

PLANNING COMMITTEE	DATE: 15/06/2015
REPORT - SENIOR MANAGER PLANNING AND ENVIRONMENT SERVICE	CAERNARFON

Number: 6

**REPORT TO THE PLANNING COMMITTEE
REFER TO A COOLING OFF PERIOD**

DATE OF THE PLANNING COMMITTEE: 15 June 2015

DESCRIPTION AND LOCATION OF APPLICATION: Application Number C15/0162/33/LL - A part retrospective application to construct a building to be used as a commercial garage, change of use of a building approved and used previously as a commercial garage at Gallt y Beren to agricultural use, along with proposed improvements to the entrance to the B4415 from Hendre Wen – Gallt y Beren, Rhydyclafdy, Pwllheli LL53 7YP.

REPORT BY: Senior Manager, Planning and Environment Service

RECOMMENDATION: To accept the recommendation, namely to refuse the application.

1 PURPOSE

- 1.1 The application was submitted to the Planning Committee on 27 April 2015 and the Committee's proposal was to approve the application contrary to the officers' recommendation. The reasons given by the Committee for supporting the application was that they considered that the development conformed to Policy D7 of the Gwynedd Unitary Development Plan (Small scale Rural Workshops or Industrial/Business Units outside the development boundaries); that the development provided local employment; geographical local need, and no similar business within reach of the site.
- 1.2 In the opinion of the Senior Manager, Planning and Environment Service (Interim), there is a significant risk to the Council in respect of the decision to approve the application contrary to officers' recommendation; therefore, the matter was referred to a cooling off period in accordance with the committee's standing orders. The purpose of reporting back to the Committee is to highlight the planning policy issues, the possible risks and the possible options for the Committee before it reaches a final decision on the application.

2 DESCRIPTION AND BACKGROUND

- 2.1 The application in question is retrospective. The retrospective element of the application is to retain the building and use it as a commercial garage with floor area of 264m² near a dwelling known as Hendre Wen, together with improvements to the access to the B4415 from Hendre Wen. It is also proposed to change the use of the building approved and used previously as a commercial garage with a floor area of 72m² at Gallt y Beren for agricultural use, as well as covering the building at Hendre Wen with a dark green cover (BS 12 C 39). No details have been submitted regarding the type of external cover it is proposed to use. The applicant stresses that he is replacing one commercial garage site at Gallt y Beren with a new site for his business at Hendre Wen.
- 2.2 The site of the commercial garage is situated on a hill west of Rhydyclafdy on the southern side of the B4415 at Hendre Wen. Gallt y Beren farm, from where the use was moved, is located a short distance down the road on the northern side of the B4415. The application site is situated in open countryside outside the recognised development boundaries as defined in

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the Gwynedd Unitary Development Plan (GUDP) and in addition the site is located within a Landscape Conservation Area.

- 2.3 For clarification, it is confirmed that planning permission is not required for the change of use of the existing commercial garage at Gallt y Beren to agricultural use. Consequently, this application deals wholly with applying for retrospective planning consent to retain the use of a building built at Hendre Wen for use as a commercial garage, together with improvements to the vehicular access off the B4415 county highway.
- 2.4 Prior approval was given to construct an agricultural shed at Hendre Wen on 1 June 2009; however, the building was not constructed in accordance with the submitted details approved by the Council at the time. The building is wider and higher than what was approved and roller shutter doors were installed on the north-eastern elevation. In September 2011, a planning application was submitted for the change of use of the alleged agricultural building into a garage and MOT station. The planning application was withdrawn in February 2012 as it was evident that it was not an application for a change of use as the building was never used for agricultural purposes. In December 2012, a further planning application was submitted to use the building without planning consent as a garage and MOT station. That application was refused in February 2012 on the grounds that the development was a misuse of general agricultural permitted development rights, prominence of the building, lack of visibility from the access to the nearby county highway and a lack of justification for siting the building in open countryside. As a result of the refusal of the planning application an enforcement notice was issued to prevent the use and to demolish the building used as a commercial garage, and to move all the materials associated with that use from the site.
- 2.5 An appeal was made against the enforcement notice and the planning refusal to the Planning Inspectorate in August 2013. When considering the appeals the Inspector considered all the relevant national planning guidance and local planning policies prior to reaching a decision. Both appeals were refused in May 2014 and a copy of the appeal decision is attached in Appendix 1 for information. It is specifically noted that the Inspector confirms that the business has no special location needs that cannot be satisfied on an existing or designated employment/industrial sites shown on the Proposals Maps of the Unitary Development Plan. The enforcement notice was revised in order to extend the compliance period and requirements of the notice to 12 months, and this period expired on 4 May 2015. The applicant has not made any attempt to comply with the requirements of this notice.
- 2.6 In addition to the Planning Statement, a Landscape Statement, Survey of Traffic Speed and details of the availability of Council industrial units and in the private sector have been submitted with the application. The Landscape Statement (based on the LANDMAP data) confirms the concerns of the Planning Service that the site is located within landscape categorised as having medium to high general sensitivity and recognises that no mitigation works can screen the entire building. The mitigation plan submitted with the application states the intention to plant birch trees 1-1.5 metres high, and oak trees 2.5 metres high, however it is noted that it is proposed to plant only two trees directly in front of the building in the direction of the village of Rhydyclafdy. In the appeal decision the Inspector noted that landscaping the boundaries would not overcome the objection to the development in terms of the harm to the area's visual amenities.
- 2.7 Regarding the traffic speed survey, it is noted that the survey indicated 85th percent wet weather speeds, leading to a visibility requirement of 70 metres either side of the access. Work undertaken west of the current access includes felling trees and removing a hedge, and it is proposed to re-locate the access itself a little nearer to the village of Rhydyclafdy in order to ensure visibility of 70 metres either side. An e-mail was submitted dated 17 December 2014 from the Senior Development Control Officer of the Transportation and Street Care Service confirming that the design was satisfactory for visibility splays and the setting of the

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access, but there was a possibility that the work already undertaken conflicted with other planning policies.

- 2.8 In an attempt to justify siting in this place the applicant's agent submitted details about the availability of industrial units in the private sector in the Dwyfor area and this was because they had received an e-mail from the Council's Business Support Service stating that the Council's industrial units were currently full. When submitting this query regarding the availability of a Council building it has to be noted that the applicant had been very specific regarding the type of unit required for his purpose, namely one with a floor area of at least 240 metres square, a height of 7.5 metres and a parking area for a minimum of 15 cars. However, the case officer noted that this was much higher than the existing building at Hendre Wen (which is 5.8m) and the applicant was requested to confirm the situation. By now it was understood that the applicant was enquiring about a building that would be similar in size to the building at Hendre Wen, namely 5.5m high.
- 2.9 The agent has made further enquiries with the Business Support Service regarding the availability of industrial units based on this revised height. He received confirmation from the Business Support Service on 11 May 2015 that the Council had no units to meet the needs of his client; however, he received a general list of the units available in the private sector in the Dwyfor Area for the period April – May 2015. This list indicates that units are available in the Nefyn and y Ffôr area that may comply with the applicant's needs and it was considered that the possibility of adapting and using one of the units should be investigated rather than permitting a new unit at a totally unacceptable location. Even if the applicant considered that these units were not suitable, for whatever reason, land had been earmarked in the Nefyn, Pwllheli and y Ffôr area for use as employment sites, where a purpose-built unit could be built for the non-permitted use currently carried out at Hendre Wen.
- 2.10 Originally the application had been submitted to the Planning Committee on 27 February 2015 and members of this Committee voted to approve the application contrary to the officers' recommendation. The reasons for supporting the application are contrary to the officers' clear recommendation and are noted in paragraph 1.1 of this report. For information a copy of the report and plans submitted to the Planning Committee on 27 April 2015 are in Appendix 2 and the report together with the appeal decision in Appendix 1, clearly explain the application's background.
- 2.11 It was recommended that the application should be refused as the development was tantamount to erecting a new industrial building in open countryside and that it was not possible to consider the application as one for the change of use of the existing building. It was noted specifically that the building had not been built in accordance with the plans submitted to the Council in 2009, with a prior consultation for an agricultural building. It is considered that no real justification has been submitted by the applicant to site the garage in open countryside and no special location needs exist for this development that cannot be satisfied in a location or on an existing suitable site or designated for employment/industrial use. It is therefore considered that the proposal is contrary to policies D5, D7, D8 and C1 of the Unitary Development Plan (July 2009).
- 2.12 Due to its colour, openings and finishes the building that has been constructed, stands out as a prominent and industrial feature that does not respect and is not in keeping with its location in open countryside and in a Landscape Protected Area. In addition to this, it is considered that the work undertaken to the access has a detrimental impact on the character and appearance of the area. It is therefore considered that the proposal does not comply with the requirements of policies B10, B22, B25 of the Gwynedd Unitary Development Plan (2009). It is noted that the applicant had referred to an existing agricultural building on an adjacent property to Hendre Wen that was alleged to be more prominent than the building subject to this current application. The committee is informed that there is a condition on this building for it to be

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painted a dark green and the Planning Enforcement Unit are following this matter up since the owner has not conformed with the condition thus far.

3 POLICY CONTEXT

National Planning Guidance

- 3.1 Paragraph 3.1.1 Planning Policy Wales (Edition 7, July 2014) (PPW) clearly states that the planning system is intended to help to protect the amenity and environment of towns, cities and the countryside in the public interest while encouraging and promoting high quality, sustainable development. In line with the presumption in favour of sustainable development, applications for planning permission, or for the renewal of planning permission, should be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise.
- 3.2 Amongst other things paragraph 4.6.3 PPW states that a priority for rural areas is to ensure a thriving and diverse local economy where agriculture-related activities are complemented by sustainable tourism and other forms of employment in a working countryside. Paragraph 4.6.4 states that the countryside is a dynamic and multi-purpose resource. In line with sustainability principles, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological and agricultural value and for its landscape and natural resources. This should be undertaken by balancing the need to conserve these attributes against economic, social and recreational needs of the community.
- 3.3 Paragraph 7.3.1 states that many commercial and light manufacturing activities can be located in rural areas without causing unacceptable disturbance or other adverse effects. Small-scale enterprises have a vital role in promoting healthy economic activity in rural areas, which can contribute to both local and national competitiveness. New businesses in rural areas are essential to sustain and improve rural communities, but developments which only offer short-term economic gain may not be appropriate.
- 3.4 Paragraph 7.3.2 states that while some employment can be created in rural locations by the re-use of existing buildings, new development will be required in many areas. New development sites are likely to be small and should generally be located within or adjacent to defined settlement boundaries. Separate criteria apply to farm diversification and agricultural development. However, some industries may have specific land requirements which cannot be accommodated within settlements. The absence of allocated employment sites should not prevent authorities from accommodating appropriate small-scale rural enterprises in or adjoining small rural settlements.
- 3.5 One of the principal policy guidelines considered here is Technical Advice Note 6 – Planning for Sustainable Rural Communities (July 2010). Paragraph 3.1.1 states that development plans should identify a diverse range of sites available for future employment use. Where possible sites should be located within or adjacent to settlements. Planning authorities should consider the need for a rural employment exception site policy. This may set out the criteria against which planning applications for employment use on the edge of settlements, on sites which are not specifically allocated in the development plan, will be assessed. They should also promote the expansion of established businesses by setting out in the development plan the criteria against which planning applications for employment uses will be assessed. This should include supporting the expansion of businesses that are currently located in the open countryside provided there are no unacceptable impacts on local amenity.
- 3.6 Furthermore, paragraph 3.7.1 of TAN 6 which refers to farm diversification notes that planning authorities should consider the nature and scale of the activity, taking a

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proportionate approach to the availability of public transport and the need to improve the local highway network. In this case, it is considered that the existing business goes beyond a diversification scheme on the farm and the applicant is employed full-time in the business.

Local Planning Policies

- 3.7 The adopted Development Plan is the Gwynedd Unitary Development Plan (July 2009) and the relevant policies are policy B10 (Protection and Enhancing Landscape Conservation Areas), B22 (Building Design), B23 (Amenities), B25 (Building Materials), C1 (Locating New Developments), C4 (Adaptation of Buildings for Re-use), CH33 (Safety on Roads and Streets), D5 (Special Local Needs), D7 (Rural Workshops or Industrial Units/Small Scale Business Outside the Development Boundaries), D8 (Extension of Current Enterprises) and D10 (Conversion of Buildings for Industrial or Business Use).

Visual amenities

- 3.8 Policy B10 protects and enhances Landscape Conservation Areas by ensuring that proposals conform to a series of criteria aimed at avoiding significant damage to recognised features. Amongst these is the impact of the proposed development on the positive features of the landscape and those elements that contribute to the character of the unique local landscape along with the location, design and materials of the proposed development and its ability to integrate with the landscape. Any economic and social benefit stemming from the proposed development will be measured against these criteria. All developments will have to be designed and landscaped to a good standard, ensuring that appropriate landscape elements that function as either mitigation measures or are important to ensure integration are included. Consideration will be given to the information provided by the LANDMAP information system about the character and quality of the landscape in each area. As previously stated, LANDMAP has categorised the landscape as having a medium to high general sensitivity.

Design and Building Materials

- 3.9 Policies B22 and B25 involve the design of buildings and their building materials. Policy B22 promotes good building design by ensuring that proposals conform to a series of criteria by aiming to safeguard the recognised features and character of the landscape and the local environment and Policy B25 safeguards the visual character by ensuring that building materials are of a high standard and in keeping with the character and appearance of the local area. The design of the existing building never reflected the design of the agricultural building approved under the prior approval system, and it is considered that the design is not suitable or acceptable for such a prominent location in open countryside. It is an industrial design that is more in keeping with an industrial estate or an employment site. Nevertheless, it is understood that it is proposed to cover the external walls with steel profile sheeting in a dark green colour BS 12 C39, in an effort to reduce the unacceptable impact on the landscape and the area's visual amenities contrary to policies B22 and B25.
- 3.10 Policy B23 safeguards the amenities of the local neighbourhood by ensuring that proposals must conform to a series of criteria aiming to safeguard the recognised features and amenities of the local area. No residents live nearby to the business and therefore the proposal is unlikely to be contrary to Policy B23.

Land Use and Effective Building

- 3.11 Policy C1 states that land within the development boundaries of towns and villages will be the main focus for new developments and that new supplementary buildings, structures and facilities will be refused in the countryside unless the development is approved by another

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policy in the Plan. An agricultural building was approved to be built in 2009, however it was not an agriculturally designed building that was built on site.

- 3.12 Policy C4 states that proposals to adapt buildings for reuse rather than demolish them will be approved provided they conform to specific criteria regarding the suitability of the building, visual considerations, design and the effect on the vitality of neighbouring towns and villages. However, it is noted that the building was erected as a commercial garage from the start and it has not been adapted from agricultural use at all. This is the view taken by the Inspector when he dealt with the appeals against the planning refusal and the enforcement notice, and it is considered that this view is correct in terms of planning law.

Road Considerations

- 3.13 Policy CH33 states that development proposals will be approved if they conform to specific criteria involving the vehicular access, the quality of the existing roads and traffic calming measures. Amongst these is that provision will be made for vehicular access to the site which is safe and in keeping with the local surroundings. It has been previously stated in this report that the Council's Transportation and Street Care Service consider that the improvements to the access to the second class county highway (B4415) is acceptable in terms of road safety. However, the work in terms of impact is not minor and what needs to be done to achieve visibility has a detrimental impact on the character and appearance of the area which is contrary to policy B10 that deals with safeguarding and enhancing landscape conservation areas.

Sustainable Economy Considerations

- 3.14 Policy D5 states that in exceptional cases, proposals to locate an industrial or business development on sites that have not been designated or safeguarded for business/industry will be permitted provided the proposed development has genuine 'special location needs' which cannot be met on an existing designated High Quality Employment or Industrial Site. In such cases genuine justification is required for a new site for industry or the business in question. Therefore, it has to be demonstrated that the existing available sites have been fully considered and the reasons why they are not suitable for the application as a result of the special location needs of the development. Special location needs is defined as businesses and industries which need to be located close to the source of raw materials (e.g. wood processing works) or that require a constant supply of natural resources for their activities (e.g. water from a river or from the sea). In this context it is quite obvious that no special location needs exist in this case, and this was confirmed by the Inspector who determined the appeals against the previous planning refusal and the enforcement notice. Consequently, and specifically due to the clear guidance given by the Inspector on this issue, it is considered that the application is contrary to Policy D5 of the Gwynedd Unitary Development Plan as there is no need for the business to be located close to the source of raw materials, and no constant supply of natural resources are required.
- 3.15 Policy D7 states that proposals for workshops or small scale industrial/business units outside development boundaries will be permitted provided it can be shown that the proposed site is the most suitable location to fulfil that need and that the existing building is used or, in exceptions where there are no existing suitable buildings available, that the site is physically related to an existing development boundary, adjoins an existing group of buildings or is a previously developed site; that the scale, type and design of the development is appropriate for the building or site and the immediate surroundings and is compatible with other existing nearby uses; that the proposal includes adequate new boundary treatment and sensitive landscape measures to alleviate the visual impact of the proposed development; and that a new dwelling is not necessary to serve the development. The aim of the policy is to permit small scale developments that are in keeping with rural areas, however, the explanation of the

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policy states clearly that the Local Planning Authority will need to consider applications to convert buildings that are permitted under agricultural use carefully in order to prevent the misuse of permitted planning development rights.

- 3.16 Considering the building's planning background and having assessed the application against the criteria in Policy D7, it is considered that the development does not meet with the relevant criteria and therefore is totally contrary to policy D7 of the Gwynedd Unitary Development Plan.
- 3.17 Lastly, Policy D8 states that proposals involving the expansion/extension/intensification of existing industrial and business or other enterprises will be approved provided that the proposal does not involve an existing use which is already causing significant harm to the surrounding area and /or existing nearby uses; that the proposal is sited within or adjoining the existing development; that the proposal is ancillary to the existing operation; that the scale of the existing development together with the proposal will not cause significant harm to amenity, the environment, and the local highway network; and that the proposal includes adequate new boundary treatment and sensitive landscape measures to alleviate the visual impact on the surrounding area. Existing enterprises play an important role in the local economy and can add to the viability of existing centres and villages. The aim of this policy is to facilitate their future development. The Council has already given consent to a similar business at Gallt y Beren, which is in a less prominent location than the site of the existing application. The current application does not comply with Policy D8 as it is an attempt to establish a new business on an alternative site, and therefore does not meet the relevant criteria.
- 3.18 It is noted that the Planning Committee submitted four reasons for considering to approve the application, contrary to the officers' recommendation. Consideration has already been given to Policy D7 in paragraph 3.15 and 3.16 above. It should also be noted that the applicant submitted information to the appeal that placed the geographical location of his customers in Pen Llŷn, the applicant noted that a number of his customers lived in locations that appeared to be closer to similar businesses, especially those customers who live in the areas of Pwllheli, Llanbedrog, y Ffôr, Ederm, Nefyn, Abersoch and Aberdaron. A simple search of the website indicates that there are at least 9 MOT stations in Pen Llŷn within the catchment area of the business, therefore it is difficult to justify that a geographic need exists, or that there is no similar business within a convenient distance to the site. In addition, the application form states that only 1 full-time post and 1 part-time post have been created in association to the business when the application was submitted to the Council, however it was proposed to create 3 full-time posts and 3 part-time posts if the application was successful. Notwithstanding this statement there is no certainty that this will occur and the Local Planning Authority would have no control over this. It appears that the 1 full-time post and the 1 part-time post associated with the business currently are not much different to the number of posts linked to the work at Gallt y Beren, and prior to moving the business to this building at Hendre Wen, therefore it is considered that not much weight can be placed on any additional economic benefit that exists or may exist by establishing a business at Hendre Wen. Neither would such considerations overcome the significant and fundamental concerns the officers have, and confirmed in appeal, regarding the principle of establishing a new business of this type on a site in open countryside contrary to relevant local and national policies.
- 3.19 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 2.1.2 of Planning Policy Wales emphasise that planning decisions should be in accordance with the Development Plan, unless material planning considerations indicate otherwise. Conversely, applications that are not in accordance with relevant policies in the plan should not be allowed unless material considerations justify the grant of planning permission. The proposal is contrary to the guidance given in national and local policies as outlined above, and it is evident when considering the local planning policies that the development does not

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comply with the vast majority of the relevant policies. It is considered that no genuine justification has been proven in this case to justify an exception to the relevant policies that deal with the establishment of businesses in prominent locations in open countryside.

- 3.20 In addition to this, the recent appeal decisions that deal with the same development are an important material consideration and give a clear decision as well as planning reasons to refuse the application. Since this appeal decision is very relevant to this case and is also very recent, significant weight needs to be given to the decision made by the Inspector. To this end, it would be very difficult for the Committee to justify going against the appeal decision without causing significant risks to the Council itself.

4 **RISKS TO THE COUNCIL OF APPROVING**

- 4.1 As has been outlined above, approving the application would undermine policies on a national and local level in terms of establishing new businesses in prominent locations in open countryside.
- 4.2 Approving the application would create inconsistency in terms of implementing planning policies in reaching decisions on applications regarding of this type of new development in the countryside and would undermine relevant local and national policies. It is quite clear that such businesses should be located in appropriate sites within or on the outskirts of towns and villages, and no special location needs exist in this case to permit retaining the building and the business on a site in open countryside that is so prominent in the landscape.
- 4.3 All relevant planning considerations, including national planning guidance and local planning policy as well as the decision of the recent appeal, have already received full consideration when determining the previous application. These matters were re-considered during the appeal against the planning refusal and furthermore when the appeal against the enforcement notice was considered. The relevant planning matters have been considered three times already before the submission of the application to Committee. Consequently, there is a risk that the application may be called in by the Welsh Government for determination. As well as the risk of individual applications being called in, the Welsh Government has powers to intervene formally in the way the Council provides the Planning Service. This may be the biggest possible risk to the Council in the end, and this would totally or partly remove the right to determine planning applications from the Council.
- 4.4 There is also a risk that granting the current application would create a dangerous precedent for other similar developments on open and sensitive sites in the countryside, contrary to the Council's planning policies, as well as to encourage misuse of the planning system to ensure permission for locating similar developments on totally unacceptable sites. It is considered that there is no justification of special location needs in this case.
- 4.5 A risk of a complaint of maladministration to the Ombudsman.

5 **OPTIONS TO THE COMMITTEE**

- 5.1 The options open to the Committee in determining the application include the following. The risks to the Council noted in section 4 of this report are relevant to the option for approving the application:
- i. Refuse the application in accordance with the recommendation. (There will be an opportunity for the applicant to submit an appeal to the Planning Inspectorate in accordance with the standard procedure, however it is noted that the Planning Inspectorate have already discussed the planning matters of this proposals on two occasions);

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- ii. Refuse the application in accordance with the recommendation and to suggest that the applicant discusses the possibilities with the Planning Service in relation to the site at Gallt y Beren and other suitable alternative sites;
- iii. To approve the application as submitted with a relevant condition concerning landscaping, roads and covering the building with dark green coloured steel profile sheeting.

6. **RECOMMENDATION**

6.1 To refuse in line with the recommendation in the report (Appendix 2) for the following reasons, which also reflect the appeal decision:

1. It is considered that the proposal is tantamount to erecting a new industrial building in the countryside and it is not possible to consider this proposal as a change of use of an existing building. There is no justification for locating the development in open countryside and no special location needs exist for it. Therefore, it is considered that the proposal is contrary to policies D5, D7, D8 and C1 of the Gwynedd Unitary Development Plan.
2. The building that has been erected due to its colour, openings and finishes stands out as a prominent industrial feature that does not respect or is in keeping with its location in open countryside and designated as a Landscape Conservation Area. In addition, it is considered that work to the access has a detrimental impact on the area's character and appearance. It is therefore considered that the proposal does not comply with the requirements of policies B10, B22, B25 of the Gwynedd Unitary Development Plan.

7. **APPENDICES**

- 7.1 Appendix 1 – Copy of a letter of the appeals decisions numbers APP/Q6810/C/13/2203352 and APP/Q6810/A/13/2202625 dated 2 May 2014.
- 7.2 Appendix 2 – A copy of the report and the plans submitted to the Planning Committee on 27 April 2015.