

<b>APPLICATION NO:</b> 14/01436/FUL	<b>OFFICER:</b> Mrs Lucy White
<b>DATE REGISTERED:</b> 19th August 2014	<b>DATE OF EXPIRY:</b> 14th October 2014
<b>WARD:</b> Charlton Park	<b>PARISH:</b> Charlton Kings
<b>APPLICANT:</b>	CTC (Gloucester) Ltd
<b>AGENT:</b>	Mr Giles Brockbank – Hunter Page Planning
<b>LOCATION:</b>	86 Cirencester Road, Charlton Kings, Cheltenham
<b>PROPOSAL:</b>	Erection of a new convenience store (A1) with associated parking following demolition of all existing buildings on the site (revised scheme following 13/02174/FUL)

## Update to Officer Report

### 1. OFFICER COMMENTS

- 1.1. Members should be aware of recent correspondence from two local residents emailed directly to Members of the Planning Committee. These are attached for convenience.
- 1.2. The first email, sent on 17<sup>th</sup> October 2014, raises a number of issues which relate to perceived factual errors, and alleged incorrect and misleading information contained within both the Officer report and some of the reports and survey documents submitted by the applicant. The objector claims that these errors were raised with Officers during the course of the previous application and are also relevant to the current application. The areas of concern cover the ‘fall back’ position relating to the application site, the applicant’s Transport Statement, Retail Impact Assessment and Environmental Assessment and Noise Survey.
- 1.3. The second email, received on 20<sup>th</sup> October 2014, refers to planning appeals and costs which can be awarded against the Council. The objector is concerned that the advice given by Officers regarding appeals and subsequent costs could result in Members being unwilling to refuse “*undesirable developments*”. That said, the objector points out that Members should also be aware of the potential costs associated with a Judicial Review on the basis that he considers the current application to contain errors that he claims have been brought to Officers’ attention but that Officers have consistently refused to address or acknowledge.
- 1.4. The two emails are attached to this report but Members should note that part of the summary of the email of 17<sup>th</sup> October 2014 has been redacted due to its content.
- 1.5. On the assumption that the content of the two emails is linked, Officers wish to provide the following comments

### 2. Fall-back position

- 2.1. The planning fall-back position/previous uses of the application site are referred to in both the Officer report and Highway Officer’s comments. Clearly there is some disagreement between local residents and Officers as to what constitutes the fall back position, but the Officer report makes it clear that the previous uses of the site, which include a petrol filling station, are material considerations which both Officers and the Highway Authority consider should be afforded considerable weight in the determination of this and the previous application. Officers accept that local residents disagree with the interpretation

set out within the report to members - this is not uncommon. Having reflected on the content of the letter, there is nothing within it that should change the advice that members have been given within the main report.

### **3. Highway considerations**

- 3.1. The objector refers to the 1996 application (ref: CB19745/02) which, through a S106 agreement, limited the size of car transporters visiting the site. This planning permission was issued in 1998. The representation goes on to ask why a similar restriction is no longer necessary.
- 3.2. In response to this, members are advised that both local plan and national planning policy guidance has shifted substantially since 1996 in terms of highway safety considerations. The application has been thoroughly assessed in terms of highway implications and members are reminded that the Highways Officer has raised no objections to the delivery arrangements and suitability of the access on this site, subject to conditions. The size of vehicles, suitability of the access, pedestrian conflict and amenity issues associated with deliveries to the site are covered in both the Highway Authority response and Officer report for the current and previous applications.
- 3.3. Members are also reminded that highway safety implications did not form part of the reasons for refusal given for the previous application.

### **4. Retail impact analysis**

- 4.1. The concern here relates to how the Lyefield Road West and Church Piece centres have been assessed, with the Mango report suggesting that both are approximately 600m from the application site. This is of course the applicant's supporting statement and officers are quite aware that alternative routes on foot will measure a shorter distance.
- 4.2. Notwithstanding the above, members will be aware that DPDS has reviewed the applicant's submission and their response is consistently critical of the approach taken by Mango. It should be stressed, however, that the DPDS review *does* consider impact on the two centres referred to above but that this does not impact on their overall conclusion. Officers see no reason to question this; the response provided by DPDS is thorough and provides some very well thought through conclusions.

### **5. Noise impact assessment**

- 5.1. The concerns raised by the objector again refer to specialist and detailed points relating to the submitted Noise Impact Assessment. In response to this point, members are again advised that this assessment has been thoroughly scrutinised by the Council's Environmental Health team. The original officer report sets out their thoughts on the scheme but subsequent to this recent correspondence, further discussions between officers have taken place. The outcome of these discussions is that the Environmental Health team remain satisfied with the assessment that has been submitted and there is no need to revisit its findings. The proposal is acceptable in terms of its impact on neighbouring amenity and is compliant with Local Plan policy CP4.

### **6. Summary**

- 6.1. It is quite right for members of the public to question the validity of the information that is submitted to support a planning application; it is for this reason that public consultation

takes place. Members are advised, however, that officers remain entirely satisfied that the supporting information is valid and that every strand of the application has been thoroughly scrutinised. Whilst objectors to the scheme may disagree with the conclusions that support the recommendation and how they have been arrived at, they are all based on a sound understanding of the scheme and an objective analysis of the proposal.

- 6.2. The content of the representations is understood and has not been dismissed but it does not alter the officer recommendation that is before members. As such, the recommendation remains that members resolve to grant planning permission subject to the satisfactory completion of a Section 106 legal agreement.

Re: Revised Planning Application for Car Wash Site, 86 Cirencester Road, Charlton Kings.

Application No: 14/01436/FUL

Dear Councillors,

This Planning Application, just as its near identical predecessor, is based on incorrect and mis-leading information. It is disappointing that despite these points being repeatedly raised with officers during the previous application, there remain clear factual errors that directly relate to planning matters in this application.

These cover the following areas:

1. Planning "Fall-back Position"
2. Transport Statement
3. Retail Assessment
4. Acoustic Impact Assessment

#### 1. Planning Fall-back Position

Please excuse the slightly facetious tone, but "the clue is in the name". A "fall-back position" is one that the developer could "fall-back to" without planning consent if the proposal they are applying for is refused. As the site has not had planning consent to operate as a Petrol Filling Station since 1996, it is not an alternative position that the developer could fall-back to if his proposal is rejected, ie a fall-back position.

I quote from an article explaining the subject by Trevor Ivory of Howes Percival LLP:

"One of the material considerations that a planning authority should take into account when deciding whether to grant planning permission for a development proposal is what the alternative is for the site in question. When the development is not welcomed or contrary to policy, the question of what can be done with the land without the need for planning permission can be particularly relevant. An existing planning permission, permitted development rights and the existing use of the site are all examples of possible fall back options that developers may ask a local planning authority to take into account when deciding whether or not to grant planning permission."

A previous use of the site, that it had a change of use from eighteen years ago, is not a fall-back position as it is not a use that could be entered into without a new planning consent.

The site in question's extant planning consent is for new & used car sales. This was changed from fuel and car sales in 1996.

It is clear from the above definitions of a fall-back position that Petrol Filling Station is not the fall-back position of this site.

However, despite the very clear (and readily accessible) evidence for definitions of a fall-back position, the Officer in question for this application has insisted that the fall-back position for this site is a Petrol Filling Station.



Her justification for this is that the tanks are still present in the ground. Anyone of an engineering background would recognise that fifty or sixty year old underground tanks, that were abandoned over 18 years ago, could not sensibly be pressed back into service. In reality, if this site was to re-open as a filling station, one of the most important operations to take place would be the replacement of the tanks and pipework. This would be necessary to eliminate pollution risks, the risk of groundwater contamination of the stored fuel, and to comply with current fuel vapour recovery standards that did not exist when the Filling Station last operated.

However, if one chooses to ignore this obvious technical rejection of the premise of just re-using the tanks, there is a further very real physical problem to the officer's stated position:

The tanks were actually filled with concrete in the early to mid '90's, after the filling station operation closed down. This is a standard procedure for management of abandoned fuel tanks as laid out in the Environment Agency Pollution Prevention Guidance (PPG) Note 27 and the Association for Petroleum and Explosives "Blue Book", covering the decommissioning of below ground fuel tanks. As well as being good practice, this would be commercially driven by the benefit of reduced insurance premiums resulting from decommissioning the tanks.

The officer's position is presumably based on four manhole covers to the tanks being visible in the forecourt area. However, a simple inspection, by lifting the covers would reveal that three of the chambers have been filled to the underside of the covers with concrete, with the valve gear left in the last chamber to allow air to escape as the concrete is poured into the tanks. Lest there be any doubt on this issue, I am more than happy (obviously subject to the tenant's consent) at any time and date of Councillors' and Officers' choosing, to arrange to lift the covers to expose the "concrete" evidence.

## 2. Transport Statement

The entire analysis of the transport flows and impact of the proposed development are based on comparisons with forecast data of a Petrol Filling Station. From item 1) above, it is clear that the fall-back position of this site is not a Filling Station and therefore it is similarly quite clear that these comparisons are erroneous and irrelevant and that the conclusions drawn from such comparisons, such as claiming that the proposal will generate a reduction in traffic flows are quite simply not valid.

When the current consent for the site was granted in 1996, part of the Section 106 Agreement was to restrict the size of the delivery car transporters to ones capable of carrying no more than two cars on two levels, ie a maximum length of two cars behind the lorry cab. This was to keep any traffic disruption by the transport activities to a reasonable level.

I am at a loss to understand why if occasional deliveries needed to be restricted to a relatively modest scale vehicle (10m long), that deliveries four times per day, every day, by full-size artics or rigidis (12m long) should now be acceptable. This is further compounded by the very real risk of more than one delivery vehicle arriving at the same time (as witnessed at other similar stores such as at Queens Road, Hewlett Road and Church Piece).

## 3. Retail Assessment

Both the Mango and DPDS reports and Officers have failed to correctly assess the distance *on foot* from the proposed development to the Lyefield Road West Neighbourhood Centre and the Church Piece Neighbourhood Centre. While driving between the proposed site and either of the above



Centres would be a distance greater than 500m, anyone with local knowledge will know that there are much shorter routes between the site and the two centres on foot.

The Lyefield Road West Centre is accessed on foot by walking north on Cirencester Road, turning right on the public footpath to Gladstone Road, turning left onto Horsefair Street and on to Copt Elm Road and Lyefield Road. This distance is 465m.

Similarly, the route on foot to the Church Piece Centre is to turn south on Cirencester Road, left into Pumphrey's Road, the public footpath through to Horsefair Close, left on Horsefair Street, right on the public footpath to Church Piece Neighbourhood Centre. This distance is 389m.

The Mango report specifically states that other retailers will be affected when within 500m walking distance, and therefore discounts any impact on the Lyefield Road West and Church Piece centres as they are greater than 500m away on foot. This is simply incorrect. These distances can easily be checked using the measurement tool in "Google Earth" or I am more than happy, at any time and date of Councillors' and Officers' choosing, to walk these routes with them with a measuring wheel to prove these distances.

It is both obvious to a lay person, and actually stated in the Mango report, that the distance between the existing Neighbourhood Centres and the proposed development will have a direct bearing on the level of impact on these Centres. Given both reports fail to correctly assess these distances, their subsequent conclusions are meaningless, their analysis being based on incorrect information.

#### 4. Acoustic Impact Assessment

With reference to the Environmental Noise Survey & Noise Impact Assessment Report 19838/N1A1 Rev.3 by Hann Tucker Associates:

The report's author admits that the methodology used for this report *"is only intended to assess fixed sources of industrial noise such as plant, equipment and machinery. Using it to assess noise sources which are not static [i.e. vehicle movements] is widely considered to be stretching the use of the standard"*.

Section 5.4, "Subjective Evaluation", states that "in lieu of a more appropriate method, we have assessed potential noise from delivery and staff vehicle movements based on calculated changes in ambient ( $L_{eq}$ ) noise levels at the nearest noise sensitive receptors". A far more appropriate measure for assessing the impact on neighbouring residents amenity would be peak noise values ( $L_{max}$ ), as defined in Appendix A of the report as *"the maximum sound pressure level recorded...  $L_{max}$  is sometimes used in assessing environmental noise where occasional loud noises occur, which may have little effect on the  $L_{eq}$  noise level."*

I would strongly contend that assessing the noise impact on residents of noises such as car doors slamming late at night, or the roller-shutter door of the early morning newspaper delivery vehicle should be made on the basis of  $L_{max}$ . Such analysis would produce a very different conclusion, which is precisely why it has not been considered.

It is not appropriate, despite the report's statement to the contrary, to use the assessment intervals stipulated in BS4142, that by the authors own admission, is aimed at the assessment of continuously running plant, not at discrete loud noises such as vehicle doors being slammed or the operation of roller shutter doors.



In conclusion, this report is deeply flawed, and, by its use of just  $L_{eq}$  and ignoring of the impact on residents of  $L_{max}$ , been written to produce the conclusion that the Applicant requires, rather than an accurate assessment of the impact on residents.

The impact on residents should be assessed by a more appropriate methodology, such as the World Health Organisation's publication 'Guidelines for Community Noise' that provides guidance regarding suitable levels of noise that will protect vulnerable groups [ie surrounding residents] against sleep disturbance.

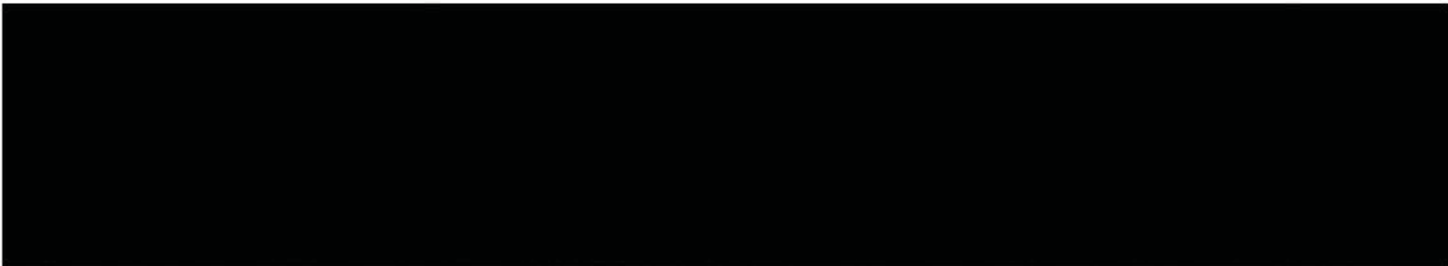
This use of this methodology would, I suggest, provide a very different conclusion regarding the loss of amenity (noise disturbance) to the surrounding residents.

Alternatively, a common sense approach could be adopted. The car wash operations were limited from 9am to 6pm to protect the amenity of the residents. The car sales site worked similar hours. Why should the same not apply to this (or any other) proposed use of the site?


In summary, there are clear unequivocal factual errors and omissions, on pertinent planning matters, in this application that have been repeatedly brought to Officers' attention.

Unfortunately, Officers have chosen to disregard these facts, as they have already agreed with the developer what they consider to be an acceptable proposal at the pre-application consultation.

The Public Consultation, in terms of an intelligent dialogue with Officers, is a sham, as they [the Officers] have already decided pre-application (and pre-public consultation) what constitutes an acceptable proposal.




While I cannot categorically comment on all Professional Associations and Institutions, I can confirm that neither the Institution of Civil Engineers nor the Institution of Structural Engineers carry out audits of their member's work and I do not believe for one moment that other similar Associations and Institutions covering the relevant areas do either.



Given the unwillingness of Officers to accept errors and omissions that conflict with their appraisal and agreement of what is acceptable with the developer's consultants, the public can only rely on the intelligence and common sense of the Councillors to reject this Application on the basis of the factual errors and omissions on Planning grounds as detailed above.

Thank you.



33 Charlton Close  
Cheltenham  
GL53 8DH

19<sup>th</sup> October 2014

Dear Councillors,

**Re: 86 Cirencester Road, Application ref: 14/01436/FUL (Car Wash Site)**

I am writing to address a concern that I, my neighbours and other members of the Cirencester Road Action Group have, regarding this Planning Application. Officers have repeatedly stated that this application should not be rejected as the Applicant will appeal such a decision and if the Borough lost the appeal there would be substantial costs. This view was repeated by some members at the previous Committee meeting.

I am confident the public would view such a position as morally bankrupt, and point out that it would give any developer a green light for any undesirable proposal, i.e. if developers believe CBC does not have the stomach to reject undesirable proposals, such proposals are more likely to be submitted.

There is, however, an alternative set of potential costs that Members should be aware of. This Planning Application and its supporting evidence contain fundamental errors that have been repeatedly brought to Officers attention, but that Officers have consistently refused to address, or even acknowledge. As such, any decision to permit will have been based on incorrect information.

The Cirencester Road Action Group has taken professional advice and been advised that the use of incorrect information to decide an Application amounts to a flawed planning process. A flawed process is open to challenge by seeking leave to appeal to the High Court for a Judicial Review of the process. Such a process would incur legal costs, and the Cirencester Road Action Group already has pledged for a legal "fighting fund" if required.

However, given that the errors have previously been brought to the Planning Authority's attention and have subsequently been ignored, thereby necessitating the application to the High Court, there would be little reasonable doubt as to where the court would award such costs.

We were very pleased that at the last committee meeting Members had the foresight and courage to see beyond the poor advice they were given. While we in no way wish to be seen as litigious or confrontational, and very much value the work the councillors have done to date, the intention of this letter is simply to counter the guidance of "give in or there will be large costs incurred", with the realistic advice that there are potentially large costs associated with making a decision to permit based on incorrect information.

Yours faithfully



On behalf of Cirencester Road Action Group