

DELEGATED REPORT

Application No:	P/26/0017
Site Address:	98 Pontmorlais High Street Merthyr Tydfil CF47 8UD
Development:	Removal of condition 2 of planning permission P/07/0335 relating to opening times.
Case Officer:	Marlene Ferreira
Site Visit:	12th March 2026
Application Expiry Date:	23rd April 2026
Consultation reply date expired:	12th March 2026

APPLICATION SITE

This application relates to a commercial property, 98 Pontmorlais, located within the Town Centre. The mid terrace two storey premises, which is located in the Pontmorlais Conservation Area, was last occupied as jacket potato take away shop ('Spud Grub'), but it currently sits as a vacant unit in the town centre.

The site is bound to the north and south by adjoining two-storey and three storey commercial premises, to the east by residential properties, and to west by the main road through Pontmorlais.

The character of the area is largely dominated by a variety of shops and services including retail, pubs, restaurants and takeaways.

PROPOSED DEVELOPMENT

This application seeks planning permission to remove condition 2 of planning permission P/07/0335 which seeks to control the opening times of the take away use permitted. The condition states:

2. The premise shall be closed for further customers Monday to Saturday at 24:00 hours and 23:00 hours Sunday. The premises shall not reopen until 08:00 on any day. The premises shall be vacated and all business activities shall cease at 01:00 hours Tuesday to Sunday and 24:00 hours Sunday.

Reason - To protect the amenities of occupiers of nearby premises.

The applicant has confirmed that the vacant premises is due to undergo refurbishment works to allow the premises to re-open as a pizza take away business. As such, it seeks to remove condition 2 of P/07/0335 to allow its future occupiers to operate the business during longer opening times, as follows:

Monday to Thursday: 15:00 until 01:00

Friday to Saturday: 15:00 until 02:00

Sunday: 15:00 until 01:00

PLANNING HISTORY

The following planning history is relevant to this application site:

- P/16/0376 - Refurbishment and partial reconstruction of the building including installation of new shopfront, erection of new brick chimney with extraction system, erection of new external staircase and other alterations to external elevations and roofs – Approved: 22nd February 2017.
- P/15/0086 - Installation of new shopfront, erection of external staircase and new first floor access, installation of new flue and other alterations to external elevations – Approved: 17th August 2015.
- P/07/0555 - Variation of Condition 2 of planning consent P/07/0335 to extend opening hours to 2.30 am Saturday and Sunday, until 1.30 am Thursdays, Fridays and Mondays and until 12 pm (midnight) on Mondays and Tuesdays – Refused: 13th December 2007.

Reason for refusal: *The increase of the opening hours of the hot food takeaway is likely to detract from the level of residential amenity that occupiers of nearby properties can reasonably expect to enjoy within their properties and curtilages by virtue of the nuisance and disturbance likely to be generated by noise particularly at unsocial hours.*

Appeal APP/U6925/A/08/204752 – Dismissed: *The extended opening hours sought would generate increased levels of activity arising from the comings and goings of customers and general anti-social behaviour in and around the premises into the early hours of the morning. This would result in increased levels of noise and disturbance being experienced at unsocial hours which would be materially harmful to the living conditions of neighbouring residential occupiers.*

Other hot food establishments in the area open beyond the hours set by the condition no.2, but these are well established and are outside the local authority's control. Guidance approved by the council states that planning applications for new hot food establishments and applications to vary the opening hours of existing establishments in the town centre will only be approved subject to the imposition of the hours stipulated in condition no.2. This demonstrated that the Council is seeking to apply a consistent approach and to ensure that the living conditions of neighbouring occupiers are not further compromised by future development, where

this lies within its control as a planning authority. Allowing the appeal would undermine the Council's efforts in that respect.

- P/07/0335 - Change of use of building to hot food take away – Approved: 27th September 2007.

CONSULTATION

Head of Engineering and Highways No objection.

Environmental Health No objection.

Public Protection/Licensing No objection.

PUBLICITY

In accordance with the Town & Country Planning (Development Management Procedure) (Wales) Order 2012, nearby properties were consulted and a site notice was displayed in the vicinity of the site. No letters of representation have been received following this publicity exercise.

POLICY CONTEXT

National Development Framework

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

Policy 1 – Where Wales Will Grow

Policy 2 – Shaping Urban Growth and Regeneration – Strategic Placemaking

Policy 4 – Supporting Rural Communities

Policy 9 – Resilient Ecological Networks and Green Infrastructure

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

National Planning Policies

- Planning Policy Wales - Edition 12 (February 2024)

The following paragraphs in PPW are relevant to the consideration of the application.

4.3.30 *'...Although retailing (A1) uses should underpin retail and commercial centres, it is only one of the factors which contribute towards their vibrancy...'*

4.3.31 *'...Primary areas are typically characterised by a high proportion of A1 retail uses, and their designation requires an understanding of the existing distribution of uses in a centre together with careful consideration of a centre's role and how it relates to the retail strategy for the area. Secondary areas typically contain mixed uses, for example shops, cafes and restaurants, financial establishments and other services and community facilities...'*

4.3.33 *'...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...'*

4.3.34 *'...Leisure and entertainment, and food and drink uses can benefit retail and commercial centres, and with adequate attention to safeguarding amenities can contribute to a successful evening economy...'*

4.3.43 *'...Retail and commercial centres often include activities which contribute to a vibrant and viable evening and night time economy. Such uses may include, for example, bars, restaurants, pubs, theatres, music, arts and other entertainment venues which provide for social and cultural experience and spaces in which creativity can be fostered. Such activities are likely to be characterised by increased levels of noise, large gatherings of people, later operating hours and greater movements in traffic...'*

4.3.44 *'...Where new uses incorporating evening and night time activities are established in retail and commercial centres, and are located near to existing residential accommodation, planning applicants should include appropriate mitigation measures to counter potential impacts to amenity...'*

6.0.2 *'...The special and unique characteristics and intrinsic qualities of the natural and built environment must be protected in their own right, for historic, scenic, aesthetic and nature conservation reasons. These features give places their unique identity and distinctiveness and provide for cultural experiences and healthy lifestyles...'*

6.1.14 *'...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...'*

6.1.16 *'...Preservation or enhancement of a conservation area can be achieved by a development which either makes a positive contribution to an area's character or appearance or leaves them unharmed. Mitigation measures can also be considered which could result in an overall neutral or positive impact of a proposed development in a conservation area...'*

6.4.22 *'...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...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...'*

6.6.22 *'...Climate change is likely to increase the risk of flooding as a result of sea-level rises, increased storminess and more intense rainfall. Flooding as a hazard involves the consideration of the potential consequences of flooding, as well as the likelihood of an event occurring. Planning authorities should adopt a precautionary approach of positive avoidance of development in areas of flooding from the sea or from rivers. Surface water flooding will affect choice of location and the layout and design of schemes and these factors should be considered at an early stage in formulating development proposals....'*

6.6.24 *‘...Development Advice Maps enable planning authorities to take a strategic approach to flood risk and consider the catchment as a whole by providing a preliminary representation of flood risks, which inform decisions on the location of new development and the requirements necessary to support any applications which may be proposed. Together with flood consequences assessments they should assist understanding of how natural and man-made defences work as integral components of places and provide a means by which the cumulative effects of development can begin to be understood....’*

6.6.25 *‘...Development should reduce, and must not increase, flood risk arising from river and/or coastal flooding on and off the development site itself. The priority should be to protect the undeveloped or unobstructed floodplain from development and to prevent the cumulative effects of incremental development....’*

- Technical Advice Notes (TANs)

Technical Advice Note 4: Retail and Commercial Development (2016)

Section 2.3 of TAN 4 refers to the variety of uses in the centre and states that *‘...a wide range of uses are located in retail and commercial centres including retail, office, residential, leisure, tourism and community functions. These centres are traditionally characterised by having higher densities which increases scope for different uses, including residential, to be accommodated above retail and commercial floorspace. Encouraging people to live and work in existing centres reinforces local demand and provides additional vibrancy during the day and in the evening. This diversity of uses, whilst benefiting the wider economy, will need to be carefully planned and managed to ensure that no conflicts arise, particularly with regards to amenity...’*

TAN 5 – Nature and Conservation Planning (2009)

This TAN provides advice on development affecting designated sites and habitats, in addition to protected or priority habitats and species. Section 6.2.2 states that *‘...It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It is considered best practice that such a survey is carried out before planning application is submitted. Planning permission should not be granted subject to a condition that protected species surveys are carried out and, in the event that protected species are found to be present, mitigation measures are submitted for approval. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of them being present...’*

Technical Advice Note 15: Development and Flood Risk (2025)

Section 5 of TAN 15 considers the vulnerability of different land uses to flooding and identifies three separate categories, emergency services, highly vulnerable development and less vulnerable development, within flood zones 1, 2 or 3.

Technical Advice Note 24: The Historic Environment (2017)

Section 1.14 of TAN 24 refers to conservation principles and '*... recognises that the whole of the historic environment is a finite and shared resource. Every place has its own history, which has shaped its character and leaves tangible traces in its present form and fabric. This historic character makes each place unique and gives it a distinctive identity. Historic character should be taken into account in the management of change in order to sustain local distinctiveness and a sense of place. The use of an objective, structured approach to identify the elements of historic character and creating an evidence base is vital...*'

Local Planning Policies

- The Merthyr Tydfil County Borough Council Replacement Local Development Plan (LDP) 2016-2031

Policy SW4: Settlement Boundaries

Policy SW11: Sustainable Design and Placemaking

Policy CW1: The Historic Environment

Policy EnW1: Nature Conservation and Ecosystem Resilience

Policy EnW4: Environmental Protection

Policy EcW3: Retail Hierarchy – Supporting Retailing Provision

Policy EcW5: Town and Local Centre Development

PLANNING CONSIDERATIONS

The issues to consider under this application relate to whether the removal of condition 2, as stated above would be acceptable. Condition 2, as discussed above, seeks to control the opening times of the takeaway business use, which was granted under planning permission P07/0335.

The application site has operated as a takeaway business since at least 2007, when the use was originally granted. The business premises, as previously described, is predominantly surrounded by a range of other business uses, which include pubs, restaurants and cafes. Indeed, this part of the town centre, along Pontmorlais, is mainly recognised for its more vibrant food and drink uses, many of which also operate into the early hours of the morning.

It is acknowledged that the proposed removal of condition 2 which currently controls the operation times of the takeaway business at this site is likely to result in additional noise and disturbances to nearby occupiers. It is also acknowledged that a previous application, P/07/0555, which proposed to vary the opening times of the takeaway use, to remain open for a longer duration, was also refused and dismissed at appeal, as highlighted earlier in the report.

In respect of the previous permission, P/07/0555, which was refused and dismissed at appeal, it is important to note that this decision is almost 20 years old. As such, policies and guidance have changed significantly since this time. Likewise, the make up of the town centre, particularly along Pontmorlais, has also substantially altered over this period. Indeed, the Council's guidance on A3 uses, 1997, is outdated and no longer in use. The operation of a business use after 23:00 within the town centre is no longer sought to be controlled through the planning process. The assessments surrounding uses which seek to open after 23:00, is instead better controlled by the Licensing Section. In this respect, it should also be noted that the Licensing Section have not raised any concerns or

objections to the use of the premises outside of the times permitted under planning permission P/07/0335 and have confirmed that the license application for the extended opening times submitted by the applicant has been granted. Furthermore, this part of the town centre, is known for its food and drink uses which operate late into the night. This has contributed to the occupation of many premises in this part of the town centre, which would otherwise have remained vacant and potentially derelict. Certainly, PPW, recognises the importance of occupying vacant buildings with uses that promote vibrant town centres, with a mix of services, entertainment and residential uses, where people can live and work and which also contribute to the financial success of the town centre.

As stipulated in the inspector's appeal decision, and which is still relevant, is that people living in locations such as town centres, cannot expect to enjoy the same levels of peace and quiet as those living in residential areas. Although the privacy and amenities of such residents should continue to be protected, it is not considered that the opening the takeaway use for an additional 2 hours within this setting, would have a significant detrimental impact to the amenities currently enjoyed by surrounding residents, particularly since other surrounding takeaways, restaurants and pubs, already operate during these times. In this respect it should be noted that the Council's Environmental Health Officer has not raised any objections or concerns. Furthermore it has been confirmed that there is no history of noise complaints during sociable hours arising from this area. Furthermore, no letters of objections or concerns have been received from nearby occupiers in respect of this application.

As a result, having considered the setting of the premises, its proposed hours of operation, combined with the existing surrounding uses and their existing hours of operation, the removal of condition 2, to allow the opening times of the takeaway business to operate into the early hours of the morning would be acceptable in this instance.

CONCLUSION

The proposed development for the reasons discussed above is therefore considered acceptable and would comply with the relevant LDP policies.

Finally, 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

RECOMMENDATION ENDORSED



Director of Neighbourhood Services

DATE: 17.04.2026