

CARLISLE CITY COUNCIL

A7

Report to:- **Development Control Committee**

Date of Meeting:- 14 June 2002

Agenda Item No:- EN.065/02

Public

Operational

Delegated: Yes

Accompanying Comments and Statements

Environmental Impact Statement:

Required

Included

No

No

Corporate Management Team Comments:

No

No

City Treasurers Comments:

Yes

Yes

City Solicitor & Secretary Comments:

Yes

Yes

Head of Personnel Services Comments:

No

No

Title:-

**LONDON ROAD-BENDALLS SITE (01/0201) BULKY
GOODS RETAIL STORE UPDATE REPORT**

Report of:-

Director of Environment and Development

Report reference:-

EN.065/02

Summary:-

This Report provides an opportunity for Members to consider correspondence received from Coralsands Ltd's Planning Agent (Phoenix Architects) in connection with the above application and also seeks approval for an amendment to draft condition 7(i).

Recommendation:-

It is recommended that:

- 1) the content of this report is noted and the decision of the Planning and Land Use Sub-Committee of the 24 August 2001 is reaffirmed;
- 2) the decision of the Development Control Committee (Special Meeting) of the 1 March 2002 is reaffirmed; and
- 3) Draft Condition 7(i) be amended as detailed in paragraph 3.2.

Mike Battersby

Director of Environment & Development

Contact Officer:

Alan Eales

Ext: 7170

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Applications 01/0201, 01/1046 and 01/1124, PPG's 4, 6 & 13, The Cumbria and Lake District Joint Structure Plan, Carlisle District Local Plan and Reports EN.025/02 & EN.153/01

1.0 INTRODUCTION

- 1.1 The purpose of this Report is to provide an update for Members following consideration of Report EN.025/02 at the Development Control Committee on the 1 March 2002 and to give consideration to an amendment to draft condition 7(i).
- 1.2 The Committee resolved after consideration of the Report that:
 - “(i) the contents of Report EN.025/02 be noted and considered during consideration of Planning Application 01/1046.**
 - “(ii) The Application 01/1046 be refused for the reasons stated in the schedule of decisions attaching to these minutes.”**
- 1.3 As Members will be aware, Application 01/1046 related to an application by Consolidated Property Northstar Ltd for permission to erect a DIY/bulky goods non-food retail store of 9,290 sq. m together with an 1858 sq. m building material area and 2,323 garden centre. The decision of the Development Control Committee was to grant permission in relation to the alternative Bendalls application subject to a Section 106 Agreement ensuring that the Bendalls Engineering business, currently situated on the site in question, relocated to an alternative site within the Carlisle District.
- 1.4 Since the Committee decision on the 1 March 2002 further work has been undertaken with regard to the preparation of the Section 106 Agreement.
- 1.5 At the Meeting on 1 March 2002, Members will recall that they considered another site at London Road, which was promoted by Coralsands Ltd. As stated, Members determined that the Bendalls site was the preferred option.
- 1.6 The City Solicitor has been involved with the writing of the Report and his comments have been included in the text.

2.0 ADDITIONAL INFORMATION FROM CORALSANDS

- 2.1 Following the decision of the Committee on the 1 March 2002 there has been further correspondence between Coralsands and the City Council. This has included a complaint to the Ombudsman together with most recently a letter from Phoenix Architects dated 1 May 2002, which is appended at Appendix 1.
- 2.2 The letter reiterates many of the points raised by Mr Kelsall at the Development Control Committee on the 1 March 2002, but also introduces in the fourth paragraph additional concerns about the climate surrounding the Section 106 Agreement itself.
- 2.3 The letter maintains that the decision of the Planning Committee on the 24 August 2002 hinged upon an argument that there were legal precedents that allowed exceptions to Planning Policy in PPG 6, Cumbria Structure Plan Policies 34 to 36 and Local Plan Policy EM2 which would otherwise disallow a displacement of employment land in favour of retail development. The letter continues by examining in some detail the background and the arguments put forward during consideration of the proposals. The letter continues by suggesting that this argument was based on case law established in *R – v - Kingston upon Hull City Council, ex parte Kingswood Development Company Limited* which, upon examination, according to Phoenix, appears inappropriate and itself now questionable.
- 2.4 Report EN.153/01 did not seek to draw comparisons between the above case and the Bendalls Site. The Report stated in paragraph 2.18 that **“relocation financed from the redevelopment of a site that would result in greater efficiency or expansion is a material planning consideration”**. As such it can be weighed against Section 54A of the Town & Country Planning Act 1990 which states that applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 2.5 Policy EM2 of the Carlisle District Local Plan seeks to protect existing employment land for employment purposes. The Policy recognises possible exceptions to this general aim and in paragraph 5.34 states that **“However, firms in these areas may occupy sites and premises which are not suited to modern day requirements and offer little opportunity for expansion.”** Paragraph 5.36 states that: **“If the alternative proposed use is retail, this will only be acceptable if the**

site is in a location where retail development would be acceptable under other policies of the Plan."

- 2.6 The whole of Section 2 of Report En.153/01 examined the London Road (Bendalls) site and Currock Road proposals against national, Structure Plan and Local Plan policy. Report EN.025/02 extended the consideration of sites against policy to include the Coralsands site (London Road west)
- 2.7 On the second page (paragraph 3) of his letter Mr Kelsall outlines his concerns in the light of his examination of the Carrs Milling Industries Limited published Report on the Accounts for 2001. From the examination of the Report and Accounts Mr Kelsall draws certain conclusions cumulating in:

"So, far from the picture painted by the Bendalls Planning Application written statement, this is not a company bursting at the seams and fettered by physical constraints, it is a company seeking to turn over assets to bail out an ailing operation. We do not see precedent for the planning system being used in this way and such motives are not material planning considerations.

Furthermore, we have heard from a reliable source at the top of Carrs Milling Group, and contrary to written denials, rebuffing similar accusations made by Northstar in March, that should the Bendalls move to Kingstown take place, Keytour would be slided down and amalgamated within the same site. This again, if true, is surely contrary to the Employment Policies previously mentioned and an abuse of Planning Precedent cited to justify support of the Bendalls scheme."

- 2.8 It was considered that the issues raised by the letter were of sufficient weight to warrant further investigation and Report back to Committee. Extracts from the Phoenix letter were forwarded to the Planning Consultants acting on behalf of Bendalls. A response from Carrs Milling Industries Plc dated 27 May 2002 has been received and is attached at Appendix 2. As the Appendix to the letter contains commercially sensitive material it will be distributed to the Committee in Part B and collected after the Committee's consideration of the Report.

- 2.9 The letter, as will be seen, calls into serious question some of the conclusions that Phoenix draw from the Company Accounts for 2001. In particular that the Coralsands statement that the Bendalls business is **"at a point of liquidation"** has no foundation. Carrs Milling Industries Limited further argue that Phoenix's letter gives a biased and incomplete view of the company's financial position.
- 2.10 From the letter, the Company maintain that there will be considerable benefits for Bendalls and the retention of skilled employment in the manufacturing sector in Carlisle in the relocation of their business to Kingmoor Park.

City Treasurer's Comments

"I refer to the letter dated 27 May 2002 from Carrs Milling Industries Plc, addressed to the Council's Chief Development Control Officer. You have asked for my observation on the statements made by the Group Finance Director in relation to the difficult trading background experienced by Bendalls (a trading division of Carrs Engineering Limited, which is itself a subsidiary within the Carrs Milling Group) over the past 2 years, and on the Company's strategy to diversify into new markets utilising the existing skill base of its workforce.

The letter summarises the historic dependence of Bendalls on the nuclear, oil and petro-chemical industries and the recent impact of the strong pound, low oil prices, and the retractions in these industries, all of which have significantly dented the turnover and profitability of the Company and caused trading losses in each of the 2 year to 2000 and 2001.

The Company's response has been to seek to develop new markets on a long-term basis, including the development of strategic partnerships and which have the backing and support of the parent company. The confidential information provided on the implementation of the strategy demonstrates the initial progress although as the letter makes clear, the strategy is predicated on a longer time frame.

The reported trading background appears to be entirely in line with the known circumstances of much of the high specification engineering industry, whilst the development strategy appears logical and compatible with the stated aim of building upon the core skills of the workforce and the asset base.

Carrs Milling Industries Plc is a public quoted company and its directors have special responsibility for the accuracy of information given under their hand. Whilst success can never be guaranteed, in my view, you are entitled to rely upon the letter as accurately representing the position of the Company and its strategic response to the difficult trading background which it has experienced over recent years. It is particularly relevant that the strategy demonstrates the commitment and support of the parent company."

- 2.11 As stated, the Phoenix letter raised matters of sufficient concern for the matter to be investigated further. However, from the evidence before the Committee from Coralsands, Carrs Milling Industries plc and the City Treasurer it is considered that there is no reason to alter the previous decisions of the Planning and Land Use Sub and Development Control Committees of the 24 August 2001 and the 1 March 2002 respectively.

3.0 PROPOSED AMENDMENT TO DRAFT CONDITION 7(i)

- 3.1 The Draft Decision Notice contains Condition 7, which states:

" The trading times and delivery arrangements for the proposed store shall be as follows:

- i) the proposed store shall trade only between 0800 and 2100 hours; and**
- ii) all service deliveries to the proposed store shall take place between 0700 and 1800 hours."**

- 3.2 As the store is also catering for the building trade the applicant's Agent has requested that Condition 7(i) be amended to read:

- “i) the proposed store shall trade only between 0730 and 2100 hours; and”

This amendment will allow the store to be open during similar hours as other trade suppliers.

- 3.3 This amendment is considered acceptable and is within the times during which service deliveries can be made within Condition 7(ii).

4.0 RECOMMENDATION

- 4.1 It is recommended that:

- 4) the content of this report is noted and the decision of the Planning and Land Use Sub-Committee of the 24 August 2001 is reaffirmed;
- 5) the decision of the Development Control Committee (Special Meeting) of the 1 March 2002 is reaffirmed; and
- 6) Draft Condition 7(i) be amended as detailed in paragraph 3.2.

Mike Battersby
Director of Environment & Development

Contact Officer: Alan Eales

Ext: 7170

To the Chairman and Members of the
Development Control Committee

EN.065/02

Appendix 1 – Letter from Coralsands dated 1 May 2002

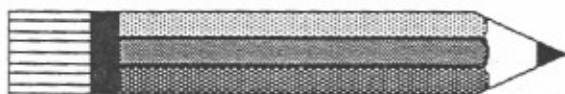
Phoenix

28 Abbey Street, Carlisle, Cumbria, CA3 8TX

Tel: 01228 539537

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ARCHITECTS



Mr J M Egan LLB
City Solicitor & Secretary
Carlisle City Council
CARLISLE
CA3 8QG

JLK/PC/PA444
Your ref. MDL/SDC
1 May 2002

Dear Sir

Proposal: Erection of Non-Food (Bulky Goods) Retail Store and Associated Garden Centre, Car Parking and Access

Location: L/A West Side of London Road, Carlisle

Appn No: 01/1124

I am conscious, from your last response of 23 April, that there is a risk of a loop developing in correspondence, stagnating progress. I will attempt to be concise about matters previously discussed, but which remain relevant, whilst expanding our queries and concerns which may change your current position.

In our opinion the errors that were made at the Planning Committee of 24 August remain uncorrected and fuel our client's reluctance to move forward without the safeguard of a suitable undertaking from the Authority.

It remains our client's view that the company he represents is hamstrung to move forwards without incurring questionable costs in producing additional information, as you, in representing the Authority, are refusing to agree to postpone the signing of the Section 106 Agreement with a competing site at Bendalls Ltd to allow such information to be heard. Our client is perfectly willing to supply this information providing it is (a) proportionate to the information developers for Bendalls were asked to supply, and (b) it is considered and heard at Committee as a "live" application i.e. capable of being approved.

Heaped upon the above concerns is the climate surrounding the Section 106 Agreement itself. The decision of the planning committee of 24th August 2001 hinged upon an argument that there were legal precedents that allowed exception to contrary National Policy in PPG6, Cumbria Structure Plan Policy 34 - 36, and Local Plan Policy EM2 policy which would otherwise disallow a displacement of employment land in favour of retail development. This argument was based on case law established in R -v- Kingston upon Hull City Council *ex parte* Kingswood Development Company Limited which, upon examination, appears inappropriate and itself now questionable.

The case commentary describes a Company, Bericap UK Ltd., which was fettered from commercial expansion by physical constraints at its Emmerdale site. Mr George Bartlett QC held that a relocation to another site permitting suitable expansion was a material consideration in planning as it met the objectives of the development plan by safeguarding jobs. It followed that the self financing of the relocation was, therefore, also a material consideration.



As far as we are aware, the Bendalls submission was not actually proposing expansion. The supporting letter by Carrs Milling Industries plc, the Parent Group Finance Director, Ron Wood, does not indicate positive intent to expand, it simply suggests that it might be convenient if extra land were available "in the event of the economy improving".

I find this comment rather hollow if the legal precedent is to apply - Bericap had apparently presented strong justification showing that its development was constrained by the physical size of their site - this is not seen in the current Bendalls situation.

Carrs Milling published Report and Accounts 2001 show their engineering sector, Carrs Engineering Ltd, to be making an annual operating pre-tax loss of £314,000 in 2001 following a loss of £150,000 for the year 2000. This division is made up principally of the companies Bendalls, supplying high integrity welding for the oil, gas & petrochemical sectors; Keytor, Mechanical and Electrical Engineering and R Hind motor body building/accident repair. Chris Holmes, the Chief Executive of Carrs Milling, on page 6 of the Annual Report, reports R Hind making progress during the year, (believed to be in the order of £115,000 pre tax profit), but Keytor suffering from decline in feed & flour mill construction and Bendalls feeling the adverse effects of a strong pound and intense competition.

So, Bendalls and Keytor are currently loss-making concerns currently in excess of £314k due to the supporting effect of R Hind within the sector. This is further underlined by a 6 monthly interim report published on 30 April 2002 which states "Our engineering division showed no significant improvement". Add to this responsibilities to the Group for interest and redundancy payments, annual losses rise to over £500,000. So, far from the picture painted by the Bendalls Planning Application written statement, this is not a company bursting at the seams and fettered by physical constraints, it is a company seeking to turn over assets to bail out an ailing operation. We do not see precedent for the planning system being used in this way and such motives are not material planning considerations.

Furthermore, we have heard from a reliable source at the top of the Carrs Milling Group, and contrary to written denials, rebuffing similar accusations made by Northstar in March, that should the Bendalls move to Kingstown take place, Keytor would be slimmed down and amalgamated within the same site. This again, if true, is surely contrary to the employment policies previously mentioned and an abuse of the planning precedent cited to justify support for the Bendalls scheme.

The legal precedent cited in support of the Bendalls site is also of interest for the lesson it provides. Bericap (UK) Ltd had 100 workers at its original site (this compares with 80 stated to work at Bendalls) it had argued that it would be able to expand its workforce by a further 100 workers if allowed to move to its new site. In fact, this was not to be the case - the new plant was fitted out with high levels of mechanisation and, we understand, employment has since dropped to below a dozen workers from an expectation of 200. So planning arguments used to safeguard jobs have had quite the

reverse effect and one doubts that a S106 Agreement can force minimum limits of employment.

I put it to you that there are material considerations that have arisen since the decision of 24 August 2001 and not considered under the remit of the meeting of 1 March 2002, that justifies re-examination in front of Council members. We believe that such a course would be compatible with the Authority's Scheme of Delegation and good planning practice and that it is essential such an examination takes place before any decision is made to sign the S106 Agreement currently in preparation. These material considerations include some issues referred to in earlier correspondence as well as the above, namely:

- 1] The case law precedent vested in *R -v- Kingston upon Hull City Council ex parte Kingswood Development Co. Ltd* is based upon an economic argument that jobs can be saved or increased by relocation of employment allowing expansion. What members were not aware of on 24 August was:
 - i] Bendalls were not operating at capacity but, in fact, running year on year at a significant loss due to factors other than space and location.
 - ii] The employment relocations in the legal precedent actually financed mechanisation and did not protect jobs as had been argued and a massive nett loss of employment resulted.
 - iii] Bendalls, as part of the Carrs Milling Group, are included in a loss-making engineering division which include other local companies. The temptation to use the finance raised to support and centralise the Group Division generally or even liquidate and re-build will be strong and potentially unenforceable under planning conditions or a S106 Agreement.
- 2] A planning submission by Coralsands Ltd has been made but not yet considered by Council Members. This application argues its site has:
 - i] A better sequential profile overall than Bendalls.
 - ii] It opens up a significant tract of brown land. to remediation.
 - iii] It offers the opportunity to trigger significant collateral city wide benefits in leisure, employment and a PPG13 friendly rail freight to road terminal.
 - iv] There has been a significant offer of planning gain in the sum of £2m for remediating the St Ninians landfill tip to clean the outflow to the River Petteril that runs past the site.
- 3] The Fairhurst Report requires re-evaluating in the light of changes in bus timetables and the other inaccuracies noted by members at the meeting of 1st March.

- 4] When the Development Control Committee of 24 August were "minded to approve" the Bendalls site the safeguards in respect of Planning Conditions or S106 Agreement was left open for Officers to research. For transparency and in the light of the above and the fact that the S106 will not otherwise be held open for public scrutiny before being signed it is considered essential that it should return to open committee.
- 5] The figures referred to earlier show that Bendalls Ltd is in a serious loss making condition. If it were not supported by a larger group it could be expected to be at the point of liquidation. Clearly the public interests for safeguarding jobs by allowing the planning policy exception would not be protected by an agreement with Bendalls Ltd, whose only strength would be in windfall funds raised by the sale for retail use. Similarly any agreement with Carrs Engineering Ltd would have marginally less risk. The required security that any agreement with the City could be met and sustained would have to be with the main Carrs Milling Industries PLC group. These issues were certainly not before members on 24 August 2001 and we believe they should now be brought to their attention.

We are approaching a period of nearly 9 months since the Council were "minded" to approve the Bendalls site. I believe that there has been sufficient material change in knowledge and circumstances to justify a return to Committee for the Bendalls site and for it to be tested alongside the Coralsands proposals. Your agreement to follow this course will immediately remove the obstacle delaying determination through lack of requested information and finally establish which site is the most appropriate to host this development.

Yours faithfully



John L Kelsall
Dip Arch RIBA

c.c. Mr P Stybelski Chief Executive
Mr A Eales Head of Planning
Mr G Davidson Coralsands

To the Chairman and Members of the
Development Control Committee

EN.065/02

**Appendix 2 – Letter from Carrs Milling Industries PLC dated 27 May
2002**



CARR'S
MILLING INDUSTRIES PLC

27 May 2002

Mr A M Taylor
Chief Development Control Officer
Carlisle City Council
Department of Environment & Development
Planning Services Division
The Civic Centre
CARLISLE
CA3 8QG

01/0201	
28 MAY 2002	
RECORDED	
SCANNED	
PASSED TO	AT
ACTION	

Dear Mr Taylor

Proposal : Erection of Non-Food DIY Retail Store, Car Parking & Access (Outline)

Location : Bendalls Engineering, London Road, Carlisle

Appn No : 01/0201

I refer to your letter addressed to Taylor and Hardy dated 10 May 2002. I wish to address the particular points raised in the letter sent by Coralsands to the City Council of which we have received from yourself selected extracts. It is important to note that the figures stated in the letter from Coralsands for Carrs engineering businesses is the aggregate of four engineering activities and not solely Bendalls.

I comment:

- 1 Coralsands have extracted figures from the Group's Report and Accounts which were announced to The Stock Exchange on 12 November 2001 and recorded an operating loss for our engineering businesses of £314,000 in 2001 and a loss of £150,000 in 2000. The extract of the results state the operating loss at £150,00 which is obviously a typographical error but to an uninformed reader it may appear that the increase in loss is £299,000 year on year which is incorrect. For information, the year to August 2001 included redundancy costs and consequently the underlying trading result year on year is similar albeit at a loss.

The result for Bendalls in 2001 and 2000 was considerably less than the figures quoted above.

- 2 Coralsands determine that the annual losses rise to over £500,000 after recognising interest and redundancy payments. Coralsands do not have factual information on which to base this figure and I can confirm that their estimate of the loss is inaccurate, and the actual figure is lower than £314,000.

- 3 Coralsands state that they have heard from a reliable source that "Keytor would be slimmed down and amalgamated within the same site". As I do not know the identity of the reliable source I am unable to comment if this statement was made, however I can comment that the Board of Carrs is confident in the future prospects of the Engineering division and will seek to maintain and expand the market position of this business. I will support this statement with details later in this letter.
- 4 Coralsands state that if Bendalls Engineering were not supported by a larger group it could be expected to be at a point of liquidation. Bendalls is a division of Carrs Engineering Limited which is a subsidiary undertaking of the Group, Carr's Milling Industries PLC. As at today net current assets of Carrs Engineering Limited are in excess of £1.0m and the shareholders funds are in excess of £4.0m, these figures do not suggest the business is "at a point of liquidation". This statement by Coralsands has no foundation.

Coralsands seem to have focussed in on parts of the accounts that suit their argument and it is necessary to have a fuller appreciation of the causes for the downturn in trade during the recent two years and the management actions taken to enable the reader to have an informed opinion of the current status of the Bendalls engineering business.

Over recent years there has been no shortage of press coverage of the difficult market conditions in which the UK's engineering companies operate. Bendalls were not immune to these adverse conditions and these are reflected in the financial results for this period. Bendalls have been dependent for much of their history on two main markets - Nuclear and the Oil, Gas and Petrochemical industries. In the Oil and Gas market over the last two years the price of oil has been very low (\$12/barrel) which resulted in a dramatic reduction in capital expenditure both in the UK and worldwide by the major oil companies. To maintain core skills and employment Bendalls had no option but to cut its selling prices and try to win limited amounts of work.

The Nuclear Industry which largely centres around BNFL Sellafield has been through turbulent times over the past two years with respect of orders being cancelled from Japan and Germany. Management changes and restructuring resulted in postponement of virtually all capital projects at Sellafield. The cumulative impact of the downturn in both market sectors was to reduce Bendalls turnover from £4-£5m to £2.5m. In addition, the strength of sterling particularly compared to European currencies enabled companies located in mainland Europe to be extremely competitive and there is ample evidence of UK engineering companies losing contracts to overseas companies. The impact of these situations caused the Bendalls result to move from a profitable business to a small loss. Furthermore Bendalls has had to turn down contracts because of the lifting capacity and the space at the London Road site. The move to a new site will eliminate these constraints.

The years preceding 2000 record a different and very favourable performance and one which the Group is proud. As a consequence of the changing and difficult market sector we have sought to expand our business with some of our efforts now beginning to show benefits. We can cite orders won in the market of renewable energy and overseas in Norway and Egypt.

It is worth noting that Bendalls are members of a consortium of manufacturing and design businesses engaged in the development of new technology for large scale generation of clean electricity from tidal streams and ocean currents in the seas. The Phase 1 project will be installed this summer and Bendalls are currently building the tower which is 42 metres in length and will weigh 75 tonnes.

Phase II and III is being largely funded by a UK Utility company. To support the programme of renewable energy and as a further indication of the confidence in the initiative Bendalls parent company Carr's Milling Industries have an equity investment in the development company, Carrs see this development as a long term project. It is believed that this initiative will be one of the most significant developments in clean power generation for many years. It is estimated the technology will take five years to be ready on a commercial basis and Bendalls seek to participate in this exciting development.

The management of Bendalls have explored other new markets with good long term potential which could utilise the current skills in the workforce. The areas targeted are:

- Direct Export (oil, gas and nuclear)
- Water
- General Fabrication

(This strategy was presented to Carlisle City Council in 2000)

Appendix 1 gives a short summary of Bendalls success in moving into new markets. It is emphasised this Appendix is commercially sensitive and is therefore Strictly Confidential.

The latter section of this letter highlights the ability and skills of the people employed in the Bendalls business as well as the difficulties faced by the adverse market conditions. Bendalls business is beginning to see some upturn in their market.

The City Council may not appreciate the skills of the workforce at Bendalls and the continuing need to employ and train younger members of the city population and therefore we enclose brochures which highlight these skills.

The UK let alone Carlisle cannot survive on the wealth created by the service industry, Carlisle needs a solid manufacturing industry which Bendalls has been for several decades and will continue to be.

Matters need to move forward immediately and we look forward to the Council issuing the consent in order that the Carrs Group progress with the relocation of Bendalls thereby substantially aiding our efforts to return our engineering activities to the level of profitability experienced throughout the 1990's.

/.....

Please advise by return when the Council will be in a position to issue the consent.

Yours sincerely



R C Wood
Group Finance Director

encl.