

CITY AND COUNTY OF SWANSEA

NOTICE OF MEETING

You are invited to attend a Meeting of the

DEVELOPMENT MANAGEMENT AND CONTROL COMMITTEE

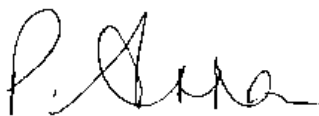
At: Council Chamber, Civic Centre, Swansea.

On: Thursday, 9 October 2014

Time: 5.00 pm

AGENDA

	Page No.
1 Apologies for Absence.	
2 Disclosure of Personal and Prejudicial Interests.	1 - 2
3 Minutes. To approve as a correct record the minutes of the meeting of the Development Management & Control Committee held on 14 August 2014.	3 - 13
4 Planning Application No.2014/0825 - Two Storey Side/Rear extension with Balcony at Llotrog House, Llotrog, Penclawdd. (Referred from Area 2 Development Control Committee held on 26 August 2014)	14 - 25
5 Response to the Consultation Document - Draft Technical Advice Note(TAN) 1: Joint Housing Land Availability Studies.	26 - 40
6 Swansea Bay Tidal Lagoon Examination Progress Report.	41 - 66
7 Implications of the Barkas Case. (For Information) Implications of the Case of R (On the Application of Barkas) (Appellant) -v- North Yorkshire County Council and Another (Respondents) [2014] UKSC31 on Applications to Register Council Owned Land as a Town or Village Green.	67 - 69



Patrick Arran
Head of Legal, Democratic Services & Procurement
2 October 2014

Contact: Democratic Services – 636824

DEVELOPMENT MANAGEMENT & CONTROL COMMITTEE (71)

Councillors:

John C Bayliss	Andrea S Lewis
Peter M Black	David J Lewis
Nicholas S Bradley	Richard D Lewis
June E Burtonshaw	Clive E Lloyd
Mark C Child	Paul Lloyd (Chair)
Bob A Clay	Keith E Marsh
Uta C Clay	Penny M Matthews
Anthony C S Colburn	Paul M Meara
David W Cole	Hazel M Morris
Ann M Cook	John Newbury
Sybil E Crouch	Byron G Owen
Jan P Curtice	Geraint Owens
Nick J Davies	David Phillips
W John F Davies	Cheryl L Philpott
A Mike Day	Jennifer A Raynor
Phil Downing	T Huw Rees
C Ryland Doyle	Ioan M Richard
V Mandy Evans	Christine Richards
William Evans	Neil M Ronconi-Woollard
E Wendy Fitzgerald	Paulette B Smith
Robert Francis-Davies	Robert V Smith
Fiona M Gordon	R June Stanton
Joe A Hale	Rob C Stewart
Jane E C Harris	D Gareth Sullivan
Terry J Hennegan	Gloria J Tanner
Chris A Holley	Mitchell Theaker
Paxton R Hood-Williams	Ceinwen Thomas
Beverly Hopkins	C Miles R W D Thomas
David H Hopkins	Des W W Thomas
Lynda James	Mark Thomas
Yvonne V Jardine	L Graham Thomas
Andrew J Jones	Linda J Tyler-Lloyd
Jeff W Jones	Gordon D Walker
Mary H Jones	Lesley V Walton
Susan M Jones	T Mike White
Erika T Kirchner	

Disclosures of Interest

To receive Disclosures of Interest from Councillors and Officers

Councillors

Councillors Interests are made in accordance with the provisions of the Code of Conduct adopted by the City and County of Swansea. You must disclose orally to the meeting the existence and nature of that interest.

NOTE: You are requested to identify the Agenda Item / Minute No. / Planning Application No. and Subject Matter to which that interest relates and to enter all declared interests on the sheet provided for that purpose at the meeting.

1. If you have a **Personal Interest** as set out in **Paragraph 10** of the Code, you **MAY STAY, SPEAK AND VOTE** unless it is also a Prejudicial Interest.
2. If you have a Personal Interest which is also a **Prejudicial Interest** as set out in **Paragraph 12** of the Code, then subject to point 3 below, you **MUST WITHDRAW** from the meeting (unless you have obtained a dispensation from the Authority's Standards Committee)
3. Where you have a Prejudicial Interest you may attend the meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, **provided** that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. In such a case, you **must withdraw from the meeting immediately after the period for making representations, answering questions, or giving evidence relating to the business has ended**, and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration (**Paragraph 14** of the Code).
4. Where you have agreement from the Monitoring Officer that the information relating to your Personal Interest is **sensitive information**, as set out in **Paragraph 16** of the Code of Conduct, your obligation to disclose such information is replaced with an obligation to disclose the existence of a personal interest and to confirm that the Monitoring Officer has agreed that the nature of such personal interest is sensitive information.
5. If you are relying on a **grant of a dispensation** by the Standards Committee, you must, before the matter is under consideration:
 - i) Disclose orally both the interest concerned and the existence of the dispensation; and
 - ii) Before or immediately after the close of the meeting give written notification to the Authority containing:

- a) Details of the prejudicial interest;
- b) Details of the business to which the prejudicial interest relates;
- c) Details of, and the date on which, the dispensation was granted; and
- d) Your signature

Officers

Financial Interests

1. If an Officer has a financial interest in any matter which arises for decision at any meeting to which the Officer is reporting or at which the Officer is in attendance involving any member of the Council and /or any third party the Officer shall declare an interest in that matter and take no part in the consideration or determination of the matter and shall withdraw from the meeting while that matter is considered. Any such declaration made in a meeting of a constitutional body shall be recorded in the minutes of that meeting. No Officer shall make a report to a meeting for a decision to be made on any matter in which s/he has a financial interest.
2. A "financial interest" is defined as any interest affecting the financial position of the Officer, either to his/her benefit or to his/her detriment. It also includes an interest on the same basis for any member of the Officers family or a close friend and any company firm or business from which an Officer or a member of his/her family receives any remuneration. There is no financial interest for an Officer where a decision on a report affects all of the Officers of the Council or all of the officers in a Department or Service.

CITY AND COUNTY OF SWANSEA

MINUTES OF THE DEVELOPMENT MANAGEMENT AND CONTROL COMMITTEE

HELD AT COUNCIL CHAMBER, CIVIC CENTRE, SWANSEA ON
THURSDAY, 14 AUGUST 2014 AT 5.00 PM

PRESENT: Councillor R Francis-Davies (Chair) Presided

Councillor(s)	Councillor(s)	Councillor(s)
J C Bayliss	T J Hennegan	B G Owen
P M Black	C A Holley	G Owens
A C S Colburn	B Hopkins	D Phillips
A M Cook	L James	C L Philpott
D W Cole	A J Jones	J A Raynor
S E Crouch	J W Jones	T H Rees
J P Curtice	M H Jones	R V Smith
AM Day	S M Jones	D G Sullivan
P Downing	E T Kirchner	G J Tanner
C R Doyle	D J Lewis	C M R W D Thomas
V A Evans	R D Lewis	L G Thomas
W Evans	C E Lloyd	L J Tyler – Lloyd
E W Fitzgerald	P Lloyd	G D Walker
F M Gordon	K E Marsh	L V Walton
J A Hale	P M Matthews	T M White
J E C Harris	H M Morris	

17 **APOLOGIES FOR ABSENCE.**

Apologies for absence were received from N S Bradley, J E Burtonshaw, R A Clay, U C Clay, A C S Colburn, W J F Davies, D H Hopkins, A S Lewis, P M Meara, J Newbury, I M Richard, C Richards, P B Smith, R J Stanton, R C Stewart, M Theaker, and L G Thomas.

18 **DISCLOSURES OF PERSONAL & PREJUDICIAL INTERESTS.**

In accordance with the Code of Conduct adopted by the City and County of Swansea, the following interests were declared:-

Councillor D W Cole – Minute No 20 (Item 4 – Application No 2013/1011) – personal – acted as a conduit between applicant and officer and Minute No 21 (Item 5 – Application No 2014/0306) – personal – know the applicant.

Councillor C A Holley – Minute No 21 (Item 5 – Application No 2014/0306) - personal and prejudicial – I know the applicant and left prior to discussion thereof

and Minute No 24 ((Item 8 – Application No 2013/1815) –personal and prejudicial - had a meeting with developer and left prior to discussion thereof.

Councillor L James – Minute No 22 (Item 6 - Application No 2014/0417) - personal – member of Gower Society and son – in law works for Family Housing.

Councillor S M Jones – Minute No 21 (Item 5 – Application No 2014/0306) - personal – know the applicant.

Councillor M Thomas – Minute No 21 (Item 5 – Application No 2014/0306) – personal – know the applicant.

19 **MINUTES.**

RESOLVED that the minutes of the meeting of the Development Management & Control Committees held on 19 June 2014 and 3 July 2014 be agreed as correct records , subject to D S Lewis in the list of apologies for the meeting on 19 June 2014 being amended to D J Lewis.

20 **PLANNING APPLICATION NO.2013/1011 - SEION CHAPEL, PENTRE ROAD, GROVESEND, SWANSEA.**

The Head of Economic Regeneration & Planning submitted a report to determine the application for the change of use of chapel (Class D1) to residential dwelling (Class C3) with two storey side and two storey rear extensions at Seion Chapel, Pentre Road, Grovesend.

Mr Griffiths (agent) spoke in support of the application.

This application had been reported to the Area 2 Development Control Committee on 29 August 2014. The application was referred to the Development Management and Control Committee with a recommendation that the application be approved contrary to officers recommendation as it was considered that the conversion of the building would enhance the visual amenities of the area.

A plan showing the location site was attached as Appendix A , together with a copy of the report to the Area 2 Development Control Committee at Appendix B. If Members resolved to approve planning permission, contrary to officer's recommendation, conditions were detailed in Appendix C.

RESOLVED that the application **BE APPROVED** contrary to the officers recommendation, subject to the conditions set out in Appendix C on the grounds that the development would provide a reuse of an important local building and would enhance the visual amenities of the area.

21 **PLANNING APPLICATION NO.2014/0306 - LAND TO THE SOUTH OF FFORDD CAE DUKE, LOUGHOR, SWANSEA.**

The Head of Economic Regeneration and Planning submitted a report to determine the application for the construction of a single storey changing room building, one full

size rugby pitch, one training pitch, a 38 space car park and installation of 11 x 15m high floodlighting columns on land to the south of Ffordd Cae Duke, Loughor.

Mr Davies (objector) spoke against this proposal.

The application was reported to Area 2 Development Control Committee on 29 July 2014. The application was referred to the Development Management and Control Committee with a recommendation that planning permission be approved as an acceptable departure from the provisions of the Development Plan.

A plan showing the location of the application site was attached as Appendix A, together with the updated report at Appendix B.

Report updated as follows:-

Page 42 final paragraph "8.5m and 14m" should read "6.5m and 7m".

Letter from the applicants agent as follows:

"I understand that some concern was expressed by some Members ref the roof of the proposed changing rooms. The question as to finish was discussed.

This was a topic in our discussions with your colleague planners at our pre application meetings.

You will be aware that tile roofs require a minimum pitch and this is normally no less than 22 Degrees. If such a roof were required then the size and shape of supporting walls and structures would need to be changed to such an extent that the current application plans would not represent the final design.

In discussions with your colleagues it was felt appropriate to reduce the building impact as much as possible and a lower pitch was decided upon.

Once this decision is made the material to be used as roof cover becomes limited to sheet material. We can of course agree with you the most appropriate colour and style and would be happy to have this conditioned.

We would wish you to be aware that we and your officer did discuss this issue in depth."

Letter of objection from the owner of adjoining land raising concerns regarding the potential for nitrate or other pollutants to emiate from the sports field.

Letter of objection on behalf of Barratt Homes advising that they do not object to the principle of development but have concerns:

Land Ownership

Appropriate notice has not been served on all landowners.

Floodlights

The impact of the proposed floodlights upon the future occupiers of their housing development on adjacent land has not been fully taken into account given the information

submitted in support of the application.

Construction Impacts.

There is no assessment of the implications of the re-grading works on residential amenity

In addition they consider that the material consideration which justify a departure from the development plan have not been fully justified.

Comment: the applicant has advised that appropriate notice has been served and the submitted scheme has been assessed by the Authority's Pollution Control Division who have no objections subject to conditions to control the floodlighting and construction management. Should a statutory nuisance arise from the development the Council has powers to address the matter through Pollution Control legislation. No objections have been raised by NRW regarding pollution issues and Policy issues are addressed within the report.

RESOLVED that the application be approved as a departure from the provisions subject to the conditions detailed in the report to Area 2 Development Control Committee on 29 July 2014, attached as Appendix B of the report.

22 **PLANNING APPLICATION NO.2014/0417 - LAND OFF MONKSLAND ROAD, SCURLAGE, GOWER, SWANSEA.**

The Head of Economic Regeneration and Planning submitted a report to consider the planning application for the construction of 14 no. residential dwellings and associated works on land off Monksland Road, Scurlage.

Mr R Fisher (objector) spoke against the application.

This application was reported to Area 2 Development Control Committee on 29 July 2014. This application was referred to Development Management and Control Committee with a recommendation that planning permission be approved as an acceptable departure from the provisions of the Development Plan subject to conditions and to a S106 Obligation in respect of the provisions of 100% affordable housing which shall be DQR complaint.

A plan showing the location of the application site was attached as Appendix A, together with an updated report attached as Appendix B.

RESOLVED that the application **BE APPROVED** as a Departure from the provisions of the Development Plan subject to the developer entering into a Section 106 Obligation to provide 100% affordable housing units on the site, which shall be DQR compliant and subject to the updated conditions detailed in the report to the Area 2 Development Control Committee on the 29 July 2014 attached as Appendix B.

23 **PLANNING APPLICATION NO.2014/0765 - LAND AT HERON WAY, SWANSEA ENTERPRISE PARK, SWANSEA.**

The Head of Economic Regeneration and Planning submitted a report to consider the application for the construction of retail unit (Class A1) (amendment to planning

permission 2013/1616 granted for the construction of four retail units (Class A3) with associated works) on land at Heron Way, Swansea Enterprise Park, Swansea.

This application was reported to the Area 1 Development Control Committee held on 22 July 2014. This application was referred to the Development Management and Control Committee that the proposal was an acceptable departure from the provisions of the Development Plan and that planning permission should be granted subject to an additional condition requiring the development to be constructed in conjunction with the adjoining units(units 2 – 4) as shown on the application drawings.

A plan showing the location of the application was attached as Appendix A and a copy of the report submitted to Area 1 Development Control Committee was attached as Appendix B.

RESOLVED that the application **Be APPROVED** subject to the conditions detailed in the report to Area 1 Development Control Committee on 22 July 2014 attached as Appendix B together with an additional condition requiring the development to be constructed in conjunction with the adjoining units (units 2 – 4)and subject to the applicant entering into a S106 Planning Obligation to provide a contribution of £25,000 to fund regeneration initiatives within Morriston district centre.

24 **PLANNING APPLICATION 2013/1815 - PARC TAWE, SWANSEA.**

The Head of Economic Regeneration and Planning submitted a report for alterations to the existing retail park comprising demolition of vacant piazza units, kiosks and some retail floorspace (A1/A3 use), substantial demolition of the enclosed walkway, potential demolition of vacant class A3 former pizza restaurant, alterations and refurbishment of building facades, physical enhancements to the existing footbridge and associated ramp, creation of 4 no. kiosks(Class A1/A3), use of units 2A, 2B and 3 for Class A3 purposes, erection of a standalone drive – thru restaurant unit(Class A3), reconfiguration of car parking layout, erection of 3m screen walling; landscaping and public realm works and associated highway works at Parc Tawe (Phase 1) .

Mr R Beresford (applicant) spoke in support of the application . Visuals of the site location were displayed.

This application was reported directly to Development Management and Control Committee because of its strategic significance in accordance with the Council Constitution.

A plan showing the location of the application site was attached as Appendix A the details of the application was attached as Appendix B.

Report updated as follows:-

Description of Development

There is a small discrepancy between the description of development between the covering report and the Appendix B report. For the avoidance of doubt the proposed

development is that set out in Appendix B, which includes the firm proposal to demolish the former pizza restaurant building adjacent to Parc Tawe.

Amendments to conditions

*Condition 14*₁ which relates to the achievement of Building Research Establishment Environmental Assessment Method (BREEAM) 'Very Good' standard for the new Unit 8 is no longer necessary following Welsh Government's withdrawal of national planning policy requirement for sustainable building standards when the changes to Part L (relating to energy efficiency) of the Building Regulations came into force at the end of July.

Condition 22 should refer to the Parc Tawe Link Road rather than Quay Parade and should therefore read:

"The existing at grade pedestrian linkages between the site and the Parc Tawe Link Road shall be widened in accordance with details to be submitted to and approved in writing by the Local Planning prior to beneficial use of the refurbished scheme by any operator not currently located at the retail park.

Reason: To improve pedestrian and cyclist permeability."

An additional Highway's condition is recommended to increase disabled parking to 50 spaces, rather than 39, in accordance with adopted standards.

Additional Representation Received from the Applicant

Further representation has been received from the applicant in response to the publication of this agenda item. The letter submitted by the applicant is split into the following sections:

Retailers to be excluded from Parc Tawe

As set out in the report, the Authority has sent the applicant a list of operators to be named on a Section 106 Agreement to be excluded from Parc Tawe, as an alternative to proposed condition 4 restricting the range of goods. The letter from the applicant confirms agreement of the list other than for Argos, Boots, Lakeland, Gap Outlet/Gap Kids and TK Maxx as the applicant considers these operators could open more than one outlet or seek larger format retail park opportunities and would not be an anchor store for St David's.

In response, the loss of Argos and Boots from the City Centre in preference of a larger retail park opportunity at Parc Tawe is exactly what the controls recommended to Members are intended to avoid. Lakeland and TK Maxx should also be located within the City Centre, whether that is within a new St David's scheme or elsewhere within the core area. The Council's commercial advisors has advised that whilst Gap should be located in core area also, the Gap Outlet/Gap Kids store is a retail park style operation and could therefore be excluded from the list.

The exclusion list sent to the applicant also includes 34 food operators (Class A3). This is not agreed by the applicant on the basis that the proposals seek a limited increase to the A3 floorspace and include a drive thru Pod unit which by its nature could not be accommodated in the City Centre and is more appropriate for a retail park environment. It is the applicant's position that the inclusion of any such food operators within a refurbished Parc Tawe would not negatively impact a redevelopment scheme coming forward at St David's, nor would it negatively impact the retail core and is unnecessary and unjustified.

In response, the advice received from the Council's commercial advisors is that the operators contained within the list are either targets for a St David's scheme or are already located in the City Centre. It is advised that leisure could be an early first phase of St David's so it's important to continue to safeguard the scheme, but also to safeguard the existing leisure offer at Wind Street / Salubrious Place. It is however acknowledged that there isn't any other comparable condition recommended to Members that would restrict the type of Class A3 operator, as is the case with Class A1 retail, therefore a pragmatic approach to agreeing any final list would be reasonable. Officers would enter into such negotiations in good faith and would only seek to name operators that are confirmed targets for the St David's scheme, that are not typically located at retail park locations, and that are unlikely to operate more than one premises in Swansea.

Whilst in principle a compromise could be reached on list of operators a significant issue remains in the length of time the operator restriction should apply. The late letter received from the applicant proposes 5 years on the basis that this would give the St David's development ample opportunity to progress.

In response, the reason why a 12 year exclusion is being sought is based on advice received from the Council's commercial advisers to allow a redevelopment of St David's to come forward (which would need to factor in sufficient time for appropriate marketing, procurement and development agreements to take place as well as construction periods), and to give sufficient time for the scheme to 'bed in', attract a reasonable number of occupiers and thereby allow the city centre core to improve to the point where it can compete with the highly competitive out of town offers. A 5 year period is therefore too short.

The removal of proposed condition 4 would also lead to the loss of a control over food retailing at Parc Tawe, which is currently excluded by means of the extant planning permission for the site.

Therefore as the required alternative controls have not yet been agreed by all parties in respect of the details of a Section 106 Agreement, the recommendation remains as per the restrictive conditions set out in the recommendation to Members.

Amendments to Conditions

The applicant here has requested a number of amendments to the conditions set out in the report to Members.

For Condition 2 it is requested that the maximum Class A1 retail floorspace is increased to 14,000 sqm rather than 12,000 sqm on the basis that this reflects the floorspace on the submitted drawings.

In response, there are some discrepancies in the figures on the submitted plans. It should also be noted the condition refers to gross internal space as opposed to the gross external area figures provided. Furthermore, the applicant's figure includes doubling the size of the mezzanine in the Toys r Us unit which is not considered justified. It is recommended therefore that the maximum threshold figure be increased to 13,000 sqm and relate to gross external floorspace. It is also recommended that the kiosks be excluded, which are small scale (148 sqm in total) and are intended for flexible A1/A3 space.

For Condition 5 it is requested that the maximum Class A3 floorspace is increased to 1,400 sqm rather than 1,300 sqm on the basis that this reflects the floorspace on the submitted drawings.

In response, based on the figures provided the 1,300 sqm is sufficient to include all Class A3 space proposed, however it is recommended that as per Condition 2 above, the flexible use kiosks are removed from this restriction.

For Condition 8, it is the applicant's position that restricting amalgamation of units is unnecessary.

In response the, advice received from the Council's Commercial advisors is that Next, Topshop and New Look have recently agreed to take leases at new units at Friars Walk, Newport at a floorspace precisely akin to that which would be created by the amalgamation of units at Parc Tawe. As such this element of the condition is necessary to protect the retail core area.

Glamorgan Gwent Archaeological Trust has advised against the requested changes to Condition 11, which is drafted in accordance with WG guidelines.

It is requested to remove Conditions 11 and 12, which require enhancements to the Strand elevation and the newly exposed Plantasia elevations. For the reasons set out in the report before Members, these Conditions are considered necessary in the interests of visual amenity.

For Condition 15, the applicant has requested that the reference to public art be deleted on the basis that the proposals make significant improvements to the public realm and additional contributions are unjustified.

In this respect, the public art element of the condition relates to proposals negotiated to date to include a historical floor map within the public realm as the plans submitted are not sufficiently precise/clear. The condition does not seek to require any further public art beyond this element. It is recommended therefore that condition is amended to make this explicit.

The applicant seeks to remove Condition 17, however, given the prominence of the site at the gateway to the City Centre, it is considered necessary to ensure appropriate retention of the landscaping/screening.

Finally, the applicant asserts that the Council is seeking to impose a 'bulky goods' restriction at Parc Tawe and that the proposed condition to limit the range of goods to be sold from units would in effect make the Parc commercially unattractive. These points are not accepted. The proposed condition is not a bulky goods condition. Rather it seeks to restrict the sale of a precise range of goods (including adult fashion clothing and footwear) that are more akin to city centre core retailing, and leaves a wide range of goods that can be sold that do not come under the banner of bulky goods. The Council's commercial advisors have confirmed that retailers are perfectly used to investing in retail park locations that often have restrictive consents, and that the vast majority of Hammerson's target tenants listed in the applicant own retail report would still be achievable. It is considered highly unlikely that the proposed restriction would make the refurbishment unviable because it is not preventing Hammerson from delivering the leasing strategy they set out in their own report.

RESOLVED that the application **BE APPROVED** subject to the conditions set out in the report attached as Appendix B together with the amendments to the conditions (which are set out below) along with the additional conditions:-

- Condition 2 is to be amended as follows:

“Unless otherwise agreed in writing by the Local Planning Authority, the aggregate floorspace occupied by Use Class A1 at Parc Tawe Phase 1, including mezzanines, shall not exceed 13,000 sq metres (gross external area), excluding kiosks 1-4, as defined on submitted Site Plan 9485 P-024.

Reason: In accordance with UDP Policies CC2, CC3 and CC4, to protect the vitality and viability of the city centre retail core and to ensure that the scale of development does not undermine the Council's aspirations for the future comprehensive redevelopment and enhancement of the retail core at St David's/Quadrant.”

- Condition 5 is to be amended as follows:

“Unless otherwise agreed in writing by the Local Planning Authority, the aggregate floorspace occupied by Use Class A3 at Parc Tawe Phase 1, including

mezzanines, shall not exceed 1,300 sq metres (gross external area), excluding kiosks 1 – 4, as defined on submitted Site Plan 9485 P-024.

Reason: In accordance with UDP Policies CC2, CC3 and CC4, to protect the vitality and viability of the city centre retail core and to ensure that the scale of development does not undermine the aspirations of the Local Planning Authority for the future comprehensive redevelopment and enhancement of the retail core at St David's/Quadrant."

- Condition 14 is to be deleted.
- Condition 15 is to be amended as follows:

"Notwithstanding the details shown on any approved plan, a scheme for the hard and soft landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The landscaping scheme shall include a management plan setting out timescales for implementation and details of maintenance and defect replacement.

Any trees or shrubs planted in accordance with this condition which are removed shall be replaced by trees or shrubs of similar size and species to those originally required to be planted. Any trees or shrubs planted in accordance with this condition which die or become seriously diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure that the site is satisfactorily landscaped having regard to its location and the nature of the proposed development, and to accord with Section 197 of the Town and Country Planning Act 1990 and to accord with the City and County Council's policy of encouraging the provision of public art features on appropriate sites."

- Condition 22 is to be amended as follows:

"The existing at grade pedestrian linkages between the site and the Parc Tawe Link Road shall be widened in accordance with details to be submitted to and approved in writing by the Local Planning prior to beneficial use of the refurbished scheme by any operator not currently located at the retail park.

Reason: To improve pedestrian and cyclist permeability."

- New conditions to be added:

"Notwithstanding the details shown on any approved plan, unless otherwise agreed in writing by the Local Planning Authority, disabled parking provision shall be increased to 50 spaces in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of accessibility."

"Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement development, details of a public art enhancement shall be submitted to and approved in writing by the Local Planning Authority, and shall be implemented prior to beneficial use of the refurbished scheme by any operator not currently located at the retail park.

Reason: To accord with the City and County Council's policy of encouraging the provision of public art features on appropriate sites."

25 **REPORT ON PERFORMANCE.**

The Head of Economic Regeneration and Planning submitted a report regarding the performance of the Council's Planning Control Service against its set performance indicators.

The performance for 2011/12, 2012/13 and the targets for 2013/14 were set out in Appendix A. Comparative details for the Area Committees were set out in Appendix B, together with the Development Management Quarterly Survey – Decisions made contrary to officers recommendation was set out in Appendix C.

RESOLVED that this report be noted.

26 **MINUTES OF THE RIGHTS OF WAY SUB COMMITTEE. (FOR INFORMATION)**

RESOLVED that the Minutes of the Rights of Way Sub Committee held on 23 April 2014 and 18 June 2014 **BE NOTED.**

The meeting ended at 6.30p.m.

CHAIR

Agenda Item 4

Report of the Head of Economic Regeneration & Planning

To Development Management & Control Committee – 9th October 2014

Referral of Planning Application Ref: 2014/0825
From Area 2 Development Control Committee on 26th August 2014

LLOTROG HOUSE, LLOTROG, PENCLAWDD, SWANSEA

TWO STOREY SIDE/REAR EXTENSION WITH BALCONY

Purpose:	To determine the planning application for a two storey side/rear extension with balcony.
Policy Framework:	National and Local Planning Policies
Reason for Decision:	Statutory responsibility of the Local Planning Authority
Consultation:	Statutory consultations in accordance with planning regulations as set out in the planning application report contained in Appendix B
Recommendation(s):	Refuse as set out in the report
Report Author:	Ryan Thomas
Finance Officer:	<i>Not applicable</i>
Legal Officer:	<i>Not applicable</i>

1.0 Background

- 1.1 This application was reported to Area 2 Development Control Committee on the 26th August 2014, with the recommendation that planning permission be refused on grounds of principle as the proposal by virtue of its scale and location outside of the curtilage of the existing dwelling represented unjustified development in the countryside which would be detrimental to the character and appearance of the original modest traditional dwelling and the character and appearance of the area. Members did not accept my recommendation but resolved that the application be referred to Development, Management and Control Committee with a recommendation that it be approved subject to conditions on grounds that there would be no detriment to the visual amenities of the area.
- 1.2 A plan showing the location of the application site is attached as Appendix A, a copy of my report to the Area 2 Development Control Committee on the 29th July 2014 is attached as Appendix B and the conditions as recommended by Members are attached as Appendix C.

2.0 Planning History

2.1 A previous application for a two storey side/rear extension with balcony and detached garage (2014/0197) was refused planning permission by this Authority on 19th March 2014 for the following reasons:

1. *The proposed extension, by virtue of its size, design and siting, does not relate to the existing dwelling and by virtue of the nature of the proposals, the existing house would become subservient element of the development. As such, the proposals go beyond the scope of 'extension' works and are considered tantamount to the creation of a new dwelling in the countryside without the requisite justification, contrary to Policies EV1, EV22, EV20 and HC7 of the adopted City & County of Swansea Unitary Development Plan and the guidance contained in 'A Design Guide for Householder Development' and the 'Gower AONB Design Guide' Supplementary Planning Guidance.*
2. *The proposed extension, by virtue of its scale in relation to the existing property, and by virtue of the finishing materials and the detailing of the proposed projecting front gable feature and hanging bay window is considered to result in an overly large incongruous and unacceptable addition to the original property, to the detriment of the original character and appearance of the dwelling and the visual amenities of the area, contrary to the requirements of Policies EV1 and HC7 of the adopted City & County of Swansea Unitary Development Plan 2008 and the guidance contained in the Supplementary Planning Guidance documents 'A Design Guide for Householder Development' (2008) and the 'Gower AONB Design Guide'.*
3. *The proposed garage, by virtue of its height would result in an excessively tall structure with top heavy appearance, which does not relate well to the character of the original dwellinghouse on this site and would be detrimental to the visual amenities of the area. As such, this element of the proposal is contrary to the requirements of Policies EV1, EV22, EV26 and HC7 of the adopted City & County of Swansea Unitary Development Plan 2008 and the guidance contained in the Supplementary Planning Guidance documents 'A Design Guide for Householder Development' and the 'Gower AONB Design Guide'.*

2.2 The current scheme has been amended to omit the proposed garage and revise the internal layout, height and footprint of the extension, together with the detailed design and the scale of the terrace.

3.0 Planning Policy Issues

3.1 A full policy appraisal is provided within the main body of my report at Appendix B.

- 3.2 The existing dwelling is set within a small curtilage and comprises of a modest two storey stone built property of traditional rural scale and character, incorporating a narrow gable width of some 5 metres, a traditional pitched roof with chimneys and an eaves height of some 4.7 metres rising to a maximum height of some 6.7 metres at ridge. Internally the accommodation comprises of 2 bedrooms at first floor level with a further bedroom, lounge, kitchen and bathroom at ground floor linked to an outbuilding at the rear providing a utility room. In total the dwelling has a gross floor space of some 115 sq metres.
- 3.3 The proposed extension, however, represents a significant overwhelming addition to the main dwelling resulting in a property with a gross floor space well in excess of 400 sq metres. The extension itself appears, when viewed from the front elevation, as a second dwelling adjoining the side elevation and incorporating a similar width to that of the main dwelling house but extending to the rear at two storeys for a distance of some 20.6 metres. More than four times the gable width of the parent property.
- 3.4 The original dwelling is constrained within a small garden and this proposal will, it is considered, push development well beyond the limits of the original residential curtilage of the property and capture the surrounding countryside for residential use.
- 3.5 Internally the extended dwelling will be reconfigured with the main entrance provided at first floor level accessed via a driveway, parking and turning facility from an elevated area of open land to the east of the main dwelling. This land is also regard as falling outside of the curtilage of the dwelling and within the countryside in policy terms. Within the extension the main entrance foyer will serve a kitchen and dining area and a lounge leading to a raised terraced area at the rear, together with a utility room, WC and sitting room. A stairwell within the extension will lead to a lower ground floor level (original ground level of the dwelling) and will serve 3 bedrooms, a bathroom, 2 en-suite bathrooms, boiler room, 2 dressing rooms and storage area. Ancillary accommodation will be provided within the original dwelling comprising of a gym at lower ground floor level with a home office at ground floor (original first floor level) and a secondary kitchen and store within the ground floor lean-to.
- 3.6 On this basis the proposed extension, by virtue of its size, design and siting, does not relate to the existing dwelling and would push development and associated residential use outside of the curtilage of the existing dwelling into the surrounding countryside. In addition by virtue of the nature of the proposals, the existing house would become the subservient element of the development. As such, the proposals go beyond the scope of 'extension' works and are considered tantamount to the creation of a new dwelling in the countryside without the requisite justification, contrary to Policies EV1, EV20 EV22 and HC7 of the adopted City and County of Swansea Unitary Development Plan and the guidance contained in 'A Design Guide for Householder Development' and the 'Gower AONB Design Guide' Supplementary Planning Guidance.

3.0 Financial Implications

- 3.1 There are no financial implications associated with this report.

4.0 Legal Implications

4.1 There are no legal implications associated with this report.

5.0 Recommendation

5.1 It is recommended that:

I. The application is refused for the following reason:

The proposal represents an inappropriate and unjustified form of development in the countryside and the extension by virtue of its size, design, use of materials and siting is considered to represent an overwhelming and incongruous addition which would significantly detract from the character and appearance of the existing modest traditional property and the visual amenities of the area and countryside of which it forms a part. The proposal is therefore contrary to the provisions of Policies EV1, EV20 EV22, and HC7 of the adopted City and County of Swansea Unitary Development Plan (2008) and the Supplementary Planning Guidance contained in 'A Design Guide for Householder Development' (2008) and the 'Gower AONB Design Guide (2011)'.

II. Should Members resolve to approve planning permission contrary to my recommendation that it be approved subject to the conditions as detailed at Appendix C.

BACKGROUND PAPERS

Local Government Act 1972 (Section 100) (As Amended)

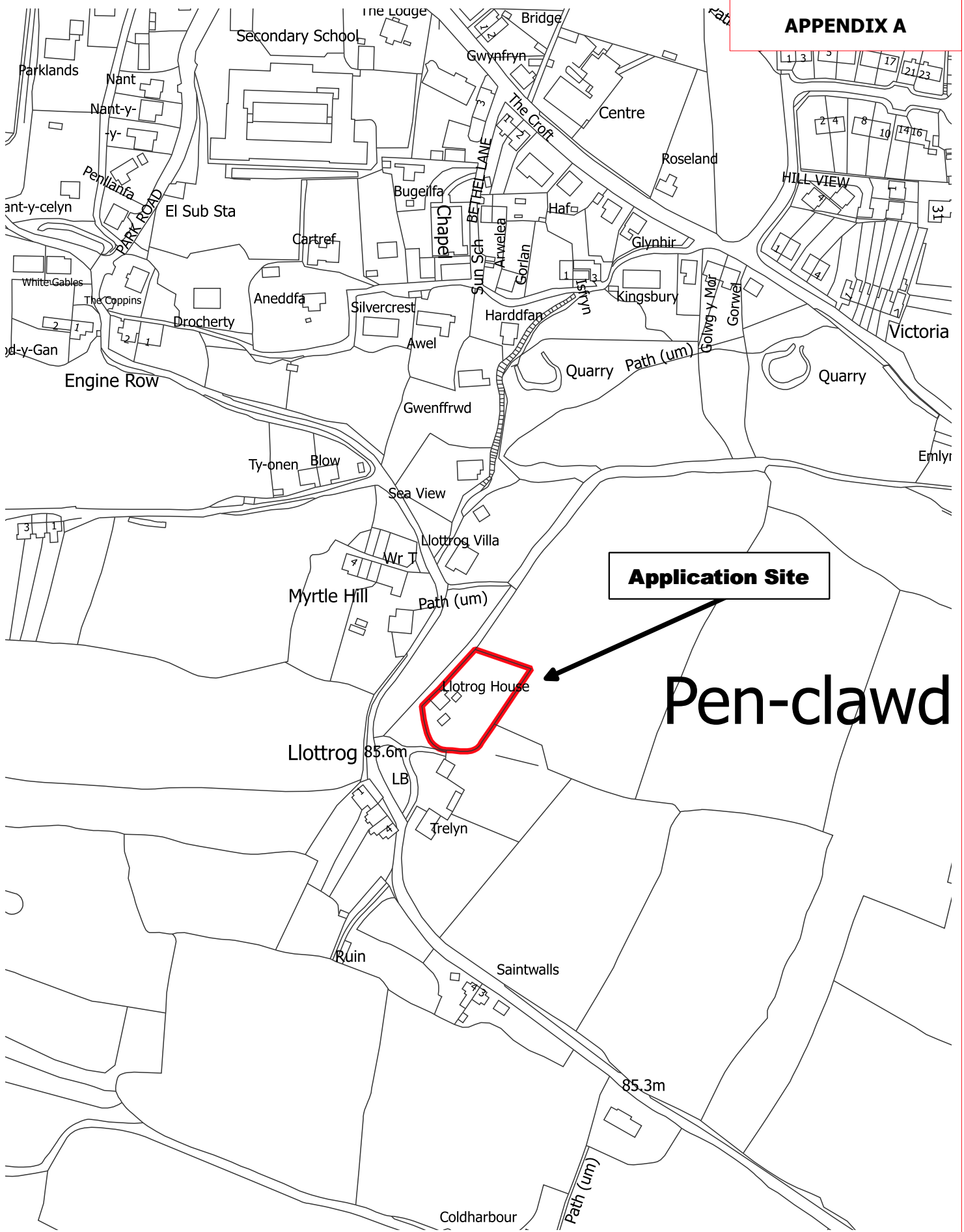
The following documents were used in the preparation of this report:
Application file, together with the files and documents referred to in the background information section of the appended Development Control committee report.

Appendices:

Appendix A – Location Plan
Appendix B – Committee Report
Appendix C - Conditions

Contact Officer: Ryan Thomas
Date of Production: 30th Sept 2014

Extension No.: 5731
Document Name: Llotrog House



Planning Application No. 2014/0825
Llotrog House, Llotrog, Penclawdd, Swansea SA4 3JX

Scale 1:2500 @ A4

Phil Homes, BSc (Hons), MSc, Dip Econ
 Head of Economic Regeneration & Planning

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 Ordnance Survey 100023509



APPENDIX B

ITEM

APPLICATION NO.

2014/0825

WARD:

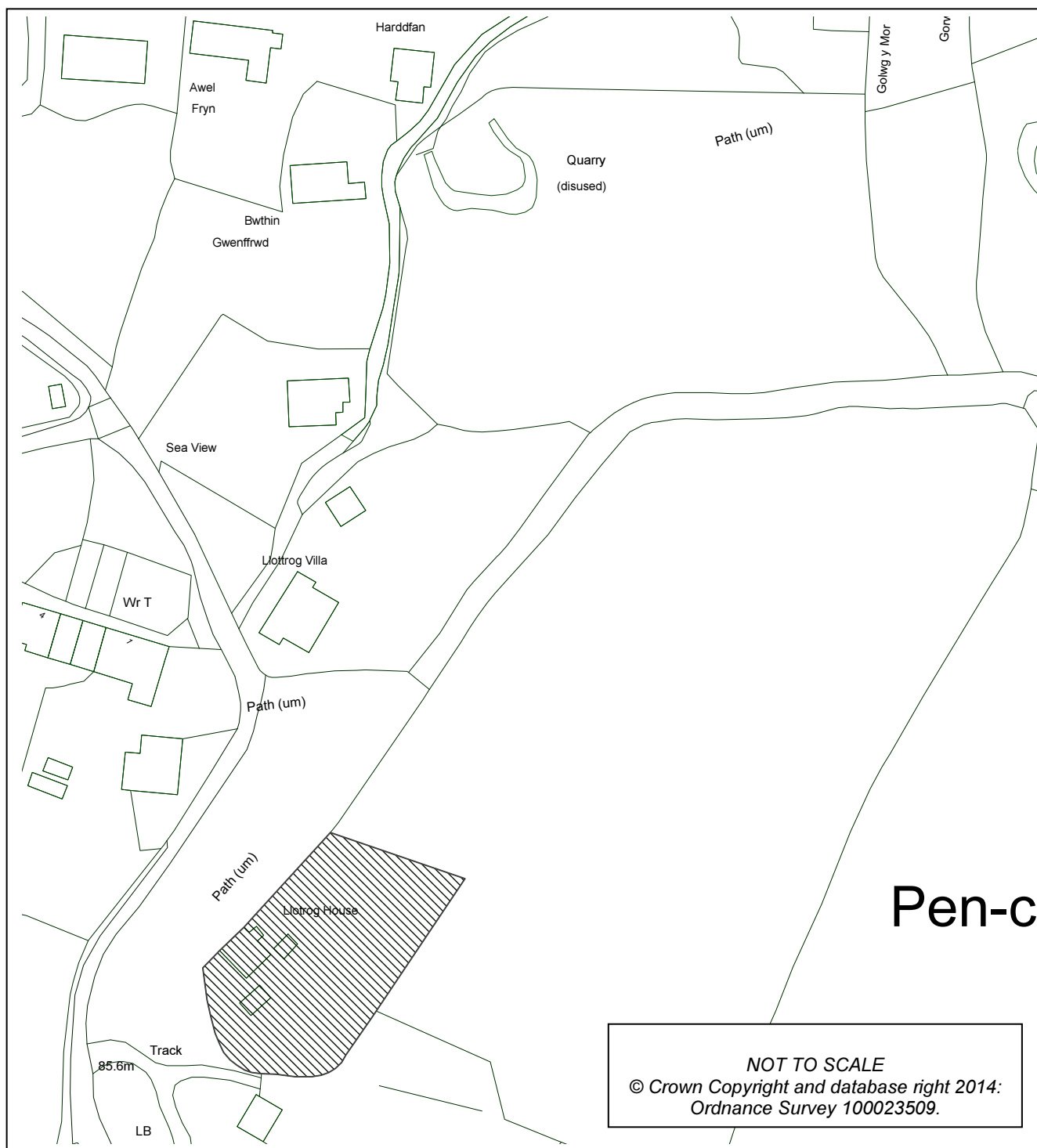
Penclawdd

Area 2

Location: Llotrog House, Llotrog, Penclawdd, Swansea SA4 3JX

Proposal: Two storey side/rear extension with balcony

Applicant: Mr Alan Jenkins



BACKGROUND INFORMATION

POLICIES

Policy	Policy Description
Policy EV2	The siting of new development shall give preference to the use of previously developed land and have regard to the physical character and topography of the site and its surroundings. (City & County of Swansea Unitary Development Plan 2008).
Policy EV20	In the countryside new dwellings will only be permitted where justification is proved in terms of agriculture, forestry or the rural economy; there is no alternative existing dwelling in nearby settlements; and the proposed dwelling is located close to existing farm buildings etc. (City & County of Swansea Unitary Development Plan 2008)
Policy EV26	Within the Gower AONB, the primary objective is the conservation and enhancement of the area's natural beauty. Development that would have a material adverse effect on the natural beauty, wildlife and cultural heritage of the AONB will not be permitted. (City & County of Swansea Unitary Development Plan 2008)
Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
Policy EV22	The countryside throughout the County will be conserved and enhanced for the sake of its natural heritage, natural resources, historic and cultural environment and agricultural and recreational value through: i) The control of development, and ii) Practical management and improvement measures. (City & County of Swansea Unitary Development Plan 2008)
Policy HC7	Proposals for extensions and alterations to existing residential dwellings will be assessed in terms of; relationship to the existing dwelling, impact on the character and appearance of the streetscene, effect on neighbouring properties, and impact on car parking. (City & County of Swansea Unitary Development Plan 2008)

SITE HISTORY

App No.	Proposal
2010/0513	Detached dwelling (outline) Decision: Refuse Decision Date: 22/06/2010
2014/0197	Two storey side/rear extension with balcony and detached garage Decision: Refuse Decision Date: 19/03/2014

RESPONSE TO CONSULTATIONS

The neighbouring occupants at Trelyn were sent a letter of consultation on 23rd June 2014. A site notice was also posted outside the property on 23rd June 2014. Four letters of support have been received which are summarised below – each letter of support is identical.

- The scheme is an interesting proposal which has been designed to a good quality by the architects.
- The existing house has always had a large garden and the proposed extension sits well with the existing building and only occupies a very small part of the garden of Llotrog House.
- The proposed extension improves the overall appearance of the house and provides better modern accommodation for the family home.

Highway Observations

The Head of Transportation and Engineering was consulted and responded with the following comments:

There is no increase in demand for parking and the parking/turning area within the curtilage of the property is sufficient to be able to accommodate the 3 required parking spaces. There are no highway objections.

APPRAISAL

This application is reported to Committee for decision and a Site Visit has been requested by Councillor Mark Thomas to assess the letters of support received in further detail.

The application site comprises a two storey detached dwelling in Llotrog which is situated in the ward of Penclawdd.

A previous application for a two storey side/rear extension with balcony and detached garage (2014/0197) was refused planning permission on 19th March 2014 for the following reasons:

1. *The proposed extension, by virtue of its size, design and siting, does not relate to the existing dwelling and by virtue of the nature of the proposals, the existing house would become subservient element of the development. As such, the proposals go beyond the scope of 'extension' works and are considered tantamount to the creation of a new dwelling in the countryside without the requisite justification, contrary to Policies EV1, EV22, EV20 and HC7 of the adopted City & County of Swansea Unitary Development Plan and the guidance contained in 'A Design Guide for Householder Development' and the 'Gower AONB Design Guide' Supplementary Planning Guidance.*
2. *The proposed extension, by virtue of its scale in relation to the existing property, and by virtue of the finishing materials and the detailing of the proposed projecting front gable feature and hanging bay window is considered to result in an overly large incongruous and unacceptable addition to the original property, to the detriment of the original character and appearance of the dwelling and the visual amenities of the area, contrary to the requirements of Policies EV1 and HC7 of the adopted City & County of Swansea Unitary Development Plan 2008 and the guidance contained in the Supplementary Planning Guidance documents 'A Design Guide for Householder Development' (2008) and the 'Gower AONB Design Guide'.*

- 3. The proposed garage, by virtue of its height would result in an excessively tall structure with top heavy appearance, which does not relate well to the character of the original dwellinghouse on this site and would be detrimental to the visual amenities of the area. As such, this element of the proposal is contrary to the requirements of Policies EV1, EV22, EV26 and HC7 of the adopted City & County of Swansea Unitary Development Plan 2008 and the guidance contained in the Supplementary Planning Guidance documents 'A Design Guide for Householder Development' and the 'Gower AONB Design Guide'.*

The area of land lying to the front and west side of the application dwelling, up to the boundary with the road, is designated as Common Land under Policy EV29 of the adopted City and County of Swansea Unitary Development Plan. Furthermore, the dwelling lies in a relatively rural location close enough to boundary of the Gower Area of Outstanding Natural Beauty (AONB) to be considered a 'Gower fringe' area, as highlighted in Section 1.2 of the Council's Supplementary Planning Guidance document the 'Gower AONB Design Guide'. Therefore this application will be considered with regard to the provisions of Policy EV26 of the City and County of Swansea Unitary Development Plan, which refers to the impact of proposed development on the character and appearance of the AONB.

Llotrog abuts the main part of Penclawdd to the south-west with dwellings following the road running between Park Road to the north and Caban Isaac Road in Blue Anchor to the south. Development in the northern part of Llotrog is informally laid out and denser than that in the southern part, which has more intermittent development along a road predominantly of single vehicle width, with hedge and field boundaries either side. The dwellings in Llotrog predominantly comprise short rows of two storey terraced houses, semi-detached and detached dwellings of various styles, materials finish and roof forms. There is, therefore, no overarching character to the locality.

The application seeks full planning permission to construct a two storey extension to the side elevation of the property. The proposed extension will measure approximately 7.8 metres wide and approximately 20.6 metres deep and would straddle, it is considered, outside of the cartilage of the dwelling.

The proposed layout indicates that the lower ground floor of the existing dwelling would become a kitchen and gym and the ground floor would become a home office and the extension proposed would effectively be the main dwelling. It appears that the proposal would result in a new dwelling in the open countryside for which no justification has been submitted

The primary issues in the consideration of this application relate to the impact of the proposed development on visual and residential amenity, having regard to Policies EV1, EV2, EV20, EV22, EV26 and HC7 of the City and County of Swansea Unitary Development Plan 2008. The application is also considered with regard to the Council's Supplementary Planning Guidance documents entitled 'A Design Guide for Householder Development' and the 'Gower AONB Design Guide'.

The proposed extension will be constructed to the side and rear of the property and will therefore be visible from public vantage points.

The proposed extension is significant and represents an increase in floor area of more than twice that of the existing property. This results in a situation whereby the existing dwelling would become subservient to the proposed extension. As such, the proposals

are considered to go beyond the scope of 'extension' works, and are be more akin to the construction of a new dwelling attached to the side of the existing dwelling. This approach is contrary to the guidance set out in the Gower AONB Design Guide at Section A1.51 (b) which states:

"It is important to note that there is a point at which an extension can become too dominant, and the following design principles should be considered:

. . . (b) Extensions should remain subordinate to the original dwelling in order that they do not have an adverse impact upon the overall composition of the building."

This guidance is also present in paragraphs 1.1, 1.4 and 1.8 of the adopted Supplementary Planning Guidance document 'A Design Guide for Householder Development'.

In relation to the front elevation of the proposal, the proposed side extension is approximately the same width as the existing dwelling, which results in a form similar to a pair of semi-detached dwellings. Whilst the proposed extension is set down from the ridge of the main dwelling and set back from the front elevation, the excessive width conflicts with Section 1.5 of the Design Guide for Householder Development.

The proposal seeks to utilise stone and larch cladding boards, with large contemporary openings which do not reflect the size or appearance those found on the original dwelling. This approach of differing materials and fenestration to the original dwelling also conflicts with the advice set out in Sections B.13 and B.14 of the Design Guide for Householder Development in terms of respecting the original character of the dwelling.

The proposed fenestration has altered from the previous application in that the hanging bay window, the large rear gable has been removed and the balcony has been reduced in size. However it is not considered that these amendments overcome the fundamental reasons for refusal.

Whilst it is recognised that one reason for refusal has been overcome in that the detached garage has been removed from the proposal, the concerns with regards to the size of the extension have not been addressed.

The siting of the proposal in relation to neighbouring residential properties is such that no adverse affects would result to the occupiers of those dwellings in terms of overshadowing/loss of light, overbearing physical impact or an unacceptable increase in overlooking.

There are several issues of concern regarding the proposals, which are considered excessive in their current form and which would result in a development where the proposed extension would become the main part of the dwelling. This would, therefore, result in a fundamental change to the character of the property, contrary to the requirements of Policy HC7 of the City and County of Swansea Unitary Development Plan, as well as conflicting with the guidance set out in the Supplementary Planning Guidance document 'A Design Guide for Householder Development', specifically paragraphs 1.1, 1.4 and 1.8 which relate to detached properties. Whilst it is noted that alterations have been made from the previous refused application, these have not gone far enough in overcoming the previous reasons for refusal. The current proposals are fundamentally the same as that which was refused under planning application 2014/0197.

In conclusion it is considered that the proposal represents an unacceptable form of development which has not overcome the previous reasons for refusal. The proposed development is contrary to the provisions of Policies EV1, EV2, EV20, EV22, EV26 and HC7 of the City and County of Swansea Unitary Development Plan and the guidance contained within the Design Guide for Householder Development and the Gower AONB Design Guide.

RECOMMENDATION

REFUSE, for the following reasons:

- 1 The proposed extension, by virtue of its size, design and siting, does not relate to the existing dwelling and by virtue of the nature of the proposals, the existing house would become the subservient element of the development. As such, the proposals go beyond the scope of 'extension' works and are considered tantamount to the creation of a new dwelling in the countryside without the requisite justification, contrary to Policies EV1, EV20, EV22, EV26 and HC7 of the adopted City and County of Swansea Unitary Development Plan and the guidance contained in 'A Design Guide for Householder Development' and the 'Gower AONB Design Guide' Supplementary Planning Guidance.
- 2 The proposed extension, by virtue of its scale in relation to the existing property, and by virtue of the finishing materials is considered to result in an overly large incongruous and unacceptable addition to the original property, to the detriment of the original character and appearance of the dwelling and the visual amenities of the area, contrary to the requirements of Policies EV1 and HC7 of the adopted City and County of Swansea Unitary Development Plan 2008 and the guidance contained in the Supplementary Planning Guidance documents 'A Design Guide for Householder Development' (2008) and the 'Gower AONB Design Guide'

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV20, EV22, EV26 and HC7

PLANS

HG.13.07.01 site location plan, HG.13.07.10 existing floor plans, HG.13.07.11 existing elevations dated 6th June 2014 HG.13.07.12B block plan, proposed floor plans and elevations dated 20th June 2014.

CONDITIONS

1. The development hereby permitted shall begin not later than five years from the date of this decision.
Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.
2. Samples of all external finishes shall be submitted to and approved by the Local Planning Authority in writing before the development is commenced. The scheme shall be implemented in accordance with the approved details.
Reason: In the interests of the visual amenities of the area.
3. Prior to the commencement of development details of a scheme for the disposal of all surface water from the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in accordance with the approved details prior to the first occupation of the development.
Reason: In the interests of the integrity of the water environment.

Agenda Item 5

Report of the Head of Economic Regeneration and Planning

Development Management and Control Committee - 9 October 2014

RESPONSE TO THE CONSULTATION DOCUMENT: DRAFT TECHNICAL ADVICE NOTE (TAN) 1: JOINT HOUSING LAND AVAILABILITY STUDIES

Purpose:	To inform Committee of the Welsh Government's consultation on new planning guidance 'Technical Advice Note 1 Joint Housing Land Availability Studies' (Draft), and to consider and approve a response.
Policy Framework:	Planning Policy Wales (2014), Welsh Government
Reason for Decision:	To approve the draft consultation response and to forward the response to the Welsh Government
Consultation:	Legal, Finance, Equality and Engagement.
Recommendation(s):	It is recommended that: <ol style="list-style-type: none">1. The contents of the report be noted2. The draft consultation response be confirmed and forwarded to the Welsh Government in response to the consultation exercise.
Report Author:	David Rees
Finance Officer:	Kim Lawrence
Legal Officer:	Jonathan Wills

1.0 Introduction

- 1.1 Annual Joint Housing Land Availability Studies (JHLAS) are the mechanism by which the supply of housing land through the planning system is monitored. They demonstrate whether a Local Planning Authority (LPA) has a deliverable five year supply of housing land as required by Welsh Government (WG) policy (Planning Policy Wales 2014). Guidance on how to undertake the JHLAS is set out in the existing Technical Advice Note (TAN) 1: JHLAS (2006).
- 1.2 The City & County of Swansea has been consulted as a key stakeholder in the formation of this revised planning guidance and a response has duly been drafted by the Head of Economic Regeneration and Planning (see Appendix A). Members are invited to approve the comments as the

formal response by the Council, which must be submitted to the Welsh Government by 10th October 2014.

2.0 Background

- 2.1 The draft Technical Advice Note (TAN) 1 has emerged from the work of a Technical Advisory Group consisting of representatives from LPAs, house builders and the Planning Inspectorate.
- 2.2 The WG views new house building as essential in Wales in order to meet the growing need for housing and to help drive economic growth. Furthermore, having an up to date Local Development Plans (LDP) in place is deemed critical to ensuring sufficient viable and deliverable housing sites are brought forward. The overriding aim of the draft TAN 1 is to align JHLAS and LDP monitoring, and incentivise the preparation and adoption of LDPs across Wales. The Council's LDP Delivery Agreement, agreed with the WG, sets out that the Swansea LDP will be adopted late 2016.

3.0 General Issues

- 3.1 Overall, the Council supports many of the aspects proposed by WG, but with certain caveats or reservations. The full proposed draft response is set out in Appendix A. The main points are summarised below cross referenced to the relevant part of Appendix A.
- 3.2 A major concern for the Council is that under the proposals it would appear that if the Council is unable to adopt its LDP before the current Unitary Development Plan (UDP) expires in 2016, it will not be considered to have a 5 year housing land supply (Q5 and 6).
- 3.3 The Council agrees in principle that JHLAS and LDP annual monitoring should be integrated. This would help set the land supply in context (e.g. with economic trends and infrastructure provision). The Council has already integrated its JHLAS into the emerging LDP's evidence base. In practice though, the Council has real concerns that the timetables of the JHLAS and LDP monitoring are not compatible (Q1, 2 and 7).
- 3.4 The Council agrees that sites where it has been resolved to grant planning permission subject to the signing of a Section 106 Agreement should be included in the 5 year housing land supply. However, more discretion should be given to allow sites with unsigned agreements to remain in the supply for longer than the 1 year proposed, provided there is a realistic prospect of development within 5 years (Q3).
- 3.5 The Council welcomes the greater delineation introduced into the site categorisation to facilitate a better understanding of why some development sites are not considered to be deliverable within 5 years and what actions may help bring them forward for development (Q4). It is proposed to introduce the following categories:

- § Category 3: Sites/phases where development is held up by physical constraints
 - § Category 4: Sites/phases free of physical or viability constraints but where development is unlikely due to the developer's proposed business decisions
 - § Category 5: Sites/phases where it is financially unviable to develop in current market conditions
- 3.6 Categories 4 and 5 will provide a clearer picture and show that there is no physical reason / constraint on the development of around 3,700 dwellings on sites currently in 3(i) in Swansea's 2013 Study. The overriding reason for the majority of sites being in 3(i) in Swansea is market conditions. Any sites with long standing physical constraints were removed from the allocated land supply upon adoption of the UDP.
- 3.7 The Council agrees that an annual Study Group meeting should be convened where it is disputed by developers that sites are not deliverable within 5 years. The Council routinely does this already. Face to face discussions aid the resolution of disputed matters and minimise delays in the process (Q8).
- 3.8 The Council has taken the opportunity (Q9) to again flag up to WG that in addition to JHLAS, WG also separately collects dwelling completion statistics from Building Control Officer returns. It needs to be explored whether these processes can be better integrated to avoid duplication of resources and potential inconsistency. The Council has already raised this with WG at their 4th August 2014 Housing Information Group Meeting.

4.0 Equality and Engagement Implications

- 4.1 There are no equality and engagement implications associated with this report.

5.0 Financial Implications

- 5.1 The policy guidance will have limited new financial resource implications since the work is already undertaken. The new proposed requirement to complete the study within 6 months will put added pressure on Officer time.
- 5.2 The existing financial requirements are already linked to the Swansea LDP work programme and will primarily involve demands on Officer time along with software maintenance costs (in-line with the vast majority of other LPAs in Wales, Swansea uses the DEF JHLAS database software). It is anticipated that these requirements will continue to be contained within the existing LDP budget.

6.0 Legal Implications

6.1 There are no legal implications associated with this report.

Background Papers:

WG Consultation Documents for the Draft TAN 1:

<http://wales.gov.uk/consultations/planning/draft-technical-advice-note-1/?lang=en>

Appendices:

Appendix A – Draft Consultation Response

**Annex A
CONSULTATION RESPONSE**

CONSULTATION RESPONSE FORM

Draft Technical Advice Note 1 – Joint Housing Land Availability Studies

We want to know your views on proposed changes to Technical Advice Note 1, *Joint Housing Land Availability Studies*, which supports the Welsh Government's policy on housing land supply.

Please submit your comments by **10th October 2014**

If you have any queries on this consultation, please email: planconsultations-f@wales.gsi.gov.uk or telephone: 029 2082 3290

Data Protection

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tick the box below. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Confidentiality

Responses to consultations may be made public on the internet or in a report.

If you do not want your name and address to be shown on any documents we produce please indicate here

If you do not want your response to be shown in any document we produce please indicate here

CONSULTATION RESPONSE FORM

Draft Technical Advice Note 1, Joint Housing Land Availability Studies (Consultation)

Date 18 July - 10 October 2014

Name	Phil Holmes, Head of Economic Regeneration and Planning	
Organisation	City & County of Swansea Council	
Address	Planning Policy Team, Room 2.6.2, The Civic Centre, Oystermouth Road, Swansea, SA1 3SN	
E-mail address	ldp@swansea.gov.uk	
Telephone	01792 635740	
Type (please select one from the following)	Business	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency / Other Public Sector	<input type="checkbox"/>
	Professional Body / Interest Group	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self-help groups, co-operatives, enterprises, religious, not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above)	<input type="checkbox"/>

Q1	<u>Purpose / Context</u> (sections 2 and 3)	
	Do you agree that the Joint Housing Land Availability Study (JHLAS) and Local Development Plan Annual Monitoring Report (AMR) processes should be more closely aligned?	
	Agree <input checked="" type="checkbox"/>	
	Neither Agree nor Disagree	
	Disagree <input checked="" type="checkbox"/>	

Q1 Further Comments

Agree in principle where an adopted Local Development Plan (LDP) is in place. The JHLAS is the established method of monitoring each LPA's housing land supply, so it makes sense that it is integrated with the annual monitoring report (AMR) of the adopted LDP - the document which sets out the housing requirement and housing allocations. This integration would enable the JHLAS land supply figure to be set in context, for example with figures monitoring local economic trends, and infrastructure provision required to support new development. This would be helpful where the land supply drops below 5 years so that a fully informed evidence based commentary can be formulated and appropriate action(s) identified. The Council has already integrated the JHLAS into the evidence base for preparing its LDP.

In practice though, the Council has concerns that the timetables for the JHLAS and AMR may not be compatible (see Q2 response below).

Q2 Study preparation (section 4.1)

To enable the most up-to-date JHLAS to feed into the AMR it is proposed to shorten the timetable for its preparation to six months.

Do you agree that it is feasible to prepare a JHLAS in this revised timeframe?

Agree

Neither Agree nor Disagree

Disagree X

Q2 Further Comments

Disagree. The Council has the following observations on the proposed timetable included in Annex 1:

Stage 2 allows only 2 months to:

- § Undertake site surveys (typically 120-150 sites)
- § Update the site proformas and forecast completion schedules via the database
- § Allow adequate time for consultation with the Study Group
- § Collate consultation responses
- § Gather further site information to respond
- § Arrange and convene a Study Group meeting

§ Follow up and seek to resolve differences arising from the Study Group meeting

This element of the proposed timetable is very tight. It is recommended that the developers/landowners who are members of the Study Group should be required to submit information on achieved and forecasted completions for their sites by 1st April each year rather than the onus being placed on the LPA to gather this information. This would make the data gathering process more efficient and quicker. Following a request made at the 2014 Study Group Meeting, the members of the Swansea Group have agreed to do this for the 2015 Study.

For clarity, guidance could be provided on how long Study Group members should be given to consider the draft site schedules/proformas (Stage 2) and Statement of Common Ground (SoCG) (Stage 3).

Stage 4 - It is the Council's experience that the longest delays in the JHLAS process occur regarding the resolution of disputed sites by the Planning Inspectorate (PINS). Only 2 months is allowed in the draft timetable but from past Studies it is the Council's experience that it can take much longer. For the 2012 Study it took 3 months and 20 days between submitting the SoCG and receipt of the accepted PINS recommendation from WG; and for the 2013 Study it took 2 days short of 4 months. This has had implications not only for the publishing date of that specific study but also a knock on effect on the preparations for the subsequent study (because the site schedule cannot be finalised and rolled forward).

It also raises the question whether PINS (and the Home Builders Federation – who are a key consultee) would have the capacity to deal with all Welsh LPAs' (with disputed sites) SoCGs within the same allotted time period.

Stage 5(b) – where disputed sites are to be resolved by PINS, no time is allowed for completion of the JHLAS report.

For LPAs with an adopted LDP, it is questioned whether a full JHLAS report is required if the findings are to be integrated into the AMR?

Q3	<u>Sites for inclusion (section 4.3)</u>	
	Do you agree that sites subject to section 106 agreements should be included in the 5 year housing land supply (subject to their removal if the agreement remains unsigned after 1 year)?	
	Agree <input checked="" type="checkbox"/>	
	Neither Agree nor Disagree	
	Disagree <input checked="" type="checkbox"/>	

Q3	Further Comments
	<p>Agree that sites subject to Section 106 agreements should be included in the 5 year housing land supply. If it is resolved to grant planning permission for a planning application, then an assessment must have been made by the LPA that the proposal is viable and deliverable, so the site should be included within the 5 year land supply.</p> <p>Disagree that where the legal agreement remains unsigned for more than one year after the date of resolution to grant planning permission, the site should automatically be removed from the 5 year housing land supply. The Council feels more local discretion should be given to the Study Group, similar to the wording in paragraph 4.4.5 along the lines of: "in situations where such sites are not reclassified there should be an explanation based on clear evidence". The Council considers that the important consideration is whether the site is realistically likely to be developed within 5 years.</p>

Q4	<u>Site categorisation (section 4.4)</u>	
<p>Greater delineation has been introduced into the site categorisation to give more precise information about why a site has not been included in the 5 year housing land supply. The former 2* category (sites affected by low market demand) has been removed as a result.</p> <p>Do you agree that these changes will assist in the understanding of a local planning authority's housing land supply?</p>		
		Agree <input checked="" type="checkbox"/>
		Neither Agree nor Disagree
		Disagree <input checked="" type="checkbox"/>

Q4	Further Comments
<p>Agree with u/c, category 1 and 2 which continue from the existing TAN 1.</p> <p>The Council accepts the removal of the 2* category, which the Swansea Study Group had resolved did not apply to any sites within the City & County of Swansea.</p> <p>The Council welcomes the re-categorisation of 3(i) development sites (i.e. those not considered to be within the 5 year supply) to categories 3, 4 and 5. It is important to have a clearer understanding of the housing land supply position and to be able to clearly identify the reason why sites are being held back. This information is currently presented in the proformas but not in a standardised way.</p> <p>Categories 4 and 5 will provide a clearer picture and show that there is no physical constraint on the development of around 3,700 dwellings on sites currently in 3(i) in Swansea's 2013 Study. The over-riding reason for the majority of sites being in 3(i) in Swansea is market conditions. Any sites with long standing physical constraints were removed from the allocated land supply upon adoption of the UDP.</p> <p>It is the Council's view that where there is a deficit in the 5 year supply, but a significant amount of development in the longer term land supply (Categories 3 to 5), then releasing additional land for development, particularly Greenfield sites at edge of settlements, would risk making the category 5 sites even less viable and attractive to developers in relative terms and further limit the prospects for the development of these sites. This would also re-direct development towards potentially less sustainable Greenfield sites, and hinder regeneration within existing settlements. The first priority for the Study Group in</p>	

the event of the land supply dropping below 5 years should be to identify ways of bringing category 3, 4 and 5 sites into play.

The Council considers that there is a need for a further category. Some of the 3(i) category in Swansea are just phases of larger sites which are not subject to constraints or poor market conditions but on the basis of agreed expected annual completion rates on the site, phases have been forecasted to be completed outside of the next five years.

The Council considers that there is potentially some overlap between categories 3 to 5 and it may be difficult to assign each site into just one category. For example, a developer's business decision (cat. 4) may be partly based upon site constraints (cat. 3) and/or financial viability issues (cat. 5). A site may be unviable (cat. 5) because of site constraints (cat. 3). Having to assign a site to a particular category may result in further disputes over sites.

Q5	<u>Calculating housing land supply (section 5)</u>	
	<p>It is proposed that only local planning authorities with an adopted LDP (or an adopted Unitary Development Plan that is still within the plan period) will be able to undertake a JHLAS calculation (using the residual methodology) and thus be able to demonstrate that they have a 5 year housing land supply.</p> <p>Do you agree with this approach, which is aimed at incentivising the preparation and adoption of LDPs?</p>	
	Agree	X
	Neither Agree nor Disagree	
	Disagree	X

Q5	Further Comments
<p>The Council is concerned that where an LPA's adoption of its LDP does not completely overlap with the expiry of its UDP (i.e. if there is a gap period before adoption of its LDP for whatever reason), the LPA will no longer be able to demonstrate that they have a five year housing land supply and will effectively be considered not to have one.</p> <p>It is noted that LPAs in this situation will still be expected to carry out an objective annual assessment of the housing land supply situation in preparation for their LDP but no guidance is provided on how to do this.</p> <p>There are several places in the document which infer that only an adopted LDP</p>	

is acceptable (with no mention of UDPs). It is only when the reader gets to Section 8 that clear mention is given to transitional arrangements for LPAs still with an adopted UDP.

Clearer reference should be given to LPAs with an adopted UDP elsewhere in the document. For example:

- § Para 2.3 - infers that only LPAs with an adopted LDP can be regarded as having a soundly based identified housing requirement, thereby undermining the evidence base of adopted UDPs.
- § Para 4.3.1 bullet points – there are 2 references which infer that only housing sites allocated in an adopted LDP should be included in the JHLAS schedule.
- § Para 5.1 - the second sentence states that LPAs without an adopted LDP will be considered not to have a 5 year housing supply.

Q6	<u>Calculating housing land supply (section 5)</u>	
	It is proposed that the residual methodology based on an adopted LDP or UDP will be the only methodology allowed for calculating housing land supply. Do you agree with this approach?	
	Agree X	
	Neither Agree nor Disagree	
	Disagree X	

Q6	Further Comments
<p>Agree that the residual methodology enables monitoring of how well the identified housing requirement is being delivered against the residual amount of allocated land and identified windfall sites.</p> <p>However, the Council is concerned that by allowing only the residual method, where an LPA has a gap period before adoption of its LDP following expiry of their UDP (Q5 above refers), the LPA will not be able to demonstrate that they have a five year housing land supply. LPAs in this situation will be expected to continue to carry out an objective assessment of their housing land supply annually in preparation for their LDP but no guidance is provided.</p>	

Q7	<u>Housing supply figure (section 6)</u>	
<p>Where an LPA has an undersupply of housing land (i.e. less than 5 years) it is proposed that the action to be taken would no longer be set out in the JHLAS report, but would be addressed in the AMR in order to link it directly with LDP monitoring.</p> <p>Do you agree with this approach?</p>		
Agree		X
Neither Agree nor Disagree		
Disagree		X

Q7	Further Comments	
<p>Q2 sets out the Council's practical concerns regarding integration of the JHLAS into the AMR.</p> <p>However, where an adopted LDP is in place, since the JHLAS is the established method of monitoring each LPA's housing land supply, it makes sense that it is integrated with the annual monitoring report (AMR) of the adopted LDP - the document which sets out the housing requirement and housing allocations. This integration would enable the JHLAS land supply figure to be set in context, for example, with figures describing local economic trends, and the monitoring of infrastructure provision required to support new development. This would be helpful where the land supply drops below 5 years so that a fully informed evidence based commentary can be formulated and appropriate action(s) identified.</p>		

Q8	<u>JHLAS process (section 7.3)</u>	
<p>Do you agree that where the inclusion of sites is disputed by members of the Study Group, a Study Group meeting <i>must</i> be held?</p>		
Agree		X
Neither Agree nor Disagree		
Disagree		

Q8 Further Comments

Agree. Face to face discussions can be the most effective and efficient way of reaching agreement on sites rather than through written correspondence. It is important to minimise the number of disputed sites that require resolution particularly in view of the timetable constraints proposed.

This Council routinely convenes and chairs a Study Group meeting.

Q9 Any other comments

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

The Council is aware that in addition to JHLAS site surveys recording dwelling completions, separate dwelling completion returns are published by WG Statistical Directorate (<https://statswales.wales.gov.uk/Catalogue/Housing/New-House-Building>) based on the reports of local authority building inspectors and the National House Building Council (NHBC). There seems to be a duplication of resources, potential for inconsistency between the datasets, and there are known to be some flaws regarding the latter data source (e.g. exclusion of information from Private Approved Inspectors).

At the 4th August 2014 Housing Information Group Meeting convened by WG, the Council raised the need to explore the possibilities of integrating the two completions surveys/datasets together for consistency and to avoid duplication of effort and suggested use of the Local Land and Property Gazetteer (LLPG) to assist the data collation.

From discussions with colleagues in the Council's Research & Information Unit, it is possible to identify new residential addresses added to the LLPG and this could be used as an indicator for new dwelling completions. New residential units are added to the LLPG by our Street Naming & Numbering Officer based on expected completion dates provided by the developers and his site knowledge/visits. The Council considers that this potential data source is worth further consideration and avoids duplication of effort. The Planning Policy Team already works closely with the Street Naming & Numbering Officer and LLPG Officer to help pinpoint sites that are being built and require site visits for the JHLAS.

How to respond

Please submit your comments by **10th October 2014** in any of the following ways:

Email	Post
<p>Please complete the consultation form and send it to :</p> <p>planconsultations-f@wales.gsi.gov.uk</p> <p>[Please include 'TAN1 Consultation WG22580' in the subject line]</p>	<p>Please complete the consultation form and send it to:</p> <p>TAN 1 Consultation Planning Policy Branch Planning Division Welsh Government Cathays Park, Cardiff CF10 3NQ</p>

Additional information
<p>If you have any queries about this consultation, please</p> <p>Email: planconsultations-f@wales.gsi.gov.uk</p> <p>Telephone: Paul Robinson on 029 2082 3290 or Nick Lloyd on 029 2082 6802</p>

Agenda Item 6

Report of the Head of Economic Regeneration & Planning

Development Management and Control Committee

9 October 2014

SWANSEA BAY TIDAL LAGOON LOCAL EXAMINATION

Purpose:	To provide an update to Members on the examination by the Planning Inspectorate of the application for the tidal lagoon.
Policy Framework:	National Policy Statements, Planning Policy Wales and the adopted City & County of Swansea Unitary Development Plan.
Reason for Decision:	To ensure that a Section 106 Obligation is completed having regard to the issues set out in the Council's Local Impact Report and Written Representation.
Consultation:	Legal, Finance and Equalities.
Recommendation(s):	It is recommended: 1. That delegated powers be granted to the Head of Economic Regeneration and Planning to negotiate and agree a Section 106 Obligation for consideration by the Secretary of State for Energy and Climate Change.
Report Author:	Richard Jones

1.0 Introduction

- 1.1 Members will recall that a report was presented to this Committee on the 3rd July 2014 appraising the impact of the tidal lagoon proposals on the City and County of Swansea and recommending that a Local Impact Report and Written Representations be submitted to the Planning Inspectorate Examining Authority on behalf of the Council. Other recommendations to deal with the procedural aspects of the examination process, including dealing with matters within a Statement of Common Ground and responses to Inspectors questions were also made in the Report. For ease of reference a location plan and copy of the report are provided as Appendix A and B respectively. Due to the length of the Local Impact Report (LIR) and associated documents, this document is not reproduced, however, the LIR can be viewed via the following link:

<http://democracy.swansea.gov.uk/documents/g6303/Public%20reports%20pack%20Thursday%2003-Jul-2014%2017.00%20Development%20Management%20and%20Control%20Committee.pdf?T=10&LLL=-1>

- 1.2 As Members will be aware, the project is an offshore generating station, which would have a nominal rated capacity of 240 MW. Consequently, the project is a nationally significant infrastructure project (NSIP) as defined in the Planning Act 2008 with a generating capacity above a threshold of 100MW. A detailed description of the proposed development is provided in the appended report.
- 1.3 Accordingly, an application for a development consent order (DCO) has been made to the Secretary of State for Energy and Climate Change (the Secretary of State), via the Planning Inspectorate, to authorise construction and operation of the generating station and its component parts. These include both offshore and onshore elements of the project and the electrical grid connection works and recreational amenities which form part of the seawalls and/or the onshore operation and maintenance facilities.
- 1.4 The main focus of the application site essentially comprises the southern edge of Swansea Docks and formerly associated industrial land from the eastern side of the River Tawe to the eastern edge of the new Swansea University Bay Campus and the foreshore and seabed of part of Swansea Bay between the dredged channels of the Rivers Tawe and Neath.
- 1.5 The site is primarily focused within the administrative area of the City & County of Swansea and Welsh Territorial Waters other than the eastern landfall of the lagoon and grid connections, which fall within Neath Port Talbot County Borough Council (NPT).
- 1.6 The application is currently at 'examination' stage and is being examined by an 'Examining Authority' (ExA) appointed by the Secretary of State for Communities and Local Government. The Examining Authority is from the Planning Inspectorate, and comprises, in this instance, a panel of five Inspectors.
- 1.7 The ExA has six months to carry out the examination and a further 3 months to prepare a report on the application to the Secretary of State, including a recommendation. The Secretary of State then has a further 3 months to make the decision on whether to grant or refuse development consent. Once a decision has been issued by the Secretary of State, there is a six week period in which the decision may be challenged in the High Court. This process of legal challenge is known as Judicial Review.

2.0 Examination Update

- 2.1 The examination formally commenced on the 11th June 2014 and is currently timetabled to close on the 10th December of this year. This report has therefore been prepared at approximately two thirds of the way through the process.
- 2.2 In accordance with the resolution of Members the following actions have been completed or are ongoing:

- The LIR for the City & County of Swansea has been submitted to the Examining Authority of the Planning Inspectorate in accordance with the timetable for the examination process.
- The Written Representation of the City & County of Swansea has been submitted to the Examining Authority of the Planning Inspectorate in accordance with the timetable for the examination process and amended to incorporate the following final paragraph:

“The position of CCS is therefore to adopt a precautionary approach to the proposed development and it is accordingly requested that if, at decision making stage, there are any residual doubts as to the impacts of the scheme, the benefit of doubt should be given to the protection of Swansea Bay.”

- Formal responses have been provided to the Examining Authority’s Inspector questions in accordance with the timetable for the examination process and comments made on the submissions of the applicant within the terms of the Council’s LIR and Written Representation.
- Officers are continuing to negotiate a Statement of Common Ground between the City & County of Swansea and the applicant within the terms of Council’s LIR and Written Representations for submission to the Examining Authority.

2.3 Officers attended a formal accompanied site visit with the ExA on the 30th July and it has been confirmed that the ExA will be undertaking further unaccompanied site visits to locations requested by Officers.

2.4 In accordance with the delegated powers granted to the Head of Economic Regeneration and Planning, Officers have attended two issue specific hearings to formally represent the views of the City & County of Swansea. These hearings allow the Inspectors to probe, test and assess evidence through direct questioning of the applicant and interested parties, including the City & County of Swansea. Oral representations made by officers at the hearings have been made with reference to and within the terms of the Council’s LIR and Written Representation.

2.5 The first of the hearings took place on the 31st July and concerned itself with the draft Development Consent Order (DCO) prepared by the applicant. The DCO is a key application document and sets the parameters for what is permitted in the event that development consent is granted by the Secretary of State (and by implication what other aspects of a proposal are not permitted by the DCO and may require further consents).

2.6 A draft DCO should include:

- A full, precise and complete description of each element of the project;
- Provisions giving the developer authority to take actions necessary for the project to be implemented satisfactorily. These might include, for example, authority to compulsorily acquire land.
- Conditions, known as “Requirements”, to which the development authorised by the DCO is to be subject.

- 2.7 At this stage of the examination, the draft DCO is an iterative document and Officers have provided detailed legal/technical comments to both the ExA and the applicant on the 3 versions prepared to date. These comments are made on a 'without prejudice' basis to any decision that might be made by the Secretary of State.
- 2.8 The second topic specific hearing took place on the 16th September and ran over 4 days. Specific topics covered included:
- General project issues including content of principal development, decommissioning and a Development Consent Obligation, all of which are discussed below.
 - Effect of the lagoon on the coastal processes within Swansea Bay.
 - Impact on protected sites and species such as Blackpill Site of Scientific Interest and marine mammals.
 - Water quality.
 - Flood risk.
 - Socio-economic impacts.
 - Commercial fishing, shipping and navigation.
 - Seascape, landscape and visual impacts.
 - Construction, noise and traffic.
 - Adaptive management (discussed below).
- 2.9 Between the above hearing dates, Officers were required to meet interested parties Deadline III on the 5th August for responses to:
- An updated Flood Consequence Assessment;
 - Comments on the Applicant's responses to Inspector questions;
 - Comments on Version 2 of the draft DCO;
 - Comments on further evidence from the Applicant;
 - Issues arising from the accompanied site visits and hearing on the draft DCO.
- 2.10 A Compulsory Acquisition hearing also took place over two days running from the 30th September. (The applicant does not currently own any part of the application site, but is negotiating for its acquisition and is also applying for powers of compulsory acquisition.) This hearing was not attended by the City & County of Swansea.
- 2.11 Most recently Officers have met Interested Parties Deadline IV (7th October) for receipt by ExA of:
- Comments on documents submitted on 1 September 2014 by the applicant including Habitats Regulations Report, updated Habitat Regulations Assessment, Water Framework Assessment, revised Operation, Construction and Adaptive Environmental Management Plans and new Piling Activity Plan.
 - All post hearing documents including draft DCO Version 3.
 - Written summaries of oral cases made at all hearings and any requested related information. (For the avoidance of doubt, these submissions fall within the terms of the Council's LIR and Written Representations.)

2.12 Further topic specific hearings are timetabled over 3 days from the 21st October with Deadline V following on the 28th October and Deadline VI on the 25th November.

3.0 Issues Arising

Section 106 Obligation

3.1 Members will recall that the Council's LIR set out comments on the Applicant's draft Heads of Terms for inclusion within a Section 106 Obligation. Comments were made in respect of traffic and transport, air quality, community provisions, environmental mitigation and public art. The Council's LIR also sets out further environmental monitoring and mitigation measures which should be included in any final Section 106 Obligation.

3.2 The Applicant has recently produced a draft Section 106 Obligation in support of the application with the intention that it is completed on a 'without prejudice' basis before the end of the Examination. This would take the form of an Agreement signed by the Applicant, the City & County of Swansea and Neath Port Talbot County Borough Council (NPT).

3.3 The draft Section 106 Obligation includes covenants relating to:

- *Traffic and Transport* – It is proposed:
 - To provide a bus stop for a shuttle bus to run between the development and the Fabian Way Park and Ride site;
 - Provide a viability assessment for a shuttle bus service and if viable the provision of the same;
 - Cycle parking;
 - A new pontoon for a water shuttle service to facilitate a western link to the lagoon. (The applicant does intend to provide a water shuttle service.)

- *Public Art* – Competitions are proposed to secure:
 - A major sculpture to be located within the footprint of the Lagoon;
 - Art work to be placed in or on the Lagoon; and
 - Community art and cultural projects within or in the vicinity of the Development.

- *Visitor Centre and Education Facility* – It is proposed to provide the same as part of the development.

- *Local Employment and Materials* – The Applicant proposes to support a local employment scheme to secure the use of local labour, contractors, and goods and services during the construction of the Project, so far as lawful and practicable and to use the local employment scheme with regard to staffing the visitor centre/educational facility.

- *Community Provisions* – It is proposed to provide:
 - A Community Trust Fund of a set sum (currently shown as £2,000) per annum per MW of installed capacity. (The installed capacity is currently stated as 240MW.) It is proposed to commence payment into the fund upon the 35th anniversary of commencement of Operation of the Development and thereafter annually upon that anniversary for the remainder of the Operation. The fund would be split between the communities of the City & County of Swansea and NPT.
 - An electricity subsidy of £500,000 per annum to be paid to or secured for eligible households within a defined subsidy area that will represent a reduction in electricity tariffs for such households of the electricity bills otherwise payable by the relevant eligible household subject to the development being sufficient for the Equity Sponsors to achieve a reasonable baseline return.
 - *Environmental Mitigation* – This proposes a number of ecological enhancement measures and bathing water monitoring.
 - *Public Realm* – The applicant proposes to provide the public realm as part of the development, to maintain and repair it and to keep it open to the public, subject to certain caveats.
 - *Dedicated Council Resourcing* – This would commit the Applicant to contribute to the costs of employing dedicated officers for work relating to the discharge of requirements etc.
- 3.4 Officers have provided detailed comments on the shortcomings of the first draft. In respect of traffic and transport reference has been made to the representation within this Council's LIR relating to the lack of pedestrian access from the west and the convoluted nature of the main access. On this basis it has been advised that the shuttle bus provision and water shuttle service take on added importance to ensure accessibility to as many of Swansea's residents as possible. It has been submitted therefore that the starting position should be that the Applicant provides a bus service for at least the first 12 months and any viability testing should be based on the reality of usage. Going forward, as a minimum there should be a subsidy to assist its viability.
- 3.5 With regards to the provision of the new pontoon, it has been advised that this would appear to have limited value as it seems unlikely that a water shuttle service would be viable in its own right. Similarly to above, it has been submitted that the applicant should look to provide this service for a set period of time to examine viability and thereafter at least provide a continued contribution to plug any viability gap. From initial discussions however, it seems very unlikely that there will be an agreement to this effect.
- 3.6 For the visitor centre and education facilities, the applicant has been advised that for the avoidance of doubt the obligation should refer to the provision of the onshore and offshore buildings containing the visitor centre and education facility and all other items contained within the application and bind TLSB to the provision of the same as soon as practically possible following operation.

- 3.7 For local employment and materials, amended clauses have been provided to link into the Council's Beyond Bricks and Mortar scheme.
- 3.8 In terms of community provisions, whilst the new offer of a community trust fund is welcomed, the comment has been made that its introduction after 35 years will mean that there will still be a generation of local people who are impacted by the scheme but will not benefit from this provision.
- 3.9 For the electricity subsidy, clarification has been sought on precise details and eligibility whilst comments have been made regarding the caveat relating to a reasonable baseline return for the equity sponsors, i.e., if TLSB cannot provide enough of a return to Equity investors then this benefit will be at risk. It has been stated that the commitment to the subsidy needs to be clear.
- 3.10 For environmental mitigation, the comment has been made that the obligation should provide the link to the environmental management plans and the commitment to effective resourcing of mitigation measures either set out in the Environmental Statement, the Council's LIR and any requirements arising from monitoring results. Such matters may include ecological mitigation, increased sand blown costs/dune management and increased dredging costs.
- 3.11 Importantly, since the provision of the first draft of the Section 106 Obligation, the applicant has agreed to fund the re-calibration/validation of the designated water quality sample point prediction model. This commitment will therefore be included within the Section 106 Obligation.
- 3.12 For matters relating to the public realm it has been stated that the maintenance commitment should also explicitly refer to the public art elements.
- 3.13 In terms of dedicated council resourcing, it has been stated that the requirement will be for a planning officer, support officer and contributions to the cost of associated specialist advice from the Council's Nature Conservation Team, Pollution Control & Public Health Division and Transportation Teams, as well as external consultants.
- 3.14 Members will note that the recommendation is that delegated powers be granted to the Head of Economic Regeneration and Planning to continue to agree a final Section 106 Obligation. It will be for the Secretary of State for Energy and Climate Change to make the decision as to whether the Section 106 is necessary in the granting of any development consent.

Principal Development

- 3.15 During the course of the examination, the ExA has raised the question whether all of the works considered within the application can be considered as principal development in relation to an application for a generating station.
- 3.16 In this instance, the Nationally Significant Infrastructure Project is the generating station, essentially comprising the lagoon walls and, hydro turbines and sluice gates but it is the Applicant's submission that elements such as those set out below are also principal development:

- Offshore Building incorporating operation and maintenance (O&M) facilities, with integral visitor centre, leisure facilities and public realm;
- Permanent access routes;

- Western Landfall Building incorporating O&M facilities including visitor orientation, recreational boating facilities, laboratory/hatchery building at the western landfall with slipways; vehicle parking; manoeuvring areas, public realm and lagoon side public open space;
 - Habitat creation works/mitigation, including beach/dune and saltmarsh creation within the lagoon.
- 3.17 This will be a matter for the ExA and Secretary of State to determine. If it is concluded that such elements are not principal development for a generating station, the applicant would be required to make a separate application to this Authority for planning permission for those elements excluded and falling within this Council's administrative boundary.
- 3.18 Within this context however, Officers have been asked at the topic specific hearings for the views of the City & County of Swansea and to agree with the applicant a list of main elements of key importance that should be secured as part of any development consent granted. Officers subsequently responded to confirm, without prejudice, as part of the Deadline IV submission, that it is the Council's preference that all elements be included within any development consent that is granted. The reason for this position is that the elements of the project over and above the generating station essentially comprise the 'gain' aspects of the proposed development and that their inclusion represents the most secure mechanism for their delivery. It was also confirmed that the whole scheme is the scheme that has been presented to Members and that the gain elements should properly be considered as part of the 'planning balance'.
- 3.19 Furthermore, a fully stripped down scheme would essentially leave just the generating station and rely on the applicant to make planning applications for the other elements and then to build the same. Accordingly, Officers have also made a submission to the ExA to the effect that if the Secretary of State does not include those aspects of the development this Council would wish to see as part of the project, these should be secured by way of a legal obligation.

Decommissioning

- 3.20 Members will recall from my previous report that at the end of the operational lifetime of the Project, two potential options for decommissioning are being put forward. These being:
1. Replace, upgrade and extend the life of the power generating station; or
 2. Remove the turbines and sluice gates leaving the seawalls and housing structure in place and allowing continued leisure use of the impounded area.
- 3.21 In response to the Council's LIR that there should be a requirement for a suitably detailed decommissioning strategy and appropriate funding arrangements along with a clear position of responsibility for maintenance or any future intended use and associated costs for the same, the Applicant has amended the draft DCO to include:
- A requirement to submit in the forty-fifth year of operation a programme for decommissioning to the Secretary of State; and

- Provision of a fund for maintenance of the development to be paid from the fiftieth year of operation onwards.

3.22 During the topic specific hearing, the ExA raised the question of the need for decommissioning before the end of the stated life of the project (120 years) and the Development Consent Order/Section 106 Obligation provisions to secure delivery of appropriate decommissioning. The issue of a 'tipping point' was raised where a point in time would be achieved when the established ecological and recreational benefits of the lagoon would outweigh the beneficial seascape, landscape and visual impacts arising from the removal of the lagoon walls.

3.23 As part of the Deadline IV response, Officers have advised the ExA that if the tidal lagoon prematurely ended its operation as a power generating station, a decommissioning strategy should ideally address the removal of the seawalls and turbine/sluice gate housing to the visual benefit of Swansea Bay.

3.24 It is the applicant's position that the proposal is entirely viable and there is no prospect of early decommissioning.

4.0 Financial Implications

4.1 As previously reported to Members, this Authority does not receive a fee for the application which has been made to the Planning Inspectorate. The cost of Officer time therefore falls to the Council.

4.2 Should the DCO be granted for the proposed development, this Council will be required to discharge and enforce the requirements of the DCO for geographical areas in addition to its own administrative area. As set out above, negotiations are ongoing regarding the Applicant funding two Planning posts to carry out this work along with the cost of associated technical support.

5.0 Legal Implications

5.1 The submission is subject to a detailed legal regime under the Planning Act 2008 and the associated Regulations.

5.2 The application includes a draft DCO and Section 106 Obligation. Comments on the same have been provided in consultation with the solicitor acting for the City & County of Swansea.

6.0 Equalities and Engagement Implications

6.1 A high profile initiative such as this will require a full Equalities and Engagement Implications report. Although the planned work is not thought to affect all protected groups, factors such as access and social inclusion (already covered in some detail in the LIR) are applicable to a Section 106 Obligation and will require thorough consideration as work progresses.

Background Papers:

The Planning Act 2008 (as amended), National Policy Statements, Planning Policy Wales, adopted City & County of Swansea Unitary Development Plan and the Tidal Lagoon Swansea Bay Ltd application documents including Environmental Impact Assessment, Draft Development Consent Order and Draft Section 106 Obligation.

Appendices:

Appendix A – Location Plan.

Appendix B – Report of the Head of Economic Regeneration and Planning to Development Management and Control Committee on the 3rd July 2014.

Report of the Head of Economic Regeneration & Planning

Development Management and Control Committee

3 July 2014

SWANSEA BAY TIDAL LAGOON LOCAL IMPACT REPORT AND WRITTEN REPRESENTATION

Purpose:	To appraise the impact of the tidal lagoon proposals on the City and County of Swansea and to recommend a Local Impact Report and Written Representations to the Planning Inspectorate Examining Authority on behalf of this Council along with other recommendations to deal with the procedural aspects of the examination process, including dealing with matters within a Statement of Common Ground and responses to Inspectors questions.
Policy Framework:	National Policy Statements, Planning Policy Wales and the adopted City & County of Swansea Unitary Development Plan.
Reason for Decision:	To provide a response to the Planning Inspectorate Examining Authority on the impacts of the proposed tidal lagoon on the City & County of Swansea and to allow full engagement within the examination process.
Consultation:	Legal Services, Finance, Equalities, Technical Services, Pollution Control, Sustainable Development, Culture, Tourism, Sport and Leisure, Economic Regeneration, Economic Development, Nature and Conservation, Marina Manager and Glamorgan Gwent Archaeological Trust.
Recommendation(s):	It is recommended: <ol style="list-style-type: none">1. That the Local Impact Report be accepted as the Local Impact Report for the City & County of Swansea and be submitted to the Examining Authority of the Planning Inspectorate in accordance with the timetable for the examination process.2. That delegated powers be granted to the Head of Economic Regeneration and Planning to make minor amendments to the Local Impact Report to rectify such matters as typing or grammatical errors.

3. That the findings of Kenneth Pye Associates and White Consultant's be accepted and presented to the Examining Authority of the Planning Inspectorate as representing the views of the City & County of Swansea and formally form part of the Council's Local Impact Report.
4. That the Written Representation be accepted as the Written Representation for the City & County of Swansea and be submitted to the Examining Authority of the Planning Inspectorate in accordance with the timetable for the examination process along with a summary version.
5. Delegated powers be given to the Head of Economic Regeneration and Planning to formally contribute to a Statement of Common Ground to be submitted to the Examining Authority of the Planning Inspectorate in accordance with the timetable for the examination process and within the terms of Council's Local Impact Report and Written Representations.
6. Delegated powers be given to the Head of Economic Regeneration and Planning to formally respond to the Examining Authority's Inspector questions in accordance with the timetable for the examination process during the course of the examination and also to make comment on the submissions of other parties, including the applicant.
7. Delegated powers be given to the Head of Economic Regeneration and Planning to formally represent the views of the City & County of Swansea in any topic specific hearing and subsequent requirements in accordance with the timetable for the examination process during the course of the examination, within the terms of the Council's Local Impact Report and Written Representation

Report Author:

Richard Jones

1.0 Introduction

1.1 Members will recall that a report was presented to this Committee on the 29th August 2013 to firstly inform Committee of the formal Section 42 pre-application consultation by Tidal Lagoon Swansea Bay Ltd in respect of their proposals to design, construct and operate a tidal lagoon for the purpose of generating renewable energy in Swansea Bay. The second main purpose of the report was to appraise the supporting Preliminary Environmental Information Report (PEIR), highlight any deficiencies, areas of concern, points of clarification and suggestions for improvements to the proposed scheme in order to inform a recommendation to members for a response to Tidal Lagoon Swansea Bay Ltd to their formal pre-application consultation. It was resolved that:

- Tidal Lagoon Swansea Bay Ltd be forwarded a copy of the report and take note of the concerns set out and request continued liaison with the City & County of Swansea on the design evolution of the scheme and associated Environmental Impact Assessment.
- Tidal Lagoon Swansea Bay Ltd be provided with a copy of the “Review of Preliminary Environmental Report: Seascape, Landscape and Visual” prepared by White Consultants on behalf of the City & County of Swansea and that Tidal Lagoon Swansea Bay Ltd be requested to note and address the findings of the report.
- Tidal Lagoon Swansea Bay Ltd be provided with copies of the unsolicited representation received.
- Members delegate the response on technical matters relating to the forthcoming informal consultation on the draft Environmental Statement to Officers.
- That the Planning Inspectorate be advised in due course that the City and County of Swansea considers that Tidal Lagoon Swansea Bay Ltd has adequately consulted with the Local Planning Authority and provided adequate supporting information to comply with its duties to consult under Section 42 of the Planning Act 2008.

1.2 The project is an offshore generating station, which would have a nominal rated capacity of 240 MW. Consequently, the project is a nationally significant infrastructure project (NSIP) as defined in the Planning Act 2008 with a generating capacity above a threshold of 100MW

1.3 Accordingly, an application for a development consent order (DCO) has been made to the Secretary of State for Energy and Climate Change (the Secretary of State), via the Planning Inspectorate, to authorise construction and operation of the generating station and its component parts. These include both offshore and onshore elements of the project and the electrical grid connection works and recreational amenities which form part of the seawalls and/or the onshore operation and maintenance facilities.

- 1.4 The application has been formally accepted for examination and an 'Examining Authority' has been appointed by the Secretary of State for Communities and Local Government to examine the application. The Examining Authority is from the Planning Inspectorate, and comprises, in this instance, a panel of five Inspectors.
- 1.5 The Examining Authority (ExA) subsequently held a Preliminary Meeting (PM) on the 10th June 2014, the purpose of which was to set out the procedure for examining the application, including, setting the timetable for making more detailed written representations.
- 1.6 Following on from the PM, the formal examination stage of the application commenced on the 11th June 2014. The ExA has six months to carry out the examination and a further 3 months to prepare a report on the application to the Secretary of State, including a recommendation. The Secretary of State then has a further 3 months to make the decision on whether to grant or refuse development consent. Once a decision has been issued by the Secretary of State, there is a six week period in which the decision may be challenged in the High Court. This process of legal challenge is known as Judicial Review.
- 1.7 As the project lies within Welsh waters, an application for a Marine Licence has also been made to the Marine Licensing Team within Natural Resources Wales.
- 1.8 In order to construct and operate the project the applicant will undertake two licensable activities: construction of marine energy works; and dredging and disposal of dredged material. The requirement for a Marine Licence is broadly defined by works taking place in the offshore environment that affect the seabed or the movement of materials related to it. In determining an application for a Marine Licence the licensing authority must have regard to: (a) the need to protect the environment; (b) the need to protect human health, (c) the need to prevent interference with legitimate uses of the sea.

2.0 The Site and its Surroundings

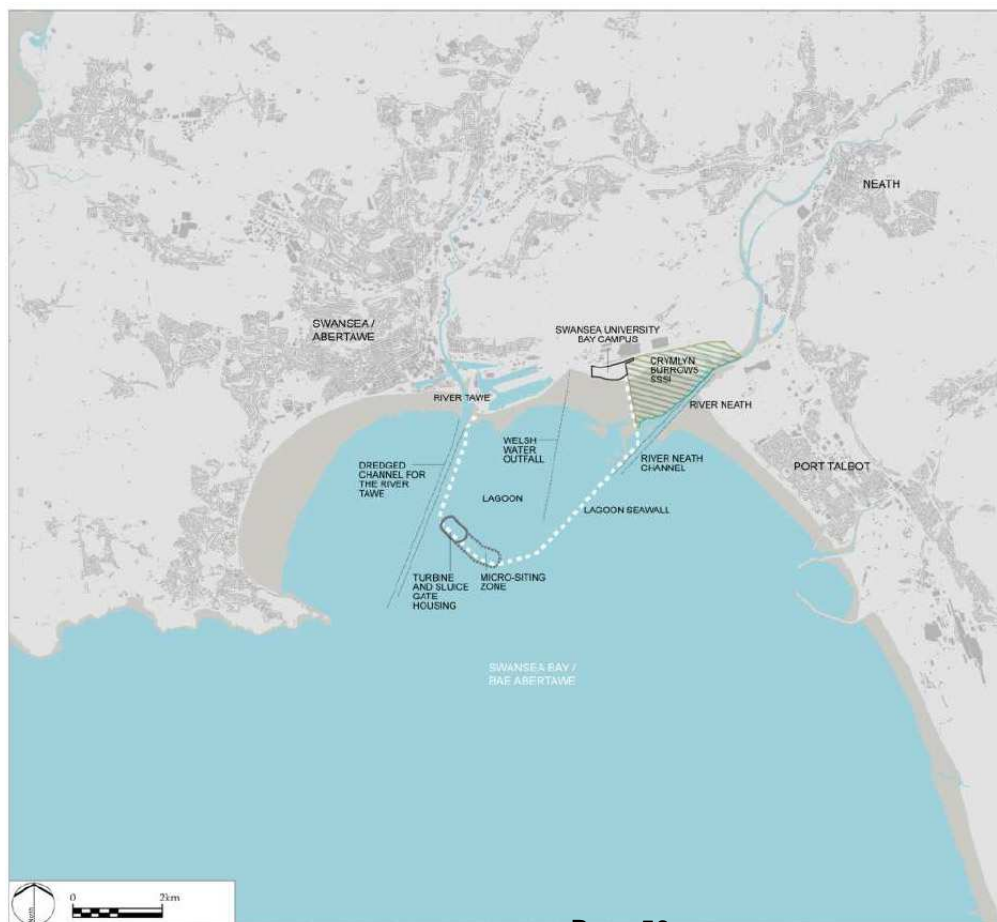
- 2.1 The red line boundary of the project, encompassing all the elements proposed and the maximum extent of land over which powers are sought, is shown below.



- 2.2 The main focus of the application site essentially comprises the southern edge of Swansea Docks and formerly associated industrial land from the eastern side of the River Tawe to the eastern edge of the new Swansea University Bay Campus and the foreshore and seabed of part of Swansea Bay between the dredged channels of the Rivers Tawe and Neath.
- 2.3 The site is primarily focused within the administrative area of the City & County of Swansea and Welsh Territorial Waters other than the eastern landfall of the lagoon and grid connections, which fall within Neath Port Talbot County Borough Council (NPT).
- 2.4 The applicant does not currently own any part of the application site, but is negotiating for its acquisition and is also applying for powers of compulsory acquisition.

3.0 Summary of the Proposed Scheme

- 3.1 Tidal Lagoon Swansea Bay Ltd proposes to design, construct and operate a tidal lagoon for the purpose of generating renewable energy. This will be achieved by harnessing the power of the high tidal range in Swansea Bay.
- 3.2 As illustrated below, the lagoon created as part of the project would enclose an area of approximately 11.5km² of seabed and foreshore of Swansea Bay to create the lagoon. The associated seawalls would be approximately 9.5km in length and extend in a distorted U-shape from the eastern side of the River Tawe to the eastern edge of the new Swansea University Bay Campus, in Neath Port Talbot County Borough Council (NPT).



- 3.3 The seawall would be a maximum of 107m wide at the base of the deepest section, adjacent to the turbine and sluice gate housing and would narrow as it extends towards the landfalls to a minimum width of 40m. The visible height of the seawalls above the water level measured at the highest point would be approximately 4m at high tide and 12.5m at low tide.
- 3.4 The seawall would have a sediment core held in place by a casing of sediment-filled geotextile tubes, known as Geotubes® or dredged or imported gravels. The outside of the structure would be covered in rock armour of various sizes, depending on its level of exposure. The sand used to form the walls would be taken from within the lagoon footprint whilst the rock armour would be brought in by sea to provide the outer protection. The crest of the seawall would include provision of an access road which will be used for the operation and maintenance of the Lagoon as well as for visitors.
- 3.5 The hydro turbines located within the turbine and sluice gate housing would be bi-directional, meaning they are able to generate power with flows of water in both directions. There would be up to 16 turbines, each one around 7m in diameter, and all located permanently underwater. There would also be up to ten sluice gates; these are large gates which will be underwater and able to let seawater in and out of the Lagoon, and so controlling the water passing through the turbines, as required.
- 3.6 To generate electricity, as the sea starts to rise (flood tide) from low tide level, water is prevented from entering the Lagoon for an average of 2.5 hours, which creates a difference in water levels known as 'head'. Once sufficient head has been reached, the water is allowed to flow into the Lagoon through the turbines, turning the runner and generating electricity. This process is repeated on the ebb tide, where the water is prevented from leaving the Lagoon until there is sufficient head to start the process again. The project would generate electricity four times per day (on each of two ebb and flood tides) totalling, on average, 14 hours of generation every day.
- 3.7 Towards the end of the ebb or flood tide the sluice gates would be opened. This is to empty or fill the Lagoon as quickly as possible before low or high tide level. By doing this, it ensures that the Lagoon water level is as close to the outside sea level as possible, before the tide starts to rise or fall again. This is to maximise electricity generation and to keep the intertidal area as close as possible to that occurring naturally outside the Lagoon. An option to pump the seawater at the end of the tide is also being investigated to further equalise seawater levels.
- 3.8 The electricity generated would be fed into the National Electricity Transmission System (NETS) via National Grid's substation in Baglan by way of an underground cable connection from the generating station. The Lagoon would have a nominal rated capacity of 240 Megawatts (MW), generating 400GWh net of electricity on an annual basis, which is enough to power around 121,000 homes.
- 3.9 In addition to generating electricity, the project aims to provide visitor facilities and other amenities including art, education, mariculture and sporting/recreational facilities. The seawall is expected to be open to the public during daylight hours for walking, running, cycling, fishing etc, though access would be controlled in extreme weather.

- 3.10 The needs of the project have been encompassed in an overarching Masterplan designed around three core areas, namely: the Offshore Building; the western landfall; and the eastern landfall. The Masterplan aims to link these three areas and the seawalls of the Lagoon to the land. It is stated that the public realm of the project has been designed as a 'marine park' with four offshore and onshore character areas reflecting their context and use. These are: the Broad Seaward Park, Narrow Seaward Park, Landward Urban Park and Landward Ecological Park. A circular route around the four parks would be provided for visitors to the lagoon as well as O&M access.
- 3.11 It is proposed to construct an offshore building as part of the turbine housing structure to accommodate the main operational and maintenance (O&M) with integral visitor centre, leisure facilities and public realm. The building would be a maximum of three storeys high.
- 3.12 The western landfall will also include a three storey building providing functional space for the O&M requirements of the project. The building will also allow controlled access to the western seawall and water sports facilities and a visitor orientation and public information space. Externally there would be 300 car parking spaces, coach parking, a slip way access to the lagoon, boat storage, a play area, soft and hard landscaping including a beach.
- 3.13 The main vehicular access routes would be from Fabian Way via a new project access road with combined footpath and cycleway constructed from Langdon Road. A shuttle bus is proposed linking the existing Park & Ride facility on Fabian Way, the western landfall, and the Offshore Building, subject to investigation of its viability. Facilities are also proposed on the western seawall to support a potential water shuttle service linking the existing pontoon on the west bank of the Tawe to the Lagoon facilities.
- 3.14 At the end of the operational lifetime of the Project (anticipated to be some 120 years), two potential options for decommissioning are being put forward:
1. Replace, upgrade and extend the life of the power generating station; or
 2. Remove the turbines and sluice gates leaving the seawalls and housing structure in place and allowing continued leisure use of the impounded area.
- 3.15 A detailed description of the proposal is provided as Appendix 1.

4.0 Planning Policy

4.1 National Policy Statements

- 4.1.1 On 18th July 2011 the House of Commons debated and approved the six National Policy Statements for Energy (NPS). On 19th July 2011, the Secretary of State for Energy and Climate Change designated the NPSs under the Planning Act 2008.

4.1.2 The energy NPSs set out national policy against which proposals for major energy projects will be assessed and decided on by the Planning Inspectorate. The Planning Inspectorate will use NPSs in its examination of applications for development consent, and Ministers will use them when making decisions. (Under the Planning Act 2008 the Secretary of State must also have regard to any local impact report submitted by a relevant local authority.)

4.1.3 The NPSs of relevance to this application are:

- Overarching Energy National Policy Statement (EN-1);
- Renewable Energy Infrastructure National Policy Statement (EN-3); and
- Electricity Networks Infrastructure National Policy Statement (EN-5).

4.1.4 NPS EN-1 sets out:

- The high level objectives, policy and regulatory framework for new nationally significant infrastructure projects;
- The need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting Government's policies on sustainable development, in particular by mitigating and adapting to climate change;
- Key principles to be followed in the examination and determination of applications;
- Policy on the assessment of impacts which are common across a range of the technologies (generic impacts).

4.1.5 Given the urgency of need for renewable energy infrastructure, it is stated that the Secretary of State should start with a presumption in favour of granting consent to applications for energy NSIPs.

4.1.6 It is stated that this presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused or if the proposal will result in adverse impacts from the development outweighing the benefits. In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Secretary of State should take into account:

- Its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
- Its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.

4.1.7 In this context, NPS EN-1 states that the Secretary of State should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels. These may be identified in this NPS, the relevant technology-specific NPS, in the application or elsewhere (including in local impact reports).

- 4.1.8 NPS EN-3 contains policy specifically relating to renewable energy infrastructure and is designed to be read in conjunction with EN-1. The infrastructure covered by this NPS comprises energy from biomass and/or waste, offshore wind and onshore wind. The NPS does not cover other types of renewable energy generation that at the time of publication were not technically viable, such as schemes that generate electricity from tidal stream or wave power. It was expected that tidal range schemes may be the subject of applications within the near future and government is, therefore considering the need for either a revision to this NPS or a separate NPS to provide the primary basis for decision-making under the Planning Act on such schemes.
- 4.1.9 Although Tidal Lagoon Swansea Bay Ltd now submit that tidal power is now economically and technically viable, Government has not yet indicated when it intends to address the situation on directly applicable NPSs.
- 4.1.10 NPS EN-3 clarifies that the Secretary of State should have regard to Planning Policy Wales and advice issued by Welsh Government relevant to renewables and expect applicants to have taken them into account when working up their proposals.
- 4.1.11 NPS EN-5 is concerned with impacts and other matters which are specific to electricity networks infrastructure or where, although the impact or issue is generic and covered in EN-1, there are further specific considerations arising from this technology. The policies set out in this NPS are additional to those on generic impacts set out in EN-1.

4.2 *Planning Policy Wales*

- 4.2.1 Planning Policy Wales (Edition 6) (PPW) states that in determining applications for renewable and low carbon energy development and associated infrastructure local planning authorities should take into account:
- The contribution a proposal will play in meeting identified national, UK and European targets and potential for renewable energy, including the contribution to cutting greenhouse gas emissions;
 - The wider environmental, social and economic benefits and opportunities from renewable and low carbon energy development;
 - The impact on the natural heritage, the Coast and the Historic Environment;
 - The need to minimise impacts on local communities to safeguard quality of life for existing and future generations;
 - Ways to avoid, mitigate or compensate identified adverse impacts;
 - The impacts of climate change on the location, design, build and operation of renewable and low carbon energy development. In doing so consider whether measures to adapt to climate change impacts give rise to additional impacts;
 - Grid connection issues where renewable (electricity) energy developments are proposed; and
 - The capacity of and effects on the transportation network relating to the construction and operation of the proposal.

4.2.2 Planning Policy Wales Technical Advice Note 8: Planning for Renewable Energy sets out the land use planning considerations of renewable energy and advises that in order to meet WG renewable energy targets that 800MW of additional installed capacity is required from onshore wind sources and a further 200MW of installed capacity is required from offshore wind and other renewable technologies.

4.2.3 It is advised that although generally supported, there could be occasions where some hydro schemes are unacceptable because of potential ecological damage. It states that all of the parties involved should work constructively to find acceptable solutions.

4.3 *City & County of Swansea Unitary Development Plan*

4.3.1 The preamble to City & County of Swansea Unitary Development Plan (UDP), Policy R11 sets out the Council's support for Welsh Government's policy for strengthening renewable energy production, and recognises the long-term benefits to be derived from the development of renewable energy sources. It is recognised that renewable energy technologies can have a positive impact on local communities and the local economy in terms of monetary savings and in generating and underpinning economic development within the County. There are however concerns about the impacts that some renewable energy technologies can have on the landscape, local communities, natural heritage and historic environment, nearby land uses and activities. The Council therefore seeks to achieve a balance between supporting renewable energy proposals whilst avoiding significant damage to the environment and its key assets. It is explained that favourable consideration will be given to developments that produce or use renewable energy where such proposals conform with UDP policies and are in scale and character with their surroundings.

4.3.2 To this end Policy R11 states that proposals for the provision of renewable energy resources, including ancillary infrastructure and buildings, will be permitted provided:

- i. The social, economic or environmental benefits of the scheme in meeting local, and national energy targets outweigh any adverse impacts,
- ii. The scale, form, design, appearance and cumulative impacts of proposals can be satisfactorily incorporated into the landscape, seascape or built environment and would not significantly adversely affect the visual amenity, local environment or recreational/tourist use of these areas,
- iii. There would be no significant adverse effect on local amenity, highways, aircraft operations or telecommunications,
- iv. There would be no significant adverse effect on natural heritage and the historic environment,
- v. The development would preserve or enhance any conservation areas and not adversely affect listed buildings or their settings,
- vi. The development is accompanied by adequate information to indicate the extent of possible environmental effects and how they can be satisfactorily contained and/or mitigated,
- vii. The development includes measures to secure the satisfactory removal of structures/related infrastructure and an acceptable after use which brings about a net gain where practically feasible for biodiversity following cessation of operation of the installation.

4.3.3 The above sets out the main national and local planning policy principles that apply to this proposal. A significant amount of other relevant planning policy is considered as part of the Local Impact Report.

5.0 The process and involvement of the City & County of Swansea

5.1 Under the provisions of the Planning Act 2008, the City & County of Swansea has the status of 'relevant local authority' for the purpose of this application, on the basis that part of the application proposals are located within the administrative boundary of the County, and, adjacent to it.

5.2 As a relevant local authority, the City & County of Swansea has been invited to submit a local impact report (LIR) to the ExA, giving details of the likely impact of the proposed development on this Authority's area.

5.3 In coming to a decision, the ExA and Secretary of State must have regard to any LIRs that are submitted by the deadline. The Planning Inspectorate strongly encourage local authorities to produce LIRs when invited to do so.

5.4 The sole definition of an LIR is given in s60(3) of the Act as '*a report in writing giving details of the likely impact of the proposed development on the authority's area (or any part of that area)*'. The Planning Inspectorate's Advice Note 1: Local Impact Reports (April 2012) advises that the LIR should be used by local authorities as the means by which their existing body of local knowledge and evidence on local issues can be fully and robustly reported to the ExA.

5.5 The report should consist of a statement of positive, neutral and negative local impacts, and their relative importance together with an assessment of the development's compliance with planning policy and the Authority's view on the DCO.

5.6 The LIR does not need to contain a balancing exercise between positives and negatives as this will be carried out by the ExA, nor should the LIR state opinions on the development itself. Moreover, there is no need for the LIR to replicate the EIA. Nor is it necessary to replicate any assessment already produced in respect of the site such as those included in National Policy Statements. Rather, the advice is that LIR's should draw on existing local knowledge and experience and therefore cover any topics considered relevant to the impact of the proposed development on their area.

5.7 As an LIR does not include the Local Planning Authority's position on the proposed development, it open to relevant authorities to submit a separate Written Representation (WR) if it wishes to express a particular view on any aspect of the development or whether the application should be granted.

5.8 The Local Authority is also required to agree to a Statement of Common Ground (SoCG), which is a written statement prepared jointly by the applicant and other parties, setting out any matters on which they agree and identifying matters where agreement has not been reached. This will be an iterative document that will evolve during the course of the examination.

- 5.9 Also during the course of the examination, the Local Planning Authority will be required to respond to specific questions raised by the ExA. The first round of questions were posed by the ExA on the 16th June 2014. The Local Authority will also have opportunity to comment on representation and responses to questions made by other interested parties and the applicant during the course of the examination.
- 5.10 Following the PM, the ExA has now made its procedural decisions about the way in which the application is to be examined and the timetable for the submission of the aforementioned documents. The timetable is provided as Appendix 2.
- 5.11 The examination of the application will primarily be a consideration of written representations about the application, along with any oral representations made at the open floor and topic specific hearings. Issue specific hearings are held only if the ExA considers they are necessary to ensure adequate examination of an issue or that an interested party has a fair chance to put forward their case.
- 5.12 An open floor hearing can be requested by anyone who has registered and made a relevant representation or by other interested parties. The dates for the hearings are set out in the examination timetable provided at Appendix 2.
- 5.13 The first significant deadline for this Authority is Deadline II (8th July) by which time it must submit its LIR, WR, contribution to the SoCG and response to the Inspector's first round of questions.

(The Local Planning Authority has already confirmed, in accordance with Deadline I on the 24th June 2014 that it reserves the right to attend and participate in all of the hearings arranged as well as providing requests for specific locations to be included in the formal site visits by the ExA.)

- 5.14 Under the terms of the draft DCO, the role of CCS would fundamentally change should consent be granted for the tidal lagoon scheme. In this respect, CCS would become the single Local Planning Authority (and Pollution Control Authority) for matters such as discharge of conditions (known as requirements in this process), obligations and enforcement. For this, the DCO proposes that seaward of the high water springs and that part of the application site located within Neath Port Talbot County Borough Council (NPT) be effectively annexed to CCS.
- 5.15 In this respect it is normal practice for the Authority with the greatest share of the application site to be the determining Authority. The benefits to CCS is that it will have control over significant matters affecting the County but will have significant resource issues at a time when such resources are already stretched. In this respect the draft DCO also sets out the expected procedures for CCS in discharging the requirements of the scheme. It is considered that a number of these procedures are unreasonable, onerous and resource intensive. Accordingly, submissions to this effect are contained with the LIR along with a suggested requirement for the applicant to fund one full time senior planning officer and one full time supporting technical officer in order to meet any finally agreed procedures. This would be resolved by way of a Planning Performance Agreement.

6.0 Submissions

- 6.1 A LIR has been prepared on behalf of the City & County of Swansea in consultation with all relevant Service Areas of the Council and its archaeological advisors. A copy of the LIR, which has been produced in accordance with the Planning Inspectorate's Advice Note 1: Local Impact Reports (April 2012) and best practice examples, is provided as Appendix 3. Copies of the internal responses received, which have helped inform the LIR, are reproduced in full as Appendix 4. (No external consultation has taken place with statutory consultees such as Natural Resources Wales, who is a registered interested party in its own right and will make submissions directly to the ExA.)
- 6.2 The main material considerations with regard to the proposal are set out below and are considered within the appended LIR.
- Principle of development
 - Seascape, landscape and visual impact
 - Design and public realm
 - Cultural heritage and terrestrial and marine archaeology
 - Coastal processes, sediment transport and contamination
 - Intertidal and subtidal benthic ecology
 - Fish, including recreational and commercial fisheries
 - Marine mammals and turtles
 - Coastal birds
 - Terrestrial ecology
 - Marine water quality assessment
 - Land quality and hydrogeology
 - Onshore transport assessment/highways, traffic, car parking, access and pedestrian movements
 - Navigation and marine transport assessment
 - Air quality
 - Hydrology and flood risk
 - Residential amenity
 - Economy, Tourism and Recreation
 - Sustainability
- 6.3 Given the nature of the proposed development and that the specialism is not available within the Council, White Consultants have been commissioned by the City and County of Swansea to review the seascape and landscape visual impact assessment (SLVIA). A copy of the final report from White Consultants is provided is Appended to the LIR.
- 6.4 Again, for specialism reasons, the City & County of Swansea has also commissioned Kenneth Pye Associates Ltd Research, Consultancy and Investigations to consider the potential impacts of the lagoon on coastal processes, sediment transport and rates of sediment accretion and erosion along the CCS bay frontage. A copy of the report by Kenneth Pye Associates Ltd is also appended to the LIR.
- 6.5 As set out above, it is recommended that the findings of Kenneth Pye Associates and White Consultant's be accepted and presented to the ExA as representing the views of the City & County of Swansea and formally form part of the Council's Local Impact Report.

- 6.6 In accordance with the issues raised in the LIR, Written Representation has been prepared which sets out the recommended position for the City & County of Swansea. This is provided as Appendix 5.
- 6.7 As set out above, CCS is required to formally agree to a SoCG. This work is currently ongoing and will be an iterative process. It is recommended therefore that delegated powers be given to the Head of Economic Regeneration and Planning to formally contribute to a SoCG in accordance with the timetable for the examination process and within the terms of Council's Local Impact Report and Written Representations.
- 6.8 The Council is also now in receipt of the Inspectors first round of questions. These are set out in Appendix 6. The appended LIR addresses many of these questions whilst responses to the residual matters are currently being prepared.
- 6.9 There will be further rounds of questions through the duration of the examination and the advice given by the Planning Inspectorate is that local authorities should ensure any necessary internal authorisation processes are in place to meet the timetable. It is stressed that such are the timescales for responses to Inspector's questions etc that it will not be possible to seek authorisation from Committee.
- 6.10 It is recommended therefore that delegated powers be granted to the Head of Economic Regeneration and Planning to formally respond to the Examining Authority's Inspector questions in accordance with the timetable for the examination process during the course of the examination and also to make comment on the submissions of other parties, including the applicant.
- 6.11 Similarly, additional delegated powers are sought to be granted to the Head of Economic Regeneration and Planning to formally represent the views of the Council in any topic specific hearing and subsequent requirements in accordance with the timetable for the examination process during the course of the examination, within the terms of the Council's Local Impact Report and Written Representation.

7.0 Financial Implications

- 7.1 CCS does not receive a fee for the application which has been made to the Planning Inspectorate. The cost of Officer time therefore falls to the Council. The applicant has however advised that it is willing to pay the costs for the Council's external consultants.
- 7.2 Should the DCO be granted for the proposed development, CCS will be required to discharge and enforce the requirements of the Order for geographical areas in addition to its own administrative area. The appended LIR addresses the resource implications of this work and suggests that dedicated officer posts are funded by the applicant and that fees are paid to the Local Planning Authority to discharge the requirements of the Order that are proportional to the submission.

8.0 Legal Implications

- 8.1 The submission is subject to a detailed legal regime under the Planning Act 2008 and the associated Regulations.
- 8.2 The application includes a draft DCO and Heads of Terms for a Section 106 Obligation. Comments on the same are provided within appended LIR.

9.0 Equalities and Engagement Implications

- 9.1 A high profile initiative such as this will require a full Equalities and Engagement Implications report. Although the planned work is not thought to affect all protected groups, factors such as access and social inclusion (already covered in some detail in the LIR) will need to be considered as work progresses.

Background Papers:

The Planning Act 2008 (as amended), National Policy Statements, Planning Policy Wales, adopted City & County of Swansea Unitary Development Plan and the Tidal Lagoon Swansea Bay Ltd application documents including Environmental Impact Assessment.

Appendices:

- Appendix 1 – Detailed project description
- Appendix 2 – Examination timetable
- Appendix 3 – City & County of Swansea Local Impact Report
- Appendix 4 - Internal consultation responses
- Appendix 5 - City & County of Swansea Written Representations
- Appendix 6– Inspectors first round of questions

Report of the Head of Legal and Democratic Services and Procurement

Development Management & Control Committee – 9 October 2014

IMPLICATIONS OF THE CASE OF R (ON THE APPLICATION OF BARKAS) (APPELLANT) –v- NORTH YORKSHIRE COUNTY COUNCIL AND ANOTHER (RESPONDENTS) [2014] UKSC31 ON APPLICATIONS TO REGISTER COUNCIL OWNED LAND AS A TOWN OR VILLAGE GREEN

Purpose:	To provide an up-date on the recent decision of the Supreme Court in the above case and its implications on village green applications relating to Council owned land.
Policy Framework:	The Council in its capacity as Commons Registration Authority is required by statute to determine applications for land to be designated as a town or village green.
Report Author:	Sandie Richards
Finance Officer:	S. Willis
Legal Officer:	Nigel Havard
Access to Services Officer:	P. Couch

FOR INFORMATION

1. Introduction

- 1.1 The Council in its role as Commons Registration Authority (CRA) has a statutory duty pursuant to Section 15 of the Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 to determine applications for land to be registered as a town or village green.
- 1.2 The effect of registration of land as a town or village green is that it is protected from development for ever and preserved for use by local people.
- 1.3 Under the terms of the Council's constitution the Rights of Way and Commons Sub-Committee of the Planning Committee discharges the functions of the Council with regard to village greens.

2. General issues

- 2.1 Applications can raise difficult issues of both fact and law. Additional difficulty is involved in circumstances where the land in question is owned by the Local Authority in that a conflict arises as the Council is both the CRA and the objecting owner of the land. These roles have to remain separate as far as is possible so as to minimise challenge by way of judicial review. The Council, in its role as CRA must consider the application purely on the merits of the case by applying the relevant law and in accordance with the principles of natural justice.
- 2.2 A case recently heard by the Supreme Court has implications for the determination of applications where the land subject to the application is owned by a local authority.

3. Implications of Recent Case Law

- 3.1 To register land as a town or village green applicants must be able to provide evidence that there has been recreational use of the land by a significant number of inhabitants of any locality or neighbourhood within a locality for a 20 year period and that the recreational use has been **as of right, ie without force, without secrecy and without permission having been granted**. The recreational use must be for lawful sports and pastimes.
- 3.2 In the case of R (on the application of Barkas) (Appellant) -v- North Yorkshire County Council and Another (Respondents) [2014] UKSC31 (referred to as “the Barkas case) the land was provided and maintained by the local authority as “recreation grounds” under what is now section 12(1) of the Housing Act 1985.
- 3.3 The Supreme Court has determined that whilst the applicant was able to meet the requirements regarding the recreational use of the land by the required users for the required time period, they could not show that they used the land “as of right”. In these circumstances the Court determined that the land is used “**by right**” by the powers of the Housing Acts. Consequently, such land is not registerable as a town or village green on the basis of such use.
- 3.4 The decision has implications for applications for the registration of land as a village green in circumstances where the land is held by a local authority for public recreational purposes pursuant to any statutory power at any time during the relevant 20 year period for the purposes of section 15 of the Commons Act 2006.
- 3.5 This position does not apply to land owned by a private individual or company where there is no legal duty and no statutory power to allocate land for public use and would be expected to protect their own legal rights.

4. Equality and Engagement Implications

4.1 There are no equality and engagement implications.

5. Financial Implications

5.1 There are no financial implications.

6. Legal Implications

6.1 The legal implications are set out in the body of the report.

FOR INFORMATION

Background papers: None

Appendices: None