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Our Ref: 20.158

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Dear Gareth

**Town and Country Planning Act 1990 (As Amended)**  
**20/0963 Former Clariant Site, Llantrisant Road, Church Village, CF38 2SN**  
**Letter in support of application.**

Asbri Planning Ltd is appointed by Bellway Homes Ltd (Wales) in respect of the above site.

Further to last week's committee, Bellway Homes Ltd (Wales) has considered the points raised by Members in the debate, namely affordable housing provision, noise and the parking for Role Play Lane. Drainage and ecology have also been considered following additional comments regarding the layout. Also as discussed, we would like this application to be reconsidered at the 25<sup>th</sup> March Committee.

**Affordable Housing**

Outline planning application 18/1402 with all matters reserved except for access was resolved to be approved by RCT Committee on the 5<sup>th</sup> December 2019 subject to the completion of a Section 106 Agreement. The Heads of Terms set out in the Committee Report were as follows:

- 7% affordable housing
- Local Area of Play
- £10,000 Active Travel contribution
- Long Term Habitat Management Plan
- Employment Skills Plan

in addition to the CIL requirements which will equate to contributions of over £1m:

Outline planning permission (reference 18/1402/13) was granted on 27 May 2020 ( ' the Outline Planning Permission' ) subject to conditions including the approval of the reserved matters set out in condition 1. In accordance with S106 of the Town and Country Planning Act 1990 and in compliance with the Community Infrastructure Levy (CIL) Regulations 2010 a section 106 agreement was entered into on 21 May 2020 ( 'the S106 Agreement' ) which sets out amongst other planning obligations the affordable housing requirement for the site. The S106 Agreement required the provision of 7% affordable housing to be provided in accordance with the Third Schedule of the Section 106 Agreement. This requires the owner to construct 7% of the dwellings as affordable housing units of which 4% are to be Social Rented Units in the form of one bedroom Walk Up Flats and 3% Low-Cost Housing Units. The Low-Cost Housing Units are to be split 2% in the form of 2-bedroom houses and 1% in the form of 3-bedroom houses. The

Compliance Statement which accompanied the reserved matters application demonstrates compliance with the Outline Planning Permission and the S106 Agreement. The matter of the provision of affordable housing can only be controlled at the point of grant of planning permission, the outline planning permission in this case and the associated Section 106 Agreement. The reserved matters approval (application reference 20/0963) is limited to the approval of the appearance, landscaping and layout and scale for the residential development of 95 dwellings including associated works, roads and infrastructure and there is no legal basis for Rhondda Cynon Taff County Borough Council ('RCTCBC') in considering the reserved matters application to seek additional affordable housing over and above what is required in the Section 106 Agreement. The subsequent approval of reserved matters does not constitute the granting of a further planning permission. So, for example, in relation to conditions, any conditions relating to anything other than the reserved matters themselves should not be imposed and nothing should be imposed which materially derogates from the outline permission (see Welsh Circular 016/2014 at 5.9 and R v Newbury DC ex parte Stevens and Partridge (1992) JPL 1057). Whilst it is accepted that in some circumstances a developer and local authority may agree to vary an existing s. 106 agreement at reserved matters stage (or indeed at any stage), there can be no requirement to do so in order for a decision on the approval of reserved matters to be taken, particularly where – as here – the RCTCBC seems to be seeking to derogate from the principle of the development and the permission already granted.

Bellway Homes does empathise with Members and they are committed to delivering affordable housing, but the 7% was agreed by RCT Committee prior to Bellway Homes' involvement in the scheme and, given CIL is in force in RCT, there was less scope to negotiate other contributions on viability grounds in favour of more affordable housing during the determination of the outline consent.

It should be noted that the Outline committee report included the following discussion with regard to affordable housing -

*The provision of affordable housing would be secured through a Section 106 agreement should Members be of a mind to support the proposals, due to the constraints that the site presents in terms of dealing with contamination in particular only 7% affordable housing can be delivered on this site. **This though disappointing, has been thoroughly investigated through an independently prepared and verified viability report.***

There is no mechanism or requirement within the S106 to re-consider the viability position of the scheme, and indeed, nothing has changed with regard to the site's viability in the 15 months since the Outline application was presented to planning committee and the issue was debated by Members.

## **Noise**

There were comments from Members in relation to noise emanating from the adjacent industrial use. Firstly, the Environmental Health Officer and Planning Officer are comfortable that the noise emanating from the industrial estate is acceptable with the mitigation proposed. The mitigation included a 3.5m acoustic barrier in the form of a fence, uprated acoustic glazing in certain properties and mechanical ventilation as appropriate. This mitigation brings noise levels down to below the British Standard guidance. Notwithstanding, Bellway Homes has now proposed increasing the height of the fence to 4m to provide further mitigation. This results in a greater reduction in noise levels again, so further below the British Standard guidance. It is noted that the objector stated that the POS was identified in this area in the outline consent, but there were still houses proposed along the western boundary in the outline consent, north and south of the proposed POS, and a buffer was identified in the outline consent in the vicinity of the tyre centre as well. Notwithstanding the above it is noted that no noise issues raised at the outline stage and at pre-app stages.

## **Role Play Lane Parking**

Unfortunately, the Role Play Lane parking that is being referred to is unauthorised as it involves encroachment of land by the industrial estate into the Clariant site. Therefore that additional Role Play parking cannot be relied upon as it is on land not in the control of Role Play Lane or the industrial estate. Consequently, this is not a planning matter. Further, Bellway Homes are not the landowners of the Clariant site, therefore it is not in their control to resolve this matter.

## **Drainage**

In addition, and in terms of the RM layout a number of factors influenced the layout. As the surface water outfall is in the bottom right the properties originally proposed along the southern boundary would have obstructed access to this area. The original strategy for reasons unknown showed the attenuation on the opposite side of the site to the outfall. It was also determined during the preliminary engineering review that additional space for attenuation was required therefore it was more efficient to place the POS area in the south which could accommodate all of the drainage requirements. This has been further reinforced with the confirmation of the remediated and finished floor site levels.

It should be noted that the remediated site levels have already been approved via condition which shows the attenuation basin in the south east of the site, at the lowest point, whereas the land adjacent to the industrial estate is some 8 - 10metres higher. If there were a requirement to provide a POS noise buffer adjacent to the industrial units, in addition to the required attenuation basin in the south east of the site, this would result in the loss of units (including affordables) and further issues of financial viability for the scheme.

No planning conditions were applied to the outline planning permission which required compliance with the indicative site layout and no issues were raised with the layout at the pre-application stage or throughout the determination of the RMs application requesting that we introduce a greater noise buffer to the units along the western boundary.

## **Ecology**

The ecological mitigation and enhancements do not differ significantly between the indicative layout submitted at Outline stage and the current layout, with existing boundary vegetation to the east and south protected. The main difference relates to the southern part of the application site where the RM drainage design and size of the attenuation basin would not permit the extent of vegetation to be retained as indicated at Outline stage. In order to protect and enhance the retained and created habitats at the site, draft Wildlife Protection Plans and Habitat Management Plans have been produced as part of the RM submission (to discharge Outline conditions). These details will be submitted shortly.

The stated aims of the Habitat Management Plan are:

‘to create, manage and enhance features within the red line boundary to maintain conservation status of the SINC that falls within the red line boundary.

The following objectives will allow delivery of the management aim:

- Manage retained trees & boundary vegetation
- Maintain ecological connectivity with Llantwit Fardre SINC
- Creation of attenuation pond with specific wildflower/marshy planting
- Maintain standing deadwood where possible
- Control invasive non-native species (INNS)

- Provide specific habitat management for targeted species, including Small Blue butterfly, Marsh Fritillary Butterfly and Small bordered Fritillary Butterfly.
- Provide additional habitats for reptiles/amphibians/nesting birds/bats.
- Provide hedgehog access in residential gardens'

I trust the above is of assistance and if you require anything further then please let me know.

Yours sincerely

**Pete Sulley**  
**Director**  
**Asbri Planning Ltd.**