of protected species.
- A planning authority has a statutory duty to have regard to the requirements of the Habitats Directive and give due weight to the presence of European protected species on a development site to reflect their statutory obligations;
- The planning (Wales) Act 2015 is an important piece of legislation and requires the Council to have meaningful regard to the concept of sustainable development and to what it means for individuals, communities, businesses and other organisations. A consequence of this may be that the approach and analysis for decision-making will shift. The proposal is contrary to the key aims and objectives to reduce carbon emissions, conserve and enhance biodiversity and to improve quality of life for communities;
- The Well-being of Future Generations (Wales) Act 2015 came into force on 1st April 2016 and as with the Planning Act, the approach taken by the council in respect of land use planning is likely to shift away from the granting of permission that is incompatible with sustainable development. It's no longer about balancing competing interests but fully recognising the economic, social and environmental harm in a community;
- 'The Council's LDP is not in accordance with the PPW edition 8 (January 2016) relating to sustainable development. Paragraphs 33 – 43 of the High Court judgment refer to PPW edition 7 and local policy. There is discussion of the submissions made to the court on behalf of our client and the submissions that the Local Development Plan (LDP) is incompatible with the principles and approach to sustainable development set in national policy. We remain of the view that the LDP fails, quite substantially, to meet the principles and objectives set out in what is now PPW edition 8 (Jan 2016). Having regard to paragraph 39 of the judgment we are of view that the LDP, including Policy BW7, does not meet the criteria in section 4, PPW. Our reading of Policy BW7 is that the focus is on

building design and in that regard it does not cover the wide scope of development, activities and operational uses that fall within the scope of section 4, PPW. In those circumstances, considerable weight does now need to be given to the policies in PPW; as well as taking into account the provisions of the Planning (Wales) Act 2015 and the Well-being of Future Generations (Wales) Act 2015. If you disagree with our point that neither BW7 nor the LDP as a whole fails to meet the sustainability and sustainable development principles provided by PPW ed. 8, please explain where in the Council's LDP that the key principles and objectives relating to sustainable development are met and how these are compatible with the principles and objectives of sustainable development in section 4, PPW;

- The judgment concludes that the Council failed to provide adequate reasons in reaching its conclusion. The question as to whether there is a need is still highly relevant given the harm it would have. The council cannot simply accept the applicant's reasons, where there is no evidence of that need and where there is evidence to support the fact that 24 hour floodlighting is not required and should be considered against national and local legislation and policy;

- The judgment states that the Council failed to take into account pollution of the night sky as noted in PPW. This is of public interest and ensure that it complies with the concept of sustainable development. *'The Council is the best-placed organisation within the community to help reduce light pollution, trespass and sky glow along with the unnecessary use of energy and resources and consequential carbon emissions'*. The Council does not have policies, in land use planning or otherwise, which supports the prevention and reduction of light pollution. The Council should therefore recognise that its environmental health team may not have the expertise to advise on visual intrusion from light pollution and, similarly, that an assessment by planning officers is unlikely to adequately assess whether light pollution, trespass and sky glow will arise from a proposal. The Council when dealing with such applications, should therefore take a precautionary approach to the pollution and prevent the risk of light pollution from arising in the first place, as well as recognising that local residents directly affected are well-placed to assess/evaluate the nature and extent of light pollution upon the use/enjoyment of their home;

- The court dismissed the ground of review regarding biodiversity. However, we remain of the view that the Council should not limit its analysis as to how it affects a species but rather consider the impact on local biodiversity and the local bat population. It is clear that until now the analysis has been on the wider species and bat population. Reference by Natural Resource Wales and the Council's Countryside Officer to the proposal as not having a 'significant' impact on the species and therefore not objecting to the proposal once again undermines the sustainable development provisions of PPW and the more recent legislation as well as section 40 of the Natural Environment and Rural Communities Act 2006;

- The Council's planning officer did not have sufficient regard to the adverse impact on our client's home. The assessment of the light intrusion from the floodlighting was that it would not cause 'significant' nuisance. There is no legislative or policy requirement of nuisance to be 'significant' and there is no requirement in planning terms to require a finding of nuisance. If there is some interference with our client's enjoyment of his family home i.e. during the winter when trees have less foliage, it would result in disturbance and an adverse effect on amenity;

- The applicant refers to a compulsory purchase order (CPO) but does not discuss this any further and as such, no info is provided as to how the applicant would be compensated. The restrictions that may or may not result from the CPO should not be a reason to remove condition H. The applicant is relying on the restriction to the lower yard as justification for its position at the CPO inquiry;

- The survey undertaken in June 2015 is out of date and an up to date survey is required. Without one, it's impossible to assess the adverse impact on biodiversity;

Letter dated 25th February 2021 from Richard Buxton Solicitors and attached letter from BIOSCAN dated 25th February 2021

- The application should be refused on the following grounds:

- the proposal would cause unacceptable environmental harm to the immediate; locality and wider night landscape;
- no need or good reason for the proposal;
- contrary to national policy; and
- there is likely to be harm to biodiversity and environmental harm to the local community.

- Mr Watson (Principal Ecologist) of Bioscan disagrees with the Council's Ecologist view that the Qoda lighting report (2463.R8), is acceptable. He points out that the Council's Ecologist *'incorrectly states that the lighting along the eastern boundary will be 0.2 lux. ...Whilst the lux level along the south-eastern boundary is modelled to be on the 0.2lux contour, the hedgerow along the eastern boundary is shown to be on the 0.5 lux contour... the proposed lighting will therefore create a relatively short but significant 'pinch point' along the eastern boundary where the lux level is at or around 0.5, not 0.2 lux...the effect of this pinch point would create a barrier to bat movement that could effectively render the whole of the eastern boundary defective as a functional bat corridor. Not only is this detrimental to bat movement through the site itself, but seen at a wider scale, this boundary is part of a likely wildlife corridor between Cwm Bargoed to the southeast and open countryside to the north of the A465. The removal of this route as a corridor for bats would be to require them to 'double back' and expend additional energy to take a significantly longer route east of Dowlais Top...On the basis of the above I disagree that the proposed lighting can be considered acceptable in planning terms or that a legally safe planning decision would be made if consent were to be granted at this stage'*.

Letter dated 10th March 2021 from Richard Buxton Solicitors

- This letter raises concerns about the continuous revisions to the application and the resultant cost, inconvenience and stress to the client and his family.

- The letter requested copies of correspondence and other information relating to the application.

Letter dated 23rd March 2021 from Richard Buxton Solicitors

- *'In terms of the Qoda lighting report version 9, the applicant...is...attempting to patch up what are the fundamental flaws in the proposal which is trying to turn floodlights on in a dark area when there is no good reason for this...the model on page 9 of report version 9 is seeking to illustrate hopefully less adverse light pollution in sensitive biodiversity areas*

by not now providing the 'minimal tilt to improve distribution' and the '20° anti-clockwise rotation'...It is unclear why the 'minimal tilt' was necessary but it has now been abandoned. Of course, if the application were to be approved there would be nothing to stop the applicant adjusting and providing the 'minimal tilt' and '20° anti-clockwise rotation' and given that the site is private, it could well be only the bats and wildlife that will be aware and be adversely affected. However, what is clear is that even from a brief comparison between Qoda report 8 and report 9 is that such an adjustment could have a serious adverse impact on biodiversity; as would changing the light units to provide for brighter lights...'

- It remains that 0.5 lux level lighting will be spilling over onto important green spaces to the west and eastern boundary hedgerows, including those which the Council's Ecologist suggested could be used for biodiversity enhancement, making the suggested enhancement ineffective;

- It remains unclear as to how the lighting under version 9 is necessary to benefit infrared security cameras that are designed to work in the dark without the need for additional lighting. *'The applicant's point about reflective decals causing concern is now embarrassing see e.g. a simple google plan illustration of this site that indicates that there may be very little 'infra-red decal reflection' arising in the Lower Yard at all, but also that the R9 modelling will have no effect either...';*

- *'...one further fundamental flaw in the R9 modelling (and all the previous modelling reports) is that it fails to model, at all, the impact of the proposed lighting in cumulation with any existing lighting in the locality...'*

- *'...the 9th version of the lighting modelling report is yet another failed attempt to make good application for which there is no good planning reason to grant and for removing a critical condition on the use of the Lower Yard that provides important environmental protection to the locality and environment...'*

- The Council should refuse the application for the reasons outlined in previous correspondence. '.

Letter dated 20th April 2021 from Richard Buxton Solicitors

- *'The information provided confirms our concern of bias and/or the appearance of bias towards the applicant and its associates. As previously stated this application should have been refused a number of months ago, an approach that would be consistent with the refusal in 2009. Indeed, the Council has even greater reason to refuse the matter now than it did previously'.*

Ward members were advised of the letters/emails of objection received but have not requested that the application be reported to Planning Committee. As such, the application will progress to be determined under delegated powers by the Chief Officer Planning and Neighbourhood Services.

POLICY CONTEXT

National Development Framework

- Future Wales: the National Plan 2040 (February 2021)

Policy 1 – Where Wales Will Grow

'The Welsh Government supports sustainable growth in all parts of Wales. In three National Growth Areas there will be growth in employment and housing opportunities and investment in infrastructure. The National Growth Areas are: Cardiff, Newport and the Valleys, Swansea Bay and Llanelli, Wrexham and Deeside...'

Policy 2 – Shaping Urban Growth and Regeneration – Strategic Placemaking

'The growth and regeneration of towns and cities should positively contribute towards building sustainable places that support active and healthy lives, with urban neighbourhoods that are compact and walkable, organised around mixed-use centres and public transport, and integrated with green infrastructure...'

Policy 9 – Resilient Ecological Networks and Green Infrastructure

'To ensure the enhancement of biodiversity, the resilience of ecosystems and the provision of green infrastructure, the Welsh Government will work with key partners to: identify areas which should be safeguarded and created as ecological networks for their importance for adaptation to climate change, for habitat protection, restoration or creation, to protect species, or which provide key ecosystems services, to ensure they are not unduly compromised by future development; and identify opportunities where existing and potential green infrastructure could be maximised as part of placemaking, requiring the use of nature-based solutions as a key mechanism for securing sustainable growth, ecological connectivity, social equality and well-being. Planning authorities should include these areas and/or opportunities in their development plan strategies and policies in order to promote and safeguard the functions and opportunities they provide. In all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated as part of development proposals through innovative, nature-based approaches to site planning and the design of the built environment.'

Policy 33 – National Growth Area – Cardiff, Newport and the Valleys

'Cardiff, Newport and the Valleys will be the main focus for growth and investment in the South East region. Strategic and Local Development Plans should recognise the National Growth Area as the focus for strategic economic and housing growth; essential services and facilities; advanced manufacturing; transport and digital infrastructure...The Welsh Government supports co-ordinated regeneration and investment in the Valleys area to improve well-being, increase prosperity and address social inequalities. The Welsh Government will work with regional bodies, local authorities, businesses, the third sector, agencies and stakeholders to support investment, including in the manufacturing sector, and to ensure a regional approach is taken to addressing socio-economic issues in the Valleys...'

National Planning Policies

- Planning Policy Wales (Edition 11, February 2021)

Paragraph 3.3 discusses good design and states it *'...is fundamental to creating sustainable places where people want to live, work and socialise. Design is not just about the architecture of a building but the relationship between all elements of the natural and built environment and between people and places. To achieve sustainable development, design must go beyond aesthetics and include the social, economic, environmental, cultural aspects of the development, including how space is used, how buildings and the public realm support this use, as well as its construction, operation, management, and its relationship with the surrounding area...'*

Paragraph 3.4 goes on to discuss the objectives of good design which are characterised into 5 key aspects, these being *'... Access – ensuring access for all; Character – sustaining or enhancing local character, promoting legible development, a successful relationship between public and private space, quality, choice and variety, innovative design; Community Safety – Ensuring attractive, safe public spaces, security through natural surveillance; Environmental Sustainability – Achieving efficient use and protection of natural resources, enhancing biodiversity and designing for change; Movement – Promoting sustainable means of travel...'*

Paragraphs 6.4.2, 6.4.5, 6.4.21 and 6.4.22 relate to biodiversity and protected species and state that *'...The Environment (Wales) Act 2016 introduced an enhanced biodiversity and resilience of ecosystems duty (Section 6 Duty). This duty applies to public authorities in the exercise of their functions in relation to Wales and will help maximise contributions to achieving the well-being goals. The Nature Recovery Action Plan supports this legislative requirement to reverse the decline in biodiversity, address the underlying causes of biodiversity loss by putting nature at the heart of decision-making and increasing the resilience of ecosystems by taking specific action focused around the 6 objectives for habitats and species....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. In doing so planning authorities must also take account of and promote the resilience of ecosystems...Planning authorities must follow a stepwise approach to maintain and enhance biodiversity and build resilient ecological networks by ensuring that any adverse environmental effects are firstly avoided, then minimized, mitigated, and as a last resort compensated for...The presence of a species protected under European or UK legislation, or under Section 7 of the Environment (Wales) Act 2016 is a material consideration when a planning authority is considering a development proposal which, if carried out, would be likely to result in disturbance or harm to the species or its habitat and to ensure that the range and population of the species is sustained. Planning authorities should advise anyone submitting a planning application that they must conform with any statutory species protection provisions affecting the site, and potentially the surrounding area, concerned. An ecological survey to confirm whether a protected species is present and an assessment of the likely impact of the development on a protected species may be required in order to inform the development management process...'*

Paragraph 6.7.1 refers to air, noise and light pollution *'... air, noise and light pollution can have negative effects on people, biodiversity and the resilience of ecosystems and should be reduced as far as possible...'*

Paragraphs 6.8.1, 6.8.3, 6.8.4 specifically discuss lighting and states '*... There is a need to balance the provision of lighting to enhance safety and security to help in the prevention of crime and to allow activities like sport and recreation to take place with the need to protect the natural and historic environment including wildlife and features of the natural environment such as tranquillity; retain dark skies where appropriate; prevent glare and respect the amenity of neighbouring land uses; and reduce the carbon emissions associated with lighting ...Lighting to provide security can be particularly important in rural areas or for specific purposes such as defence or to create calming environments. Where this is the case, planning authorities should adopt policies for lighting, including the control of light pollution, in their development plans. Planning authorities can attach conditions to planning permissions for new developments that include the design and operation of lighting systems, for example, requiring energy-efficient design and to prevent light pollution...*'

Paragraph 6.8.4 states that '*Planning authorities can attach conditions to planning permissions for new developments that include the design and operation of lighting systems, for example, requiring energy-efficient design and to prevent light pollution*'.

- Technical Advice Notes (TAN's)

TAN 5: Nature Conservation and Planning (2009)

Paragraph 4 refers to nature conservation in development control and states the following:

Paragraph 4.1.1 states that '*...the development control process is a critical stage in delivering the protection and enhancement of nature conservation required by PPW and the following can help in achieving these objectives:*

- *adopting the five-point approach to decision-making - information, avoidance, mitigation, compensation and new benefits;*
- *ensuring that planning applications are submitted with adequate information, using early negotiation, checklists, requiring ecological surveys and appropriate consultation;*
- *securing necessary measures to protect, enhance, mitigate and compensate through planning conditions and obligations;*
- *carrying out effective planning enforcement;*
- *identifying ways to build nature conservation into the design of new development...*'

Paragraph 4.3.4 states that '*...the information submitted with the planning application should be proportional to the likelihood of effects on nature conservation interests and to their potential significance...*'

TAN 12: Design (2016)

Paragraph 4 discusses the delivery of good design and states the following:

4.1 Design is a process of analysis and synthesis: analysing, identifying and diagnosing problems and barriers, then solving them through critique, research, development and testing. Design is a creative means by which to realise innovation and add value. Design for the built environment plays a key role in economic growth and in raising the quality of the places where we live and work.

4.12 Appraisal of the public realm should focus on condition, fitness for purpose in changing climates, ease of use for everyone, safety, convenience, enjoyment, contribution to local identity and potential for reducing street clutter.

5.14.5 The development should take positive steps to provide adequate public lighting, but also to minimise unnecessary light pollution in their schemes for enhancement of the public realm. Lighting should be considered as an integral and creative part of the design of the public realm. Consideration should be given to methods of directing light more accurately; reducing carbon emission from the energy use of street lighting; reducing glare by use of low profile reflectors and ensuring appropriate rather than excessive levels of illumination.

Local Planning Policies

The Merthyr Tydfil Local Development Plan

LDP Policy SW11 – Sustainable Design and Placemaking

LDP Policy EnW1 – Nature Conservation and Ecosystem Resilience

LDP Policy EnW2 – Internationally and Nationally Protected Site and Species

LDP Policy EnW3 – Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves and Priority Habitats and Species

LDP Policy EnW4 – Environmental Protection

LDP Policy EnW5 – Landscape Protection

- Supplementary Planning Guidance (SPG's)

SPG Note 4 - Sustainable Design (July 2013)

Section 11.0 refers to designing out crime and states:

Paragraph 11.7.1 Appropriate lighting increases the opportunity for surveillance, suggests that an area is well managed, reduces the fear of crime and in certain circumstances reduces the incidence of crime. The selected lighting source should be sensitive to the needs of local residents and users. It should improve security whilst minimising glare and respecting residents' privacy. In order to avoid vandalism, the design of lighting and the positioning of lighting fixtures and columns should be robust and secure.

11.7.2 Places that do not require access at night can be left unlit in order to discourage the presence of victims and potential offenders. Security lighting can be used to alert others of unauthorised access.

SPG Note 5 – Nature and Development (May 2015)

Paragraph 4 refers to the requirement of adequate information and states:

4.3 For planning applications to be properly considered by the Council, applicants are required to submit sufficiently detailed information to enable the developments' impact on biodiversity interests to be assessed.

4.4 The level and detail of information required will depend on the nature and scale of the proposal and characteristics of the natural resource. At an early stage in the process it is

recommended that discussions take place between the applicant and the Council's ecologist prior to an application being submitted.

PLANNING CONSIDERATIONS

The issues to consider under the assessment of this application relate to whether the removal of condition H, the provision of new luminaires (to replace the 8 existing floodlights) and the erection of a replacement 4.5 metre high column, would be acceptable in this location with regard to the impact upon the character and appearance of the area, the amenities of nearby residents, ecology and the surrounding natural environment. Additionally, the issue of need for unrestricted floodlighting at the premises is a material consideration which falls to be considered.

Need

In considering the JR of the Council's previous grant under application P/14/0258 (as highlighted in the history section above) the HHJ Jarman QC (sitting as a Deputy Judge of the High Court) concluded that inadequate reasons were provided in respect of the need for the extended use of the floodlights. Notably, whilst the judge considered that need had been taken into account during the assessment of the application, he stated that it was considered '*...on very scant information put forward by MMA...*' and that there was no explanation as to how the local planning authority arrived at that decision. The judge's decision is therefore clearly material to the consideration of this application.

The planning statement submitted with the application explains that allowing the floodlights to operate without restriction would '*...reduce the risk of vandalism and theft of the vehicles parked in the lower yard an incidences of antisocial behaviour in this area, together with keeping high standards of health and safety for MMA employees (and emergency services) called to this area to attend any security breach...*' It also confirms that '*...the use of the floodlighting during the hours of darkness in the lower yard is imperative for the infrared security system to function in a satisfactory way...*' The need for the floodlights is further justified, by the amount of vehicles with affixed reflective decals (such as ambulances and maintenance vehicles - which form a large part of the MMA business and storage space in the lower yard area). A supporting letter from Western Security System Ltd and additional information from Axis Communications forms part of Annex E of the planning statement. This information points out that the decals on the vehicles reflect the infrared of the CCTV cameras and thus results in cloudy and ineffective images. The supporting information highlights adding the right light improves security camera night vision and therefore justifies the need for the floodlighting to be switched on during hours of darkness.

It is noted that the lower yard is currently enclosed by high security fencing and benefits from a CCTV system which provides some security to this area. However, the applicant considers that the existing security measures are not sufficient enough to deter theft, antisocial behaviour and/or vandalism from occurring within or near the site. This proposal not only seeks to enhance security at the site but also to improve the safety of staff who have to attend the site during these dark hours. Indeed, previous call logs (as submitted under the last application P/14/0258) demonstrated that some 'emergency' call outs were legitimate whilst others were unnecessary. The applicant considers that having enhanced lighting would reduce unnecessary call outs (due to improved CCTV image quality) and

clearly identify 'legitimate' incidents (e.g. a potential theft, vandalism and/or anti-social behaviour) which can be appropriately and efficiently actioned.

PPW and the Council's SPG Note 4, addresses lighting in a similar manner, specifically that they support its use to provide safer environments, increased surveillance and aid the reduction in crime. Thus, whilst it is agreed that the site is already served by some security measures comprising of a fence and CCTV system, it is also considered that the removal of condition H would enhance the security at the lower yard and the safety of the staff who may have to visit this part of the site when it is unlit. Therefore, it would not only help to deter criminal activity but also provide a safer working environment. Indeed, the upper yard serving MMA is constantly lit at night by numerous floodlights and as such, it is evident that this provides enhanced security and a safer working environment when compared to the lower yard.

Whilst the objector's suggestions with regard to the use of infrared cameras are noted, it is evident that based on the current operations at MMA the lower yard is used (and has been for a considerable time) for the parking of specific vehicles with decals which result in cloudy and ineffective images of these vehicles in the hours of darkness. There is evidence to suggest that there have been occasions on which unnecessary call outs of emergency services would not have occurred with floodlighting in the hours of darkness as this would improve the quality of CCTV images that can be obtained of vehicles with decals. Whilst it is accepted that there are presently infra-red CCTV cameras (which have night vision capability) and a high security fence, it is considered that night time floodlighting is an additional security measure which is justified in the circumstances and would facilitate clear CCTV surveillance. A floodlit site coupled with CCTV cameras would provide an additional deterrent effect against criminality in the hours of darkness. It would also virtually eliminate the risk of unnecessary emergency service call outs. Having taken into account the argument that cars with decals could be parked in a manner so as to avoid the need for night time flood lighting, no persuasive evidence has been submitted to demonstrate how this would be possible and/or how vehicles with decals could be adequately surveilled during the hours of darkness absent of proper lighting. It is not for the local planning authority to change established working practices at the site if a sensitive solution has been proposed. Therefore, given the above, the need for the increased lighting of the site during dark hours is acceptable.

Character and Appearance

The proposed development in addition to seeking to remove condition H, also proposes to install new floodlights and modify the height of the column located furthest south (closest to Victoria Street). The impact of these works upon the character and appearance of the area have been considered.

In respect of the installation of new floodlights, 4 Meyer Monospace luminaires, would replace the existing 8 floodlights. Three new floodlights would be installed in the same location and at the same height as those existing. However, one floodlight would be installed at the same location but at a lower height of 4.5 metres (to further minimise light spillage along the eastern and southern boundaries). The existing floodlights are bulkier in their appearance and are angled, whilst the proposed floodlights are more slimline in their design and would be installed in a horizontal position. Thus, the alterations to the height of the column and the replacement floodlighting would have a positive visual impact. As such, these works would not have an adverse impact on the character or appearance of the area. Furthermore, given that the floodlights and columns are located immediately

adjacent to the western boundary of the lower yard, comprising of mature trees/hedgerows, their impact is significantly reduced. The proposal would therefore accord with LDP Policies SW11 and EnW5 of the LDP.

Residential Amenity

The proposal has been considered in respect of its impact upon the amenities of nearby occupiers. As such, the previous appeal decision (APP6410/C95/508749 and APP6410/C95/508750) requires careful consideration in order to understand why conditions E and H were imposed, and therefore forms an important consideration which is material to the assessment of this application.

As noted in the planning history, the Planning Inspector restricted the use of the floodlights to the permitted operating times of the Merthyr Motor Auction business (i.e. from 08:00 until 18:30 on weekdays and Saturdays, and not at all Sundays and Bank Holidays). Whilst the condition forms part of the decision, the Inspector does not explain why the use of the floodlights (condition H) is limited to the hours of operation (condition E). However, in paragraph 51 of the appeal decision, the Inspector states:

'...the substantial amount of complaints from local residents to the local authority and the police, as well as evidence at the inquiry, indicates clearly that the use has generated an unacceptable amount of noise and disturbance caused by the arrival of vehicles, the positioning of vehicles, the starting up and idling of engines which has occurred not only during the day, but sometimes, in the evening when it has been particularly unwelcome and obtrusive. In my opinion that injury to amenity is demonstrable...Overall it appears to me that the activities associated with the use enforced against have been demonstrably undesirable and that without substantial controls, such activities should not be granted planning permission. At the inquiry, in line with national advice, I sought from the main parties comments on conditions that might be applied were I minded to grant permission...Draft conditions were prepared and were modified so that a complete landscape scheme could be considered directly...the effect of conditions would be to a) limit the area designated for the parking/storage of vehicles prior to auction and the area for valeting and associated parking; b) designate an area for vehicle circulation; c) provide a landscape area...d) limit the activity on the site to between 08:00 and 18:30 on weekdays and Saturdays...e) provide a particular type of fencing along the whole of the western boundary to the site...Bearing in mind firstly, the previous use, secondly, the long-standing and interrupted use of the southern access and thirdly, the opportunity to control and limit activity on the appeal site were planning permission forthcoming, it seems to me that on balance, the granting of planning permission with conditions would be appropriate on this occasion...'

Thus, having considered the comments of the Inspector, it would be reasonable to conclude that his main concerns appeared to be the impact on the amenity of local residents from the noise and disturbance being generated from the site. There is no mention in the appeal decision that the lighting of the lower yard area is restricted due to light pollution or its impact upon neighbouring residents.

It is noted in the letters of objections received, that one of the concerns raised by nearby residents with regards to the removal of the condition H, is that allowing the floodlights to operate without time restrictions would result in the applicant operating the business outside the times specified in condition E. However, it should be noted that the operation of the Merthyr Motor Auction business is controlled by condition E, and the applicant is not

seeking to remove or vary this condition. Thus, provided that the business continues to operate in accordance with condition E, the removal of condition H would not give rise to any significant or additional noise or disturbance to nearby occupiers and would therefore not adversely impact upon residential amenity in this respect.

During the assessment of the previous application, P/14/0258, the concerns of local residents with regards to light pollution and the loss of amenity due to light spillage/glare were considered. The case officer and Countryside Officer/Ecologist during that time, assessed the impacts of the existing floodlights (2 LED luminaires per each of the 4 columns) during a site visit to Rhosbren Fach, on the 12th November 2014 at approximately 6:00pm. At least two of the floodlights were visible from the garden and rear first floor bedroom windows of this property, however, the light spillage/glare of the floodlights into the bedrooms and garden was minimal and was not considered to have an adverse impact or cause a significant nuisance. At this time, it was also noted that the impact of the floodlights was minimised by them being erected so that they faced away from the properties located adjacent to the eastern boundary and at least 2 metres away from the boundary with these nearby residents (Gerwnllwyn Fach and Rhosbren Fach). Thus, it was concluded during that time that any light spillage from the floodlights was directed towards the lower yard only. Furthermore, there are trees and other vegetation along the boundary which largely screened the floodlights and columns. It was also noted that the Environmental Health Manager had not raised an objection to the removal of condition H under the last application, P/14/0258. Indeed, HHJ Jarman QC when reviewing this last decision on application P/14/0258, agreed that the impact upon neighbouring residents had been considered and it was accepted that the LPA were entitled to come to the conclusion that the impact would be minimal since he stated '*...the conclusion was that light spillage/glare of the floodlights into the bedrooms and garden was minimal (emphasis added). This is hardly surprising because Mr Thomas himself in his earlier email to the council accepted that this was the case...*'.

Notwithstanding the above, this application also has to be considered with regard to its impact on neighbouring residents. Whilst the proposal incorporates the installation of floodlighting on existing columns in the same location, it varies from that previously considered under application P/14/0258, in that it seeks to include the provision of 4 luminaires only (which would result in the reduction of the existing 8 luminaires to 4 luminaires). Furthermore, the 4 new luminaires would not be positioned at an angle, but rather, in a horizontal position which would further reduce light spillage. Similarly, the reduction to the height of the most southern column from 6 metres to 4.5 metres would also reduce light spillage. The spillage diagrams submitted with the Qoda Light report indicated that as result of the proposed lighting scheme there would be no spillage to neighbouring properties. As such, it is concluded that the proposal would not have a detrimental impact on the amenities of nearby occupiers. It should also be noted that the Environmental Health Manager has not raised any objections to this application. The proposed development would therefore comply with Policies SW11 and EnW4 of the LDP.

Ecology

Firstly, it is worth noting that under the previous application, P/14/0258, the then Council's Countryside/Ecologist confirmed that it was reasonably likely that bat species may utilise the area as a connecting route for feeding/foraging and as such a bat survey was requested. The Countryside Officer/Ecologist was re-consulted on the bat survey received and confirmed that the report indicated that it was unlikely that bat species would be significantly affected by the proposal despite bat species being observed on the periphery

of the application site. The Countryside Officer/Ecologist also confirmed that it was unlikely that the proposal would have a significant impact upon other ecological priority species or habitats in the immediate vicinity. During this time, Natural Resources Wales (NRW) were also consulted on the application, P/14/0258 (and the subsequent bat survey), and did not raise an objection to the removal of condition H. The conclusion of the bat survey however stated that *'as bats are only likely to be present and active during the summer period and the lamps are only likely to be required during winter a compromise whereby the lamps are off from 1st May through to 30th September as an enhancement to encourage bats in the interests of biodiversity and conservation may be the best recommendation'*. Thus, given that there were no objections from NRW or the Councils Countryside Officer/Ecologist, the applicant was contacted to ascertain whether, if permission were to be granted, he would accept a condition which restricted the use of the floodlighting in accordance with the conclusions of report prepared by The Countryman: Wildlife Consultancy. The applicant confirmed that he would not accept such a condition. Based on the applicant's response, the Councils Countryside Officer/Ecologist and Natural Resources Wales (NRW) were re-consulted to find out whether the omission of this recommended condition would change their original decision (i.e. not to object to the proposal). Both NRW and the Council's Countryside Officer/Ecologist confirmed that the removal of this recommended condition would not change their original comments. It was therefore considered that the operation of the floodlights without time restrictions, under application P/14/0258, would not cause an adverse impact upon protected species.

The judge, when reviewing the decision on the previous application, P/14/0258, and in particular the impact on bats concluded that *'...the case officer's report had regard to the fact that the unacceptability of the compromise to Merthyr Motor Auctions did not change the lack of objection to the proposal by the countryside officer or NRW. In my judgment sufficient regard was had to this factor and ground 3 is not made out...'*

Under this proposal, the application has also been supported by an Ecological Assessment by BE Ecological (received 29th October 2020) and a Qoda Light report (amended) (received: 8th March 2021) which assesses the impact on ecology. Indeed, local and national policies state that local authorities have a duty to maintain and enhance biodiversity and protected species.

The ecological assessment (BE Ecological Ltd) highlights that the floodlighting, which is already in situ, would have the potential to only affect bats. It confirms that there are no buildings or other structures within the application boundary that could offer bat roosting habitat, however, the hedges on the periphery of the site could offer bats foraging or commuting opportunities. It concludes that *'...overall the site appears to be of little importance to bats both in terms of roosting and foraging/commuting. During the transect surveys, only low numbers of pipistrelle bats were observed flying in close proximity to the site. None of the aforementioned bats were observed interacting with any features within the yard in any way. A single myotis sp. call and a single noctule call was recorded using one of the automated detectors. However, there is no evidence to suggest that this species uses the site on a regular basis. There is no evidence to suggest that any of the light intolerant species present within roosts within 2km of the site, use the site in any way shape or form. The results of the survey are largely in line with the results of the survey undertaken by the Countryman in 2015. It is anticipated that the increased duration of lighting at the site will not have any adverse impact on foraging, commuting or roosting bats providing that appropriate mitigation is implemented as per the lighting report (retention of dark areas, in particular, the vegetated boundaries)...'*

Having concluded, under the ecological assessment, that the floodlighting could be acceptable subject to appropriate mitigation, the lighting report (Qoda Light), was prepared to assess the current floodlighting on the lower yard and to demonstrate how the floodlighting can be altered to ensure there is no excessive light spillage across the site boundaries.

The initial lighting report (Qoda Light, Revision 7) carried out its assessment in respect of the existing floodlighting using a comparable photometric curve with the output luminaire adjusted to match that of the luminaires currently installed at the lower yard (since the luminaire currently installed was no longer available). The report illustrated the horizontal and vertical illuminance levels. The Council's Ecologist considered the information submitted and concluded that the proposed lighting would now conform with the advice contained in Guidance Note 08/18 – Bats and Artificial Lighting, prepared by the Bat Conservation Trust (2018) which recognises that *'...lighting is critical in maintaining safety...'* but advises that *'...the lighting design should be flexible and be able to fully take into account the presence of protected species and the obligation to avoid impacts on them...'* However, the Council's Ecologist confirmed that in order for the proposed lighting to be acceptable, the light spillage would require further reduction along the hedgerow at the eastern boundary, since illuminance levels must be below 0.2 lux on the horizontal plane and below 0.4 lux on the vertical plane, in accordance with Guidance Note 08/18, which also confirmed that such figures *'...are still lower than what may be expected on a moonlit night...'* In addition, the Council's Ecologist concluded that enhancement measures in accordance with the Environment (Wales) Act 2016 were required stating that the filling in of any gaps along the boundary of the site with planting, which is of native species of local or at least UK prevalence, should be undertaken. As such, an amended Qoda Light report (Revision 8) was submitted to address these issues. Photos of the hedgerow surrounding the site were also submitted. The photos confirmed that no gaps had been identified in the hedgerow/vegetation. This was accepted by the Council's Ecologist and an alternative enhancement comprising of a wildflower strip (to include a species also of benefit to bats) was to be created on the grass verge that runs along the eastern boundary to benefit pollinators. Thus, a condition requiring such an enhancement could form part of any planning permission granted. In respect of the amended Qoda report (Revision 8), this revised report showed that the most southern column (which was to be reduced to 4.5 metres in height) was now proposed to be rotated 20 degrees anti-clockwise, and the amended lighting report was thereafter deemed to be acceptable by the Council's Ecologist. However, the submission of an objection letter with an attached report discussing the impact of the amended lighting report on bats (prepared by Samuel Watson of Bioscan Ltd), stipulated that although *'...the lux level along the south eastern boundary is modelled to be on the 0.2 lux contour, the hedgerow along the eastern boundary is shown to be on the 0.5 lux contour. The proposed lighting would therefore create a relatively short but significant 'pinch point' along the eastern boundary where the lux level is at or around 0.5, not 0.2...the effect of this pinch point is to create a barrier to bat movement that could effectively render the whole of the eastern boundary defective as a functional bat corridor...'* Following consideration of the Bioscan report, the Council's Ecologist agreed with Samuel Watson's comments and concluded that the Qoda lighting report be amended.. An amended Qoda light report (Revision 9) was received on 8th March 2021, which explained that the small installation angles to be applied to the luminaires (in order to achieve the best spread of light) and the 20 degree anti-clockwise angle to the most southern column had been omitted from the report. Thus, no installation angles were to be introduced in the proposed lighting scheme. The Council's Ecologist having considered this latest revision, confirmed that this amended report shows that illuminance levels along the eastern boundaries, appear to be in the range of 0.0 lux and

0.2 lux. Thus, the Council's Ecologist concluded that the proposed illuminance levels conform to those illuminance levels stipulated in Guidance Note 8, as discussed above.

Thus, as concluded in the Ecological Assessment and Qoda lighting report, the proposed installation of 4 Meyer luminaires, provided these are installed in a horizontal position and in accordance with the other details of the report (which could be conditioned as part of any planning permission granted), would not have any adverse impact on foraging, commuting or roosting bats and the proposed enhancements are considered acceptable. With regard to the objection raised concerning light spillage into the biodiversity enhancement area (and thus making this ineffective), the submitted details (horizontal illuminance plan) indicate that a significant area of the land to the west of the eastern boundary would fall within an illuminance range of 0 - 0.2 lux. Thus, there is ample scope for the creation of a wildflower habitat which would be dark enough for bats to benefit from an increased source of insect prey. It should also be noted that the enhancements would not solely be for the benefit of local bat populations. There would be an increased number of grass and wildflower species which would benefit invertebrate species (providing both adult and larval food sources). The increase in invertebrate species will then benefit, for example, bat and bird species. Neither the Council's Ecologist nor Natural Resources Wales (NRW), have objected to the application and as such the proposal would comply with Policies EnW1, EnW2 and EnW3 of the LDP.

Natural Environmental

Under the previous application, P/14/0258, in addition to the failure to provide adequate reasons in respect of need, which formed ground 2 of the Claimant's challenge, the decision was also quashed due to the failure to have regard to issues of dark skies, which formed ground 1 of the Claimant's challenge.

Whilst the judge considered that relevant policies had been sufficiently addressed in the officer's report, he found that an important material consideration had been omitted. He explained that although light pollution and light spillage had been taken into account, the officer's report confirmed that this was assessed on the site visit to Mr Thomas' property. However, the judge went on to state that the concerns were also raised in respect of the reduction to the view of the night sky and sky glow and that the information contained in the officer's report strongly suggested that what was considered was the light spillage/glare into nearby homes rather than pollution of the night sky. The judge therefore concluded that *'...what was required by the paragraph of PPW cited in the report is not just consideration of that aspect of light spillage/glare, but the need to protect the natural environment, retain dark skies where appropriate, prevent glare and respect amenity of neighbouring land uses. In my judgement that wider need was a material consideration which ought to have been weighed in the balance and, in that wider sense, it was not. To that very limited extent ground 1 is made out...'* As such, the protection of the natural environment, in accordance with the judge's decision and the relevant planning policies, therefore form a primary material consideration in the assessment of this application.

In order to appropriately assess the impact of the proposal on light pollution and the night sky, an Environmental Lighting Impact Assessment was prepared by Jacobs. This report was prepared in respect of the current installation (i.e. 8 LED floodlights positioned at a tilted angle of approximately 60° on 4 6 metre high columns).

Due to the absence of environmental zones set out by the Local Planning Authority, the report differentiates between the 5 environmental zones (lighting environment), which

range from dark, intrinsically dark, low district brightness, medium district brightness and high district brightness. In a suburban area such as this, the report explains that the area around the lower yard is classified as an E2 Environmental Zone, which is defined as having a 'low district brightness' lighting environment. In respect of dark skies, the report specifically states that *'...the sky in the area surrounding the MMA lower yard has been assessed and given a level according to Light Pollution Map and Bortle Scale. This is a 9 level (9 being the highest and 1 the lowest) numeric scale that measures sky brightness in a given location. It quantifies the clarity of objects in the sky and the interference cause by light pollution. The area around the MMA is currently class 5 (suburban sky).'*

The baseline lighting conditions were carried out by taking illuminance levels in receptor locations surrounding the lower yard. The identification of which were carried out by looking into the area surrounding the lower yard in the day, and then at night, when the yard lights were switched off, which helped to identify from where the yard was visible to take viewpoint readings. A total of 12 viewpoints were identified which translated into receptor locations comprising of Victoria Street car park, Llewellyn Street north, Llewellyn Street south, footpath, Pant Road, Vaynor Road, Pant Road North, Yr Hafod and Barracks Row. The simulation shows that *'...the lighting in the lower yard is mostly contained to the yard boundary and there is negligible amount of back light into the properties and a small amount of light intruding onto the footpath that runs along the boundary of the site...'* The report confirmed that the illuminance levels measured by Jacobs in the surrounding areas show the average Lux Level in the areas noted as 11.27 lux and the lighting in the lower yard as 4.46 lux, concluding that the lighting levels in the lower yard are lower than the lux levels from the baseline surveys. The report recommended mitigation which included fitting back light shields to all 4 lighting columns and fit cowl/barn door shields on each of the 8 floodlights within the MMA lower yard due to their installation angle. These would block any backward and upward light from the luminaires and would reduce the effect of light visible from a distance, thus reducing overall sky glow. The report concludes that with the additional mitigation suggested, it would reduce the predicted effects to neutral, in respect of obtrusive light, glare and sky glow. Without such mitigation, the report concludes that the results of the proposed lighting would be minor adverse for the surrounding area. Indeed, the report finalises by confirming that *'...the very high lighting levels at the Victoria Street car park have much greater adverse effect on sky glow in this area than the MMA lower yard site...light pollution in the local town will far outweigh any potential light pollution from the MMA lower yard site. Any light pollution will be negligible in comparison and near to invisible by the naked eye...'*

Having noted the conclusion by Jacobs that the existing floodlighting would have a neutral impact (with mitigation) in respect of obtrusive light, glare and sky glow, when viewed within the surrounding area, it is important to note that the proposed lighting to be installed at the lower yard would vary from that referred to in the Environment Lighting Impact Assessment prepared by Jacobs.

The proposed lighting, as discussed earlier, would include the replacement of the 8 LED floodlights with 4 Meyer Monospace luminaire. Although these would be located in the same location and free of any shielding, the luminaires would be 2700k warm white light, would be less in number and would illuminate directly downwards given their horizontal arrangement. Furthermore, the most southern column would be reduced to 4.5 metres which would further reduce light spillage. Given their improved design, appropriate location amongst the existing trees/hedgerows and limited light spillage (as described in the Qoda light report), it is considered the proposed lighting would be an improvement on the existing (mitigated) lighting and would have a neutral impact in respect of obtrusive light,

glare and sky glow when viewed from within the surrounding area. As such, the proposed lighting would be acceptable in respect of its impact on the natural environment. It should therefore be noted that the Councils Environmental Health Manager has not raised any objections to the proposed development.

Carbon Emissions

As stated in PPW (paragraph 6.8.1) there is a need to balance the provision of lighting to enhance safety and security to help the prevention of crime with the need to (amongst other criteria) reduce the carbon emissions. Although the proposed lighting is far more efficient than that which exists, given the length of time the lights would be illuminated (if permitted) the carbon emission would more than double. The Councils Energy Engineer has calculated that the current lighting (under existing time restrictions) creates approximately 81kg/CO₂ per year whereas the proposed lighting (with no time restrictions) would produce approximately 168kg/CO₂ per year. Therefore, an approximate increase of 87kg/CO₂ per year has to be balanced against the applicant's requirement for increasing the usage of the lighting. Based on figures provided by Energy Systems Catapult, when compared to the carbon emission from an average house, the increased carbon emission as a result of this proposal would be lower. Having taken all matters into consideration, in this case, the balance is in favour of the provision of the lighting.

Responses to Representations

The majority objections raised have been addressed in the main body of the report. In respect of other objections raised, these have been addressed below:

- The numerous amendments submitted by the agent, were a result of the objections received to the proposal. Offering the applicant the opportunity to consider and respond to objections/comments during the consideration of the application is considered appropriate, helpful and is indeed common practice. Likewise, it is reasonable to allow objectors/supporters an opportunity to comment on additional/amended reports/information submitted during the application process.
- The compulsory purchase order relates to the northern part of the MMA site (close to the A465 dual carriageway) and therefore does not affect the application site.

CONCLUSION

The focus of the consideration of this application has been on whether the hours of permitted illumination should be extended. No issue is taken by any of the objectors to the replacement of 8 existing luminaires with 4 Meyer Monospace luminaires and the proposal to modify one column to measure 4.5 metres in height (as opposed to 6 metres in height). Planning Policy Wales points out that there is a need to balance the provision of lighting to enhance safety and security to help the prevention of crime with the need to protect the natural and historic environment including wildlife, prevent glare and retain dark skies, respect residential amenities and reduce carbon emissions. In this case, for the reasons given above, it is considered that any adverse impact to neighbouring residents would be minimal, any effect on the natural environment would be neutral and the minimal increase in carbon emissions is acceptable. The proposal is also considered satisfactory in terms of its impact on protected species and their habitats. Thus, the proposal accords with the relevant national and local policies. Additionally, for the reasons given, it is considered that

there is a demonstrated need for extending the hours of permitted illumination and this is a material consideration to which regard has been had.

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 taken into consideration when determining this application. In reaching the following recommendation, the ways of working set out at section 5 of the WBFG Act have been considered and thus the proposal is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

RECOMMENDATION: BE APPROVED subject to the following **CONDITIONS:**

1. The development shall begin not later than five years from the date of this decision.

Reason - To comply with Section 91 of the Town and Country Planning Act 1990.

2. The revised floodlighting scheme shall be installed in accordance with the following approved plans and documents:

- Qoda Light, 2463.R9 - MMA Lighting Report, received: 8th March 2021.

Reason - To ensure compliance with the approved plans and to ensure that the proposed lighting would not have an adverse impact on the amenities of nearby occupiers, ecology or the natural environment, in accordance with Policies SW11, EnW1, EnW2, EnW3 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.

3. The floodlights, hereby permitted, shall not be used between 18:30 and 08:00 hours until they have been installed in accordance with the approved details as shown on pages 8-10 of the Qoda Light Report (Revision 9) received 8th March 2021. Thereafter the floodlights shall be retained as such in perpetuity.

Reason - To ensure that the proposed lighting would not have an adverse impact on the amenities of nearby occupiers, ecology or the natural environment, in accordance with Policies SW11, EnW1, EnW2, EnW3 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.

4. The floodlights, hereby permitted, shall not be brought into use until details of a wildflower strip on the grass verge that runs along the eastern boundary has been submitted to and approved in writing by the Local Planning Authority. The details shall include the area of land to be planted/seeded, the mix and density of plants/grass/seeds noting species, an implementation programme and a wildflower management plan. All planting and seeding comprised in the approved details shall be carried out in the first planting and seeding seasons after the floodlights, hereby permitted, are brought into use.

Reason - To enhance the ecological value of the site in accordance with Policies EnW1, EnW2 and EnW3 of the Merthyr Tydfil Replacement Local Development Plan.

5. The use and layout of the site shall be operated strictly in accordance with the details indicated on the Lower Yard Area Layout plan (Drawing LAF 1 - approved at appeal ref: APP6410/C/95/508749 and APP6410/C/95/508750).

Reason - To protect the amenities of nearby occupiers and ecology in accordance with Policies SW11, EnW1, EnW2, EnW3 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.

6. No activity shall take place on the site (i.e. as identified on the Lower Yard Area Layout plan Drawing LAF 1 - approved at appeal ref: APP6410/C/95/508749 and APP6410/C/95/508750) before 08:00 hours or after 18.30 hours on weekdays and Saturdays nor at any time on Sundays or Public Holidays, (the sole exception to this condition being in the event of a transporter arriving whilst the auction activities are being undertaken in the upper yard, such transporter shall be permitted to enter the lower yard for the purpose of parking only).

Reason - To protect the amenities of nearby occupiers in accordance with Policies SW11 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.

RECOMMENDATION ENDORSED



Head of Town Planning

DATE:

3/9/21