

DELEGATED REPORT

Application No:	P/23/0173
Site Address:	36 - 37 Fox Street Treharris CF46 5HE
Development:	Proposed change of use from a shop to a creche with external alterations including a new shopfront and erection of elevated deck
Case Officer:	Rebecca Owens
Site Visit:	26th July 2023
Application Expiry Date:	27th November 2023
Consultation reply date expired:	7th August 2023

APPLICATION SITE

The application relates to two vacant, mid-terrace properties located within a mixed use area comprising of retail, commercial and residential uses and within the settlement boundary. The site is also within the Treharris Conservation Area and Treharris Local Centre. The site fronts onto the commercial highway of Fox Street, with a supermarket to the north eastern side which wraps around to the rear of the site and a vacant unit to the south west.

PROPOSED DEVELOPMENT

Full planning permission is sought to change the premises from a shop to a creche with external alterations including a new shopfront and erection of an elevated deck.

The creche would comprise of crèche floor space, baby changing and quiet area, equipment store and toilets at basement level, creche floor space, reception, office and toilets at ground floor level and creche space, toilets and staff facilities at first floor.

The existing pilasters, capitals and fascial of the shopfront would remain with new windows and entrance door inserted and the area below the windows would be finished with render.

The elevated deck would be erected to the rear of the property at ground floor level with access gained from a newly formed doorway in space of a window. The decking would project out by 3.56m and would be 7.88m in width with a height of 2.76m. This would be enclosed by 1m high balustrading. There would also be steps leading down from the decking to the lower garden area.

In addition, it is proposed undertaken some additional external elevations details below:

- Replace the first floor front windows with timber sliding sash windows.
- Replace all the rear windows with upvc windows.
- Block up a rear basement door, create a new doorway in place of a window and insert a new larger doorway.
- Render the rear elevation (which is currently stonework).

PLANNING HISTORY

The relevant planning history is detailed below:

P/03/0038	Change of use of properties from shop to community education unit plus extension Granted planning permission subject to conditions on 19 June 2003
P/06/0023	Change of use of shop to three flats Granted planning permission subject to conditions on 17 March 2006
P/06/0479	Change of use of shop to 4 no. flats Granted planning permission subject to conditions on 5 December 2006

CONSULTATION

The following bodies were consulted and their responses are presented below:

Engineering & Traffic Group Leader	No objection
Planning Division's Policy Group Leader	No objection
Planning Division's Ecologist	No objection
Environmental Health Manager	No objection subject to conditions
South Wales Fire and Resue	No objection
Dwr Cymru Welsh Water	No objection subject to condition

PUBLICITY

In accordance with the Town & Country Planning (Development Management Procedure) (Wales) Order 2012, letters were sent to the neighbouring properties and a site notice was displayed within the vicinity of the site.

No letters of objection were received following this publicity exercise.

POLICY CONTEXT

National Development Framework

Future Wales: the National Plan 2040 (February 2021) sets out a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities.

National Planning Policies

Planning Policy Wales (Edition 11, February 2021) must be taken into consideration. Relevant sections are identified below:

- Paragraphs 3.3 – 3.18 refer to good design and better places.
- Section 4.3 relates to retail and commercial development and paragraph 4.3.3 highlights that planning authorities should:
 - *“promote viable urban and rural retail and commercial centres as the most sustainable locations to live, work, shop, socialise and conduct business;*
 - *sustain and enhance retail and commercial centres’ vibrancy, viability and attractiveness; and*
 - *improve access to, and within, retail and commercial centres by all modes of transport, prioritising walking, cycling and public transport”.*
- An emphasis is placed on creating viable and vibrant centres with paragraph 4.3.33 explaining that *“Vibrant and viable centres are distinguished by a diversity of activity and uses which should contribute towards a centre’s well-being and success, whilst also reducing the need to travel”.*
- 4.3.36 Where economic decline is impacting on a retail and commercial centre, emphasis on retaining A1 uses in premises either in primary or secondary areas, which have been vacant for a period of time, may undermine a centre’s viability and vitality. In such circumstances planning authorities should consider how non-A1 uses may play a greater role to increasing diversity and reducing vacancy levels”.
- Paragraphs 6.1.14 – 6.1.17 relate to conservation areas. Paragraph 6.1.14 notes that *“There should be a general presumption in favour of the preservation or enhancement of the character or appearance of conservation areas or their settings. Positive management of conservation areas is necessary if their character or appearance are to be preserved or enhanced and their heritage value is to be fully realised”.* With paragraph 6.1.15 clarifying that *“There is a strong presumption against the granting of planning permission for developments, including advertisements, which damage the character or appearance of a conservation area or its setting to an unacceptable level”.*

The following Technical Advice Notes are also relevant:

- TAN 4: Retail and Commercial Development
- TAN 12: Design
- TAN 18: Transport
- TAN 24: Historic Environment

Local Planning Policies

The following policies of the Merthyr Tydfil County Borough Council Replacement Local Development Plan 2016-2031 are relevant to the determination of this application:

- SW4: Settlement Boundaries
- SW11: Sustainable Design and Placemaking
- SW12: Improving the Transport Network

- SW13: Protecting and Improving Local Community Facilities
- CW1: The Historic Environment
- EnW1: Nature Conservation and Ecosystem Resilience
- EnW2: Internationally and Nationally Protected Sites and Species
- EnW4: Environmental Protection
- EcW3: Retail Hierarchy – Supporting Retailing Provision
- EcW5: Town and Local Centre Development

Furthermore, the following Supplementary Planning Guidance (SPG) Notes are relevant:

- Note 4, Sustainable Design.
- Note 5, Nature and Development.

PLANNING CONSIDERATIONS

Principle

The application site is located within the settlement boundaries. Accordingly, the principle of development is considered to be acceptable subject to compliance with other planning policies and material planning considerations.

In this respect it is also noted that the application site is located within the Treharris local centre and as such is a favoured location for retail, leisure and other complementary development. Policy EcW3 supports applications for such developments where they would improve the vitality and viability of the centre concerned and similarly, Policy EcW5 supports development that enhances the vitality and viability of local centres. It is recognised that the proposal would provide a use which does not fall within the A uses classes and as such under Policy EcW5 evidence would be required to establish the following:

- It is demonstrated through active and appropriate marketing that the existing use is no longer economically viable; and,
- The proposal would not result in an over concentration of non-A1 uses that would be detrimental to the vitality, attractiveness and viability of the local centre; and,
- The proposal would not result in the creation of a dead window frontage; and,
- The proposal would not have an unacceptable effect on the amenity and viability of neighbouring uses, having regard to the 'agent of change principle'.

Information has been submitted with the application indicating that the application site has been vacant for at least 15 years. However, the applicant has confirmed that the property was not marketed in this time. Therefore, it is not possible to demonstrate that the use is no longer economically viable through such means. Notwithstanding this, there are a number of vacant units within the local centre (approximately 20), some of which have been vacant for some time. As such, there are other potential units available for new 'A' uses to occupy. However, the high number of empty units would suggest that the economic viability of such uses at this location is poor. In addition, whilst the proposal is for a non 'A' use, a creche would be a use which is appropriate within a local centre and it would bring a vacant unit back into use, which would be beneficial to the vitality and viability of the local centre. With respect to the other criteria set out by Policy EcW5, it is not considered that the proposal would result in an overconcentration of non-A1 uses. There are a number of commercial units that currently operate from the local centre, with a mix of 'A1' and other uses. In addition, the proposal would not result in a dead window frontage (as the vacant unit now has) and would operate during normal daytime working

hours. Finally, it is not deemed that it would have a negative impact on the amenity and viability of neighbouring uses. Taking the above into consideration, the proposal would satisfy the four criteria set out in policy EcW5 and the overarching objective to enhance the vitality and viability of the local centre.

In addition, it is noted that Policy SW13 seeks to support new and enhanced community facilities whilst also protecting against the loss of such facilities. Although this proposal would result in the loss of a shop unit, it would be replaced with an alternative community facility in the form of a creche. It is also noted that the property has been vacant for a long period of time and is in a deteriorating condition so it has not provided any community use for a number of years. There are also a number of other shops and uses within the Treharris Local Centre to serve the community including a number of vacant units suggesting that these are surplus to the needs of the community. Having regard to this, it is considered that this proposal would be in accordance with this policy.

Character and visual amenity

It is noted that the site is located within the Treharris Conservation Area and as such the impact of the proposal on its character would be an important planning consideration. However, the properties subject to this application are vacant and have been unoccupied for a number of years. They appear to be in a poor state of repair and deteriorating condition, with the shop fronts and first floor front windows boarded up. As such they have a negative impact of the appearance of the street scene and do not contribute to the character of the conservation area. The reuse and subsequent refurbishments of the building would there be positive.

The proposal would involve the erection of a new shopfront, which is considered to be of an appropriate design and scale, which would be sympathetic to the area. In addition, the new first floor windows would be a timber sliding sash to replace the existing sash windows currently boarded up. These would respect the traditional character of the building and would enhance the conservation area in line with Policy SW11 of the LDP.

It is noted that the proposal includes an elevated deck. However, this would be discretely located to the rear of the property where it would not be visible from the street. It is also recognised that the works to the rear of the property involve the alteration of windows and doors, the insertion of upvc window frames and the rendering over the existing stonework. However, given the context of the rear which is visually poor, with various unsympathetic additions including air conditioning unit, a flue and a raised platform area serving 35 Fox Street, it is not considered that the decking or the other alterations would have an adverse impact on visual amenity or harm the character of the conservation area.

Noting the above, the proposal is found to be acceptable in terms of visual amenity and its refurbishment of the property would in fact enhance the character and appearance of the Conservation Area. As such the proposal would comply with policies SW11 and CW1 of the LDP.

Residential amenity

The impact of the proposal on the residential amenity of neighbouring occupants is a material planning consideration. In this respect it is noted that this local centre is characterised by a number of residential properties in addition to the commercial and retail type uses. The main impact of the proposed use is likely to be noise and disturbance

associated with a crèche type use and as a result of comings and goings. However, being located within a local centre, it is recognised that there is already a higher volume of activity within the area and as such an element of noise and disturbance is already in existence. Thus, given the location of the property and the type of use, it is considered that the additional disruption associated with a creche use would not add to the levels of noise and activity that is already present to an extent that would be deemed harmful.

Regard has also been had for the impact of the proposed decking on the residential amenity of neighbouring occupants. As it would be located adjacent to annexe wall of the supermarket to the north east, the decking would have no impact on this proposed. The property bounding the other side of the site comprises of a vacant commercial unit at ground floor with flats (it is assumed that these would occupy the first floor and possibly basement levels). The decking would project out at ground floor level and would be set off the boundary with this property by over 3m. Whilst it is recognised that it would allow for views back towards the rear elevation of 38 Fox Street and in turn the rear windows of this property, the views would be angled and thus not allow for any direct overlooking. In addition, it is noted that the rear windows of 38 Fox Street are already overlooked from the garden of the application site. Similarly, whilst the decking would allow for elevated views into the rear garden of this neighbouring property, the garden is also already substantially overlooked from the application site and as such it is not considered that the decking would result in any significant increase in overlooking or loss of privacy. In this respect it is noted that no objections were received following the publicity exercise.

Whilst the rear of the site is bound by the curtilage of 39 Fox Street, it is noted that there are dwellings to the other side of this. The decking would allow users to look across towards these properties but given that its distance from the rear boundaries of these dwellings and their rear windows, it is not considered that it would give rise to overlooking or a loss of privacy to a harmful level.

Having regard to the above and noting that no representations were received following the publicity exercise, it is on balance considered that the proposal would not result in harm to residential amenity to an degree that would warrant the refusal of the application and it is therefore found to be in accord with Policies SW11 and ENW4 of the LDP.

Car parking and highway safety

It is noted that the site does not benefit from any off-street parking and no designated parking is included as part of the proposal. However, with the exception of employees, users of this facility would generally require only short term parking during dropping off and picking up and there is on street parking to the front of the property (time limited). The site is also in a sustainable location within a local centre and is therefore in close proximity to public transport links and a public car park which would provide both short and longer term parking as well as accommodating other more sustainable means of travelling to the facility. As such, it no concerns are raised in respect to car parking or highway safety and no objection has been received from the Head of Engineering and Highways.

Ecology

A Preliminary Ecological Appraisal (PEA) and Preliminary Roost Assessment (PRA) and Activity Survey have been undertaken.

During the PRA, lesser brown-eared droppings were identified under the ridge board, along with several examples of feeding remains. While A 14-day static survey returned no evidence of bats currently using the interior of the structure, local records document the presence of a local population of brown long-eared and this space has likely been used by the species in recent years. In addition a dusk survey for bats was undertaken on two occasions and a day roost, supporting a single common pipistrelle was identified at the south elevation (at the eaves). As such a European Protected Species Licence is required and an informative to this effect should be included on any permission issued. Whilst the findings of the report are acknowledged, it is considered that the development is necessary to bring a derelict property back into beneficial use which would be beneficial to the vitality and viability this local centre and improve the character and visual amenities of the conservation area. In addition, providing the licence is granted, the Ecology Officer has not raised any objection to the proposal subject to the provision of the recommended mitigation and enhancement. This can be secured through a suitably worded condition.

Conclusion

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.

Accordingly the following recommendation is made:

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 development shall be carried out in accordance with the following approved plans and documents:

Drawing Title: Proposed Plans, Drawing Number: 944.04, Amended Plan Received on 2 October 2023.

Drawing Title: Proposed Elevations, Drawing Number: 944.05, Amended Plan Received on 2 October 2023.

Drawing Title: Proposed Side Elevations, Drawing Number: 944.06 Rev. A, Amended Plan Received on 2 October 2023.

Preliminary Ecological Appraisal (PRA), reference LT117-LPEA, Produced by Little Wing Ecology, Received 2 October 2023

Bat Survey Report, reference LT096-PRA/BAS, Version 3. Produced by Little Wing Ecology, received 18 October 2023

Reason -To ensure compliance with the approved plans and clearly define the scope of the permission.

3. **Prior to works** commencing on site, the following details shall be submitted to and approved in writing by the Local Planning Authority:
- the external colour(s) of the shopfront;
 - the finish of the first floor front sash windows

The development shall be carried out in accordance with the approved details.

Reason - To ensure that the external appearance of the proposed development will be in keeping with the character of the area and adjoining buildings in the interests of visual amenity and to accord with Policies SW11 and CW1 of the Merthyr Tydfil County Borough Council Replacement Local Development Plan.

4. No surface water from any increase in the roof area of the building /or impermeable surfaces within its curtilage shall be allowed to drain directly or indirectly to the public sewerage system.

Reason - To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

5. Prior to the installation of any external lighting, a Lighting Scheme shall be submitted to and agreed in writing by the Local Planning Authority, which shall include:
- Details of the siting and type of lighting to be used, including the colour temperature
 - A plan illustrating the lux levels across the site to ensure dark corridors are maintained and that the access points to the additional roosting locations are unilluminated.

The lighting scheme shall only be installed in accordance with the approved details and maintained as such thereafter.

Reason - To limit the impact on protected species and reduce light pollution in accordance with policies EnW2 and EnW4 of the Merthyr Tydfil County Borough Council Replacement Local Development Plan.

6. **BEFORE** the use hereby approved commences, and in accordance with the Bat Survey Report, details of the additional roosting locations (provided at the ridge of the building) and the bat loft (including timings of their installation/provision) shall be submitted to and approved in writing by the local planning authority and shall be retained in perpetuity thereafter.

Reason - To protect the natural environment in accordance with Policies EnW1 and EnW2 of the Merthyr Tydfil County Borough Council Replacement Local Development Plan.

7. **BEFORE** the use hereby approved commences, details of the bird boxes (including the locations and timings of their installation/provision) shall be submitted to and approved in writing by the local planning authority and shall be retained in perpetuity thereafter.

Reason - To protect the natural environment in accordance with Policies EnW1 and EnW2 of the Merthyr Tydfil County Borough Council Replacement Local Development Plan.

INFORMATIVES

1. The developers attention is drawn to the comments and advice received from Welsh Water during the application process.
2. The developer is advised to seek appropriate legal advice if the development to which this application refers involves either:-
 - i) work on an existing wall shared with another property;
 - ii) new building on the boundary with a neighbouring property;
 - or
 - iii) excavating near a neighbouring building.

as these works may fall within the scope of the Party Wall Act 1996 and may require statutory notices to be served on affected owners.

3. Warning: An European protected species (EPS) Licence is required for this development.

This planning permission does not provide consent to undertake works that require an EPS licence.

It is an offence to deliberately capture, kill or disturb EPS or to recklessly damage or destroy their breeding sites or resting places. If found guilty of any offences, you could be sent to prison for up to 6 months and/or receive an unlimited fine. To undertake the works within the law, you can obtain further information on the need for a licence from Natural Resources Wales on 0300 065 3000 or at <https://naturalresources.wales/conservation-biodiversity-and-wildlife/european-protected-species/?lang=en>

4. All birds, their nests and eggs are protected by law under the Wildlife and Countryside Act 1981 (as amended) while they are breeding.

If works to any trees, hedgerows and/or other nesting bird habitat (including buildings with suitable features) are to be undertaken, they will take place outside of the bird nesting season. If the works must be undertaken during the nesting season (generally from 1st March until 31st August, although birds are known to nest outside of these dates in suitable conditions), a breeding bird survey will be required and must be carried out by a suitably qualified ecologist. Any active nests identified will be protected until the young have fledged.

Where a Schedule 1 species (as defined in the Wildlife and Countryside Act - <https://www.legislation.gov.uk/ukpga/1981/69/schedule/1> is involved, compensation for impacts, e.g., loss of nesting sites, will be devised and implemented.

RECOMMENDATION ENDORSED



Director of Neighbourhood Services

P.P.

DATE: 27.10.2023