

## DINAS A SIR ABERTAWAWE

### HYSBYSIAD O GYFARFOD

Fe'ch gwahoddir i gyfarfod

### PWYLLGOR CYNLLUNIO

**Lleoliad:** Ystafell Bwyllgor 3A, Neuadd y Ddinas, Abertawe

**Dyddiad:** Dydd Mawrth, 12 Ebrill 2016

**Amser:** 2.00 pm

**Cadeirydd:** Cyngorydd Paul Lloyd

#### **Aelodaeth:**

Cyngorwyr: A C S Colburn, D W Cole, A M Cook, M H Jones, E T Kirchner, C L Philpott, I M Richard, P B Smith, M Thomas a/ac T M White

### AGENDA

Rhif y Dudalen.

- 1 Ymddiheuriadau am absenoldeb.
- 2 Datgeliadau o fuddiannau personol a rhagfarnol.  
[www.abertawe.gov.uk/DatgeliadauBuddiannau](http://www.abertawe.gov.uk/DatgeliadauBuddiannau)
- 3 **Cofnodion.** 1 - 2  
Cymeradwyo a llofnodi cofnodion y cyfarfod blaenorol fel cofnod cywir.
- 4 **Eitemau i'w gohirio / tynnu'n ôl.**
- 5 **Cais am gofrestru tir a adwaenir fel Picked Mead, Newton, Abertawe yn faes tref neu bentref.** 3 - 59
- 6 **Penderfynu ar geisiadau cynllunio o dan Ddeddf Cynllunio Gwlad a Thref 1990..** 60 - 83
- 7 **Cais Cynllunio 2008/0512 - Tir oddi ar Heol Brithwen, Waunarlwydd, Abertawe - datblygiad preswyl (amlinelliad)** 84 - 116
- 8 **Heol Tavistock a Heol Parc Wern, Sgeti, Abertawe - Adroddiad Cadarnhau Gorchymyn Cadw Coed 599.** 117 - 119

**Cyfarfod Nesaf:** Dydd Mawrth, 10 Mai 2016 ar 2.00 pm



**Patrick Arran**

**Pennaeth Gwasanaethau Cyfreithiol a Democrataidd**

**Dydd Llun, 4 Ebrill 2016**

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**Cyswllt: Gwasanaethau Democrataidd - 636923**

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE PLANNING COMMITTEE

HELD AT COMMITTEE ROOM 3A, GUILDHALL, SWANSEA ON  
TUESDAY, 8 MARCH 2016 AT 2.00 PM

**PRESENT:** Councillor P Lloyd (Chair) Presided

**Councillor(s)**

A C S Colburn

P Downing

I M Richard

T M White

**Councillor(s)**

D W Cole

M H Jones

M Thomas

**Councillor(s)**

A M Cook

C L Philpott

D W W Thomas

**Apologies for Absence**

Councillor(s): E T Kirchner

92 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS.**

In accordance with the provisions of the Code of Conduct adopted by the City and County of Swansea, no interests were declared

93 **MINUTES.**

**RESOLVED** that the Minutes of the Planning Committee held on 9 February 2016 be agreed as a correct record

94 **ITEMS FOR DEFERRAL / WITHDRAWAL.**

None.

95 **DETERMINATION OF PLANNING APPLICATIONS UNDER THE TOWN & COUNTRY PLANNING ACT 1990.**

The Head of Economic Regeneration and Planning presented a planning application.

Amendments to this schedule were reported and are indicated below by (#).

**RESOLVED** that:

(1) the undermentioned planning applications **BE APPROVED** subject to the conditions in the report and/or indicated below:

**#(Item 1) Planning Application - 2015/2544 - Cwmrhydyceirw Quarry, Vicarage Road, Cwmrhydyceirw, Morriston, Swansea.**

**#(Item 3) Planning Application - 2015/2308 - The Bungalow, Parkmill, Swansea.**

A visual presentation was provided.

Christine Lloyd(neighbour) addressed the Committee relating to the issue of issue of asbestos on the site.

Late correspondence received from the objector to the application. Concern is expressed within this correspondence that the planning application forms indicate that the proposal does not involve hazardous waste, whereas it is alleged that the building contains asbestos.

The objector has requested that the application forms be consequently amended.

The Case Officer has discussed this matter with the agent, who has advised that an asbestos survey has not yet been carried out, and hence at this point in time, they are not aware of there being asbestos within the application building. On this basis, they have indicated that the proposal does not involve hazardous substances. Whilst not a material planning consideration, the agent has however advised that an asbestos survey will be carried out in due course. The objector has been advised that if she continues to have concerns on this matter, she should contact the Health & Safety Executive for advice.

Application approved in accordance with recommendation, subject to the use of the following additional informative.

*7. The applicant/developer is advised to take appropriate professional advice prior to the demolition of the existing dwelling, particularly in relation to the potential for asbestos to be present within the dwelling.*

**(2)** the undermentioned planning applications **BE REFUSED** for the reasons indicated in the report and/or below:

**(Item 2) Planning Application - 2015/2522 - Former Hills Colliery, Heol Dywyll, Clydach, Swansea.**

The agent has submitted a report relating to coal mining issues, and submitted information suggesting the applicant would be prepared to reduce the site area to move away from protected trees, and amend the proposal so that the stables, store and birthing stable are included as one building. In view of this, a request has been made for Committee to defer the application.

Officers advised that the information submitted is significantly different from the originally submitted scheme and does not address all the reasons for refusal. It was considered that the application should be considered on the basis of the originally submitted details.

Members did not resolve to defer the application and considered the report.

Late letter received expressing concerns over additional traffic and access.

Councillor P B Smith (Local Member) addressed the Committee and spoke in support of the recommendation of refusal.

The meeting ended at 2.47 pm

**CHAIR**

## Report of the Head of Legal and Democratic Services

Planning Committee - 12 April 2016

### APPLICATION TO REGISTER LAND KNOWN AS PICKET MEAD, NEWTON, SWANSEA AS A TOWN OR VILLAGE GREEN APPLICATION NO. 2730(S)

<b>Purpose:</b>	To inform the Planning Committee of the recommendation of the Inspector
<b>Policy Framework:</b>	None
<b>Statutory Tests:</b>	Section 15 Commons Act 2006
<b>Reason for the Decision:</b>	The Authority has a statutory duty to determine the application
<b>Consultation:</b>	Legal, Finance, Planning and Local Members
<b>Recommendation</b>	It is recommended that:  <ol style="list-style-type: none"><li>1) the application for the above registration be REFUSED;</li><li>2) that NO PART the land of the application site be added to the Register of Town or Village Greens under Section 15 of the Commons Act 2006.</li></ol>
<b>Report Author:</b>	Sandie Richards
<b>Finance Officer:</b>	Aimee Dyer
<b>Legal Officer:</b>	Sandie Richards
<b>Access to Services Officer:</b>	Phil Couch

#### 1.0 Introduction

- 1.1 The Council has received an application by Mr. Simon Arthur under Section 15(2) of the Commons Act 2006 in respect of land known locally as Picket Mead, Newton, Swansea. The application seeks to register land as a Town or Village Green. A plan of the land in question appears as Appendix 1.

## **2.0 History of the Application**

- 2.1 The land is owned by this Council. However, the Council has not made an objection to this application.
- 2.2 An objection has been received from Carrington Moore Estates Limited who are owners of neighbouring land at Picket Mead House and beneficiaries of an easement which has been granted by the Council as landowner over the track or access road within the eastern part of the application site.
- 2.3 The land also forms part of a larger area which is already registered with the Authority, initially under the Commons Registration Act 1965, latterly under the Commons Act 2006 as common land. Furthermore, an application had been made by Carrington Moore Estates Limited under Section 38 of the Commons Act 2006 to the Welsh Government for consent for certain physical works to be carried out within the present application site, in connection with the development, pursuant to planning permission, of adjoining land to the south.
- 2.4 Upon an initial assessment of the evidence the Inspector advised that there were issues of fact and law in dispute and that it would be appropriate to hold a non-statutory inquiry.

## **3.0 The Remit of the Inspector**

- 3.1 The role of the Inspector was to act on behalf of the Council solely in its role as Commons Registration Authority. The Inspector had no involvement with the Council in its capacity of landowner.
- 3.2 Mr. Alesbury is a recognised expert in this area of law and has been appointed on numerous occasions to hold public inquiries in relation to village green applications both by the City & County of Swansea and other local authorities throughout England and Wales.

## **4.0 The Role of this Committee**

- 4.1 The Inspector's findings are not binding on this Committee. It is for the Committee to reach its own determination on the matters of fact and law arising as a result of the Application.
- 4.2 It is for this Committee to determine the Application fairly, putting aside any considerations for the desirability of the land being registered as a Town or Village Green or being put to other uses.
- 4.3 However, the Inspector has had the opportunity to assess the written evidence of all parties in light of the legislation and relevant case law. It is therefore not appropriate for this Committee to re-open issues regarding the quality of the evidence unless they had extremely strong reasons to do so.

## 5.0 The Legal Tests to be Satisfied

5.1 The Commons Act 2006 is the statutory regime governing village greens. Section 15 of the Act sets out the requirements which must be met if the land is to be registered. Registration of town and village greens is determined by the Council in its capacity as Commons Registration Authority. The process of determination of any application is focused on whether a village green has come into existence as a matter of law.

5.2 The application in this case was made under s.15(2) of the Commons Act 2006. That section applies where:

“a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years*”

and

b) *“they continue to do so at the time of the application.”*

5.3 The test can be broken down as follows:

*“a significant number of the inhabitants . . . “*

It is sufficient to show a general use by the local community as opposed to mere occasional use by trespassers. It is not assessed by a simple headcount of users.

5.4 *“. . . of the inhabitants of any locality or any neighbourhood within a locality”*

This is not defined by any arbitrary margins and must be a recognised county division such as a borough, parish or manor. An ecclesiastical parish can be a locality. It is acceptable for the users of the land to come ‘predominantly’ from the locality. A neighbourhood must be clearly defined and have a sufficient cohesiveness. It must also be within a locality.

5.5 *“. . . have indulged as of right . . . “*

Use ‘as of right’ is use without permission, secrecy or force. The key issue in user ‘as of right’ is not the subjective intentions of the users but how the use of the land would appear, objectively, to the landowner. Use is ‘as of right’ if it would appear to the reasonable landowner to be an assertion of a right. Permission by the landowner, perhaps in the form of a notice on the land, would mean that the use is not ‘as of right’. Equally use by force, such as where the user climbs over a fence or other enclosure to gain access to the land would not be use ‘as of right’.

5.6 If the use of the land is not sufficient in terms of frequency or regularity to reasonably bring it to the attention of a landowner, then it may be a secret use and have direct consequences upon it. Another example of a secret use

could be where the use takes place exclusively under the cover of darkness such that it would not be reasonable to expect a landowner to become aware of it.

5.7 *“in lawful sports and pastimes on the land . . .”*

This is broadly interpreted so that general recreational use including walking with or without dogs and children’s play would all be included.

5.8 *“. . . for a period of at least 20 years. . . .”*

The relevant 20 year period in this application is measured backwards from the date the application was received on 17<sup>th</sup> January 2012.

## **6.0 Burden and Standard of Proof**

6.1 In order for an application to be successful each aspect of the requirements of Section 15(2) must be strictly proven and the burden of proof in this regard is firmly upon the Applicant. The standard of proof to be applied is ‘on the balance of probabilities’. Therefore the Applicant must demonstrate that all the elements contained in the definition of a town or village green in section 15(2) of the Commons Act 2006 have been satisfied.

6.2 This Committee must be satisfied based on the evidence and the report and addendum of the Inspector and subsequent comments by the Council and the applicant as objecting landowner that **each** element of the test has been proven on the balance of probabilities. In other words, it must be more likely than not that each element of the test is satisfied.

## **7.0 The Inspector’s Findings**

7.1 The Inspector addresses each of the elements of the test in his report dated 5<sup>th</sup> February 2016 (which is attached as Appendix 2) and these are set out below.

### **7.2 “Locality” or “Neighbourhood within a Locality”**

This is addressed in paragraphs 11.19 to 11.27 of the Inspector’s report. He concludes that there is a cohesive neighbourhood of the village of Newton, and that the Electoral Ward of Newton relied upon by the Applicant at the inquiry represents a reasonable definition of its boundaries.

### **7.3 “A significant number of the inhabitants” “lawful sports and pastimes” “at least 20 years” “they continue to do so”**

These four criteria are taken together by the Inspector in paragraphs 11.28 to 11.37 of the report. He concludes that on the balance of the evidence that there was sufficient use of the land, during the period of at least 20 years,



specifically for 'lawful sports and pastimes' on the land as a whole. He finds that general use of the land has continued right through to the date of the Applicant's application.

#### **7.4 "On the land"**

This issue is discussed at paragraphs 11.38 to 11.47 of the Inspector's report.

He concludes that if he were otherwise minded to recommend that Picket Mead generally should be registered as a town or village green, he would nevertheless be recommending that the access track should be excluded from the area so registered due to the lack of substantial or convincing evidence that it had been used to any significant extent for "lawful sports and pastimes" as opposed to being used as a route of passage by people either in vehicles, on foot or on horseback.

#### **7.5 "As of right"**

The issue of most legal significance at the inquiry was whether or not use of the land had been 'as of right' and is referred to in paragraphs 11.48 to 11.54 of the Inspector's report.

It is concluded that the fact that the land had been registered as common land and has subsequently been subject to the express statutory right given to members of the public to use such commons "for air and exercise" granted by Section 193(1) of the Law of Property Act 1925.

As such, the activities which the local people carried out on the land were exercised in a way which was akin to having been given permission to use it.

### **8.0 Formal Conclusion and Recommendation**

8.1 The Inspector's conclusions and recommendations are set out in paragraphs 11.55 and 11.56 of the Report.

8.2 He concludes that the Applicant has not succeeded in making out the case that any part of the application site should be registered pursuant to Section 15(2) of the Commons Act 2006. In particular he failed to establish that any part of the land was used "as of right" for the requisite purposes or period, within the legal meaning of that expression.

8.3 The Inspector recommends that no part of the application site should be added to the Register of Town or Village Greens, under Section 15 of the Commons Act 2006.

### **9.0 Recommendation**

9.1. It is RECOMMENDED that the application for registration be REFUSED for the reasons set out in paragraph 8 above.

## **10.0 Equality and Engagement Implications**

10.1 This paper reports and endorses the report of an external inspector and so there are no equality and engagement implications.

## **11.0 Financial Implications**

11.1 If the land is designated as a town or village green it will not be available for development in the future.

## **12.0 Legal Implications**

12.1 None over and above those included in the body of the report.

**Background papers:** Application file.

**Appendices:** Appendix 1: Plan of the application site

Appendix 2: Report of the Inspector, Mr. Alun Alesbury, M.A.,  
Barrister at Law, dated 5<sup>th</sup> February 2016

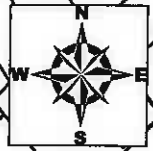
# CITY AND COUNTY OF SWANSEA

SECTION 15 COMMONS ACT 2006

APPLICATION FOR TOWN OR VILLAGE GREEN

APPLICATION NO. 2730 (S)

LAND AT PICKET MEAD, NEWTON



House

MURTON LANE

Hall

Reservoir  
(covered)

Picket Mead

Picket Mead

NEWTON

SUMMERLAND LANE



Application Site

**SCALE 1:1250**

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Arolwg Ordnans 100023509

**COMMONS ACT 2006, Section 15**

**CITY AND COUNTY OF SWANSEA  
(Registration Authority)**

**RE: LAND KNOWN AS PICKET MEAD,  
NEWTON,  
SWANSEA**

**REPORT OF THE INSPECTOR  
MR ALUN ALESBURY, M.A., Barrister at Law**

**into**

**AN APPLICATION TO REGISTER THE  
ABOVE-NAMED AREA OF LAND**

**as**

**TOWN OR VILLAGE GREEN**

## **CONTENTS:**

1. Introduction
2. The Applicant and Application
3. The Objector
4. Directions
5. Site Visits
6. The Inquiry
7. THE CASE FOR THE APPLICANT – Evidence
8. The Submissions for the Applicant
9. THE CASE FOR THE OBJECTOR – Evidence
10. The Submissions for the Objector
11. DISCUSSION AND RECOMMENDATION

Appendix I           Appearances at the Inquiry

Appendix II          List of new Documents produced in evidence

## 1. INTRODUCTION

- 1.1. I have been appointed by the Council of the City and County of Swansea (“the Council”), in its capacity as Registration Authority, to consider and report on an application, received by the Council on 17<sup>th</sup> January 2012, for the registration of an area of land known locally as Picket Mead, which lies next to (south of) Murton Lane, in Newton, Swansea, as a Town or Village Green under **Section 15** of the **Commons Act 2006**. [I note in passing that the site’s name is not infrequently spelt with two Ts, as ‘Pickett Mead’; I shall use the ‘Picket Mead’ spelling]. The site is within the administrative area for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.
- 1.2. However the Council, in its capacity as owner of the site concerned, did not object to the application in this case. An objection was made in due course by the owner and developer of some adjoining land, as I explain further below. It is important to record at this point that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the Commons Act. I have had no involvement with the Council in relation to this matter, in its capacity as landowner.
- 1.3. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of it, and on behalf of the Objector(s). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections which had been made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.
- 1.4. I was also provided by the Council as Registration Authority with copy documentation showing that the land in question (the application site) forms part of a larger area which is already registered with the Authority, initially under the **Commons Registration Act 1965**, latterly under the **Commons Act 2006**, as ‘Common Land’. I was subsequently made aware that proceedings had taken place leading to the grant on behalf of the Welsh Government, by a Decision Letter dated 19<sup>th</sup> August 2013, under **Section 38** of the **Commons Act 2006**, of consent for certain physical works to be carried out within the present application site, in connection with the development, pursuant to planning permission, of adjoining land to the south. The Applicant in those proceedings under **Section 38** had been the Objector in the present case (see below), Carrington Moore Estates Limited.

## 2. THE APPLICANT AND APPLICATION

- 2.1. The Application was dated 17<sup>th</sup> January 2012, and noted as received by the Council on that day; it was made by Mr Simon Arthur, who gave his address as 54 Summerland Lane, Newton, Swansea, SA3 4RS. Mr Arthur is therefore “the Applicant” for the purposes of this Report. The application form indicated that the application was based on *subsection (2)* of *Section 15* of the *Commons Act 2006*. The application was supported by a considerable number of completed ‘evidence questionnaires’.
- 2.2. On the question of the relevant ‘neighbourhood’ and ‘locality’, the form as submitted referred to a ‘Map’ accompanying the application. However it is my understanding that the only map or plan accompanying the application was one showing the intended extent of the application site itself. There was at that stage no map or plan showing a ‘locality’ or ‘neighbourhood within a locality’ to which the claim under *Section 15* was said to relate. Nor did the application document itself contain or refer to a clear description of the extent of any intended locality or neighbourhood, although there was wording in the ‘Justification’ given in *section 7* of the application form which could be taken as implying that the relevant neighbourhood was the village of Newton. In the event the identification of an appropriate neighbourhood or locality for the purpose of the application was a question discussed further by the parties in the context of the Inquiry which I held. I shall therefore return to the questions of ‘neighbourhood’ and ‘locality’ again in Section 11 of this Report, and I do not need to say anything else on these matters at this stage.
- 2.3. As far as the application site itself was concerned, its boundaries were fairly clearly shown on a plan which accompanied the application. I have already noted that the application site does not include the totality of the land in the area which is already registered as ‘Common Land’
- 2.4. The site is currently (as I was able to see it) a reasonably well maintained but (when I visited it) mostly rather wet area of grassland, with a few trees and shrubs, largely towards its western side. A hard surfaced footpath runs within the site, situated towards (but not adjacent to) its western edge, between Murton Lane to the north, and Summerland Lane to the south-west.
- 2.5. A separate track, clearly used by vehicles, runs within the site from Murton Lane, close to the site’s north-east corner, southwards to link to the off-site property centred on Picket Mead House. At its southern end, as well as seeming to provide access to land on the east side of Picket Mead House, the track turns westward for a short distance, and appears to provide further access to (off-site) land on the west side of Picket Mead House. I was told that, in the south-east corner of this part of the site, access was also available, and was sometimes used, to or from the ends of two long garden plots associated with properties other than Picket Mead House. This looked to be physically feasible, but the accesses concerned did not appear to be in such regular use as those to the land around Picket Mead House (which was undergoing development at the time of my site inspection).

- 2.6. The wider northern part of the overall site is relatively but not completely flat, whereas the long, fairly narrow south-western extension of the site slopes generally down from north to south.

### 3. **THE OBJECTOR(S)**

- 3.1. I have already noted that the Council of the City and County of Swansea, in its capacity as the owner of the area of land covered by the application, did not in fact seek to register any objection to the application.
- 3.2. An objection to the application was however submitted on behalf of Carrington Moore Estates Limited, as owners of neighbouring land at Picket Mead House, and beneficiaries of an easement which had been granted by the Council as landowner over the track or access road within the eastern part of the application site, which I have referred to above. Carrington Moore Estates Limited is therefore “*the Objector*” for the purposes of the remainder of this Report.
- 3.3. In the Objector’s original objection (dated 23rd September 2013) the easement which I have mentioned above was referred to, but it was not entirely clear whether the objection, and request that the application be refused, related only to the application as it affected the track or access road, or whether it related to the application generally. In a further written clarification of its objection provided by the Objector, and at the Inquiry which I held, the Objector made it clear that, although its main concern related to the ‘access road’ or track across Picket Mead, it raised an objection to, and questioned the validity of, the application as a whole. That is the basis on which I have considered the matter. That this was the nature and extent of the objection being made was made clear to the Applicant in the material exchanged and circulated between the parties well in advance of the Inquiry, so there was no question of any party being surprised or prejudiced in terms of the case which it needed to meet.

### 4. **DIRECTIONS**

- 4.1. Once the Council as Registration Authority had decided that a local Inquiry should be held into the application [and the objection(s) to it], it issued Directions to the parties, drafted by me, as to procedural matters in September 2015. Procedural matters raised included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The spirit of these procedural Directions was broadly speaking observed by the parties, and no material issues arose from them, so it is unnecessary to comment on them any further.
- 4.2. In the particular circumstances of the present case, the Directions also raised the possibility that the Council itself, in its capacity as freehold owner of the land of the application site, and in spite of its not having either objected to, or expressed support for, the application, might wish to participate in or be represented at the



Inquiry. In the event however, this offer was not taken up, and the parties to the Inquiry were limited to the Applicant and Objector as identified above.

- 4.3. I also note briefly at this point that, as well as dealing with procedural matters, the Directions in this case also asked the parties to consider addressing certain specific questions which appeared likely to arise at the Inquiry (as well as presenting their own intended evidence and submissions in the normal way). These included, but were not limited to, the question whether it is in fact open to a Registration Authority to register as ‘town or village green’ under *Section 15* of the *Commons Act 2006* land which is already included in the Register of ‘Common Land’ maintained under a different provision of the same Act.
- 4.4. I consider this and the other questions raised, and the parties’ evidence and submissions in relation to them, in the appropriate later sections of this Report.

## 5. **SITE VISITS**

- 5.1. As I informed parties at the Inquiry, I had the opportunity on the day before the Inquiry commenced to see the application site, unaccompanied. I also observed the surrounding area generally.
- 5.2. After all the evidence to the Inquiry had been heard, on 9<sup>th</sup> December 2015, I made a formal site visit to the site, accompanied by representatives of both the Applicant and the Objector. In the course of doing so, I was again able to observe parts of the surrounding area more generally.

## 6. **THE INQUIRY**

- 6.1. The Inquiry was held at the Civic Centre, Oystermouth Road, Swansea, over three days, on 8<sup>th</sup>, 9<sup>th</sup> and 10th December 2015.
- 6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Objector, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination, and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.
- 6.3. As well as the oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the earlier stages of the process, some of which I have referred to already above. I report on the evidence given to the inquiry, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

## 7. **THE CASE FOR THE APPLICANT – EVIDENCE**

### **Approach to the Evidence**

- 7.1. As I have noted above, the original Application in this case was supported and supplemented by a number of documents, largely consisting of completed evidence questionnaires.
- 7.2. Other written or documentary material was submitted on behalf of the Applicant [and also the Objector] in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.
- 7.3. I have read all of this written material, and also looked at and considered the photographs and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.
- 7.4. However, as is to be expected, and as indeed was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded (where matters are in dispute) to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, etc., where there is no opportunity for challenge or questioning of the author.
- 7.5. With these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in the statements, completed questionnaires, letters, etc. by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as particularly needing to have special, individual attention drawn to it by me.
- 7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

### **The Oral Evidence for the Applicant**

- 7.7. *Mrs Christine Humphreys* lives at 16 Murton Lane, Newton, Swansea. Mrs Humphreys had completed one of the evidence questionnaires which were provided in support of the application.
- 7.8. Mrs Humphreys said that she has known the land of the application site as Picket Mead for at least 45 years. She has lived on Murton Lane for 33 years, and previously lived in Brooklyn Terrace, Newton.

- 7.9. The cinder track across Picket Mead has always been an integral part of the Mead, owned by the City and County of Swansea. Therefore in her view it belongs to the people of Newton as residents and tax payers.
- 7.10. The land is in regular use as a short cut through the village, and for recreational purposes such as dog walking, children's play area, jogging and occasional horse riding. Many people she knows she meets there regularly, as she is a regular dog walker who is there most days herself.
- 7.11. The Mead has always been an access route to the Church, Chapel, public houses, village shop and community hall. It is also used by a number of organisations such as the Scouts, Brownies etc.
- 7.12. She has never been asked if she has permission to use the Mead, or prevented from using the land. Nor has she ever felt she had to seek permission to use it. There has never been a notice, or any measures to prevent the use of the land by residents. She strongly feels that to give Picket Mead the protection of Village Green status is of vital benefit to the village of Newton for the generations to come. It is the only green space left in a highly built up area.
- 7.13. Both of her own boys went to Newton School and they have a strong connection with Newton. She had not seen any animals grazing on the Mead, but she has seen horses being ridden there.
- 7.14. *In cross-examination* Mrs Humphreys agreed that 1992 – 2012 was the period of particular concern to the inquiry. During that period her only personal use of Picket Mead would have been for dog walking and access. She walked dogs on the Mead during all that period. She walks dogs on the land every day. Whether she walks on the footpath or not depends on the condition of the Mead, but more often than not she walks across the Mead, rather than just on the footpath. She usually comes back from her walk the same way. Occasionally if it is very wet she goes along the pavement and along the cinder track and back. Indeed there are occasions when even the concrete path on the Mead becomes impassable through the wet. She does then tend to stick to the path though. She often goes on down St Peter's Road to the church. St Peter's Road is on the other side of Summerland Lane. There are also joggers who run along the drover's path on the land, as well as cyclists and dog walkers.
- 7.15. Children do play on Picket Mead. They will kick a ball around there when it is drier, usually in the summer months. It all depends on the amount of rain that has fallen. Also boys don't mind being covered in mud.
- 7.16. Mrs Humphreys had known that the Council was the owner of the land. She had heard reference to the Duke of Beaufort being the owner, but that was a historical myth. She had known that the land was registered as common land.

- 7.17. She had never felt she was trespassing, she felt she had a right to be there. It is an inviting space to go onto and to use. There are benches there, and litter and dog bins, etc.
- 7.18. *In re-examination* Mrs Humphreys confirmed that she did not typically walk on the area of the Mead directly in front of Picket Mead House.
- 7.19. *To me* Mrs Humphreys said that she had seen children playing and horses riding on the grassy parts of the Mead, if the conditions allowed. Parts of the Mead are boggy than others after wet weather.
- 7.20. **Miss Eirwen Harry**, lives at 12 Melcorn Drive, Newton. She explained that that is off Summerland Drive near to the lower, narrower part of that road. Miss Harry had also completed one of the evidence questionnaires provided in support of the original application.
- 7.21. Miss Harry said that she wholeheartedly supports Picket Mead's village green status application.
- 7.22. She has lived a couple of hundred yards from the Mead since moving to Newton 19 years ago. She has walked it frequently for exercise, or to make a short cut to visit friends in Newton Lane or Highpool Close. She has also keenly enjoyed looking at the former façade of Picket Mead House with its almost ecclesiastical features.
- 7.23. No permission to use the Mead was ever needed. When she walks on the Mead she does walk across the area in front of Picket Mead House. It is a fascinating old building.
- 7.24. *In cross-examination* Miss Harry confirmed that she had lived in Newton for 19 years, and thought that she had started using this land in about 1997. She primarily walked on it, and had walked a neighbour's dog there. Typically she goes there via Summerland Lane, then up the path on the Mead, then she goes off to the right and has a look at Picket Mead House. Then she would go round via Newton Road making a loop. It is good exercise.
- 7.25. When on the Mead she does usually stick to the original drover's paths, but it depends on the weather. There is what is known as the Duck Pond, situated to the east of the north/south narrower part of the site just before you turn off to the right towards Picket Mead House.
- 7.26. She confirmed that she had seen children playing on the Mead with their parents, and also on walks with their parents. In former times she had seen bonfires on the

Mead, and recalled seeing cricket being played there. She had known that the land had belonged to the Council.

- 7.27. *In re-examination* Miss Harry said that the north/south path up the Mead is quite solidly surfaced. She confirmed that she herself had not seen the boy scouts on the land. However she knew that children had gone up to the land for activities; she simply had not seen them herself.
- 7.28. **Mr Victor Collier** lives at 26 Riversdale Road, West Cross, Swansea. Mr Collier had completed one of the evidence questionnaires lodged in support of the original application. Mr Collier said that he fully supports the application to designate Picket Mead as Newton Village Green. He is now 82 years old, and 32 of those years were spent living in the heart of 'old' Newton, centred on and fanning out from the junction of New Well Lane and Newton Road. He attended Newton School from the age of 4 to 8, and following education at Oystermouth studied at Swansea Technical College. He joined the RAF in 1952, but had a break in service from 1972 – 1982, during which time he again resided in Newton.
- 7.29. All his family, his father, his mother and 7 siblings lived in Newton, and their ever-enduring memories are centred on the Mead. He had been one of about 20 young boys of the village who made up a close-knit group which used the green regularly to socialise and play sport. They camped there, enjoyed bonfire nights and played at weekends and in the summer evenings, enjoying their own company, flying kites and playing rounders, cricket and football. They used to have a much respected football team with an official strip, and they played for several seasons against other village teams, from as far away as the lower Swansea Valley and all over the town. They were watched at times by sizeable local crowds.
- 7.30. During his service break from 1972 – 1982 he returned to Newton and again enjoyed frequenting the Mead with his three children. When he finally retired from the RAF he set up home in the nearby village of West Cross, having failed to find a suitable home in Newton, but again joined the wider family to enjoy social gatherings on the Mead. His daughter and her family (they have two teenage boys) have resided in Millands Close in Newton for many years, and he himself has played with his grandchildren on the Mead, and still to this day they walk their dog there. His daughter and family have lived where they now do from 1998.
- 7.31. The Mead has been precious to his family and the people of Newton as long as he can remember, and more so now as they see the loss of other surrounding open areas to development. The Mead remains a focal point and is home in a real sense to most Newton residents past, present and he hopes in the future.
- 7.32. He sees the Mead as the classic village green in every sense, and was truly shocked to learn recently that it was not designated as such. Indeed he was one of many Newton people who believed it had been officially recognised back in 1970. He passionately believes that the Mead belongs morally to the villagers. When he was

informed that part of it was to have a new access road over it he was and still is appalled at that decision. When he envisages that a large chunk of their beloved football pitch, including where they put their corner flag, is to be usurped, he and many others feel bitterness about it.

- 7.33. *In cross-examination* Mr Collier said he moved to West Cross in 1988. He has not resided in Newton since then. However he is a family visitor to Newton on an almost daily basis. Although he himself had completed one of the evidence questionnaires, he did not think that his daughter had done so. She might have but he was not sure. His daughter does use the Mead. She takes her share in walking the dog, and goes on the Mead often. Her sons are now aged 18 and 16. They have not provided statements; they are heavily involved in education.
- 7.34. A lot of local people thought Picket Mead had been registered as a village green in 1970. He agreed that in his 2012 completed questionnaire he said that it was common land. However he had always assumed that it was the village green of Newton. He had never contemplated that there was a restriction on the land which prevented anybody from using it.
- 7.35. *To me*, Mr Collier said, that when he completed his evidence questionnaire in 2012 he did not understand the significance of the difference between common land and town or village green, in terms of legal status.
- 7.36. ***Mrs Angela Williams*** lives at 155 Newton Road, Newton. Mrs Williams had completed one of the evidence questionnaires provided in support of the original application.
- 7.37. Mrs Williams said that Picket Mead had always been regarded as a village green, and only appeared to lack a formal title as such. She is a resident of Newton. She has lived in close proximity to the site since she was born, which is over 50 years. She still lives in Newton. Her brother, parents and grandparents had lived in walking distance of Picket Mead, as did she, no more than 200 yards away. They had all been brought up around the Mead, and she had taken her three sons up there, as she herself had been taken up there in her own early years.
- 7.38. The open space of the Mead gives a real sense of peace and quiet and well-being, and it is a beautiful place. Throughout her life they have used the Mead for playing tennis or bat and ball, looking for the wildlife in the pond, trees and hedges. They learned to ride their bikes along the cinder track around the front of Picket Mead House, and on the footpath. They had so much fun, and it is a safe place off the road which has now become very busy and dangerous.
- 7.39. She would meet up with her friends, sit on the Mead, make daisy chains for hours etc. They used to watch the lady riders pass over the Mead. They proudly walked

their horses across the Mead. She had tried riding herself but she is no horse person, unlike a friend of hers.

- 7.40. Their oldest neighbour would release his pigeons, and they would watch as they flew round and round in a perfect group. Their owner, called Winston, would come out onto the Mead and call them home. He would just stand at the entrance by his back gate onto Picket Mead. Everyone knows Winston even today. This is an area where you will always meet a friendly face, or even new people walking their dogs there, or just looking at the old house. It is a lovely safe place for an enjoyable walk; it is also that for some people who have no family and live alone. You would always end up chatting to other locals walking their dogs there as this is a very popular route.
- 7.41. Years ago they would look forward to bonfire night on the Mead. All the village children would get together to collect wood for the bonfire, make a Guy, and of course collect a penny for the Guy. What fun it was. They gathered on the Mead and enjoyed the bonfire evening, fireworks and all. There are still Guy Fawkes fireworks but not a bonfire. Rumour has it that safety was the reason, brought on by certain adjacent neighbours' concerns. The local children have never forgiven the removal of their bonfire while they were at school. It was a tradition of the village for a long period.
- 7.42. Her three children have all enjoyed the Mead, as she had done herself. They have used it for many things. Her boys and she would go out there. They strolled with her on many evenings over Picket Mead, they would kick a ball or just mess about. They had an electric car which they all shared, a Volkswagen with two seats which was called Herbie. They would drive up the cinder path to their uncle's, whose garden backed onto the cinder path, and then they would come back over the Mead, along the path and back home. They outgrew the car in time, so instead they learned to ride their bikes there. They flew a kite there and had it for years; it was a favourite place on the Mead for kites, as the winds can be very strong there. There were Beavers and Scouts, and on summer evenings they played cricket and other activities with other Beavers or Scouts or Brownies. Their hall is adjacent to the Mead and it is an ideal location. The Mead has always been well used by them. Obviously they were inside when it was raining, but they were out on the Mead when dry enough. The new Scout Hall was established in the mid-1970s and has carried on ever since.
- 7.43. Every group that meets at the Scout Hall uses the green open space of the Mead for activities, and they can run and jump and do anything they want in complete safety. That has always been the case for as long as she can remember, even before the new hall was in place. It is a worry that developers might have set their sights on the Mead and the possibility of building there. There is no other open space worthy of the name in walking distance of the core of Newton Village.
- 7.44. The Mead has never been formally designated for recreational use, nor have there ever been signs put up by Swansea City Council saying that it was a recreation

area. It is supposed to be common land, although she has never seen any commoner exercising a right of farm animals grazing there in 50 years. She had never been asked to leave the land or to stop any activity there, no matter what it was. There had never been a sign indicating what one could or could not do. In short they did what they liked there, without permission from anybody. They were never asked or told to remove the bonfire, except at the end when someone said it was a fire hazard after a complaint from the neighbours. She believed that some of the adjacent residents surrounding Picket Mead had expressed concerns about that.

- 7.45. *In cross-examination* Mrs Williams said that her three sons are now aged 19, 21 and 24. They had not produced evidence questionnaires or statements. Mrs Williams had not asked them.
- 7.46. She herself had learned to ride on Picket Mead when a child. She herself had also made daisy chains there. And then when her boys were growing up they also used the Mead.
- 7.47. There used to be some stables which are not there now, but people still go across the Mead on horses. The gentleman called Winston is now aged 92 but had lived there all his life. He used to release his pigeons there on the Mead until quite recently.
- 7.48. As for dog walkers, they walk all over Picket Mead and always have done. The bonfires on the Mead stopped in the 1980s because of the fire hazard that was complained about. There are still fireworks up on Picket Mead though, usually on the cinder track there, at the back of her brother's garden, 175 Newton Road. Her brother has a long garden running up to Picket Mead from Newton Road. The other long garden running from Newton Road up to Picket Mead belongs to the gentleman called Winston.
- 7.49. Part of Picket Mead is comparatively dry ground, it is not all wet. The Scouts for example use Picket Mead regularly for cricket when it is dry. She does not know if other people do.
- 7.50. She had known that the land was common land. She thought her brother had checked the commons register. She had not done a lot of research herself, nor had she looked at any Council records in relation to the land. She had not seen Council people there on the land cutting the grass. The grass grows and dies back. She knew however that the Council had provided benches and a dog bin. She had seen people sitting on the benches.
- 7.51. She had referred in her evidence questionnaire to a refusal for swings for a play area on Picket Mead for children. That was a reference to her understanding that the City Council had at one stage refused to provide swings for children to play on on Picket Mead.



- 7.52. *To me* Mrs Williams recalled that she might in the distant past have seen the grass being cut there. She confirmed that all her boys went to the Scouts who met in the hut to the west of Picket Mead. In summer time they were always out on Picket Mead playing. There were always people or children walking there with or without dogs. Some people would go straight across the Mead, some people would go off the track or onto the grass. However, when there has been heavy rain the ground is really boggy there.
- 7.53. **Mr Alcwyn Jones** lives at 169 Newton Road, Newton. Mr Jones had completed one of the evidence questionnaires lodged in support of the application.
- 7.54. He said he had lived in close proximity to Picket Mead all his life. He could personally confirm that the area of Picket Mead is as shown by the Applicant for village green status.
- 7.55. He said he was giving his evidence in complete support for the designation of Picket Mead as a village green. He and many others take the view that it should have been registered years ago. He has used the Mead from a very young boy to play just about any activity known, from horses, butcher's bike, bows and arrows to bonfires. He has run over it, played football, cricket, even mud ball fights, as there was a never ending supply of mud even that far back. They had had the privilege of growing up within a village, full of girls and boys, who all knew each other. They played and enjoyed the freedom of just being children, allowed to roam without fear and without danger.
- 7.56. To suggest that the Mead is or was not used is beyond belief. Even the Objector is purporting to be a local boy, as he mentioned his own boys playing on the Mead. He himself (Mr Jones) played and walked over every inch of Picket Mead from the old remnant of the duck pond to the stables in the far corner. Its entrance was straight onto the cinder track. Anyone who went to Newton School would have gone on nature study walks, as could be confirmed by the school teachers past and present.
- 7.57. Some games played there were so simple in his younger days. They were endless. Making daisy chains, holding a buttercup under one's chin to see if you like butter, simple things. Those they did on the Mead. Over the years pastimes evolve; some survive and some do not. Nowadays Mr Jones walks rather than runs over the Mead. He sees familiar dog walkers he has known all his life. He has seen the local Scouts and Girl Guides playing there over what must be the best part of 60 years. They played football, cricket and rounders, and engaged in a variety of other games, but only if conditions on the Mead allowed it.
- 7.58. The Mead has survived since and before Oliver Cromwell's visit to it, which is an historic fact. It is recorded in history books. It is said that he passed by on his way

to Ilston. Some of Mr Jones's neighbours had families who had lived for centuries in this corner of the village.

- 7.59. He understood from local stories passed down through the generations that it was said that Oliver Cromwell's troops camped in the area of the Mead.
- 7.60. He has two children who are now grown up. He and his wife introduced them to the Mead, and they ran and played and learned to ride their bikes there. They flew kites, played tennis on the dirt track, the very area the Objectors say no-one uses. His son was in the Scouts and his daughter in the Brownies and Guides. His son collected frog spawn which in turn grew into tadpoles and then frogs, and then his son released them. This annual event still occurs each year in Spring. Frog spawn is still there in the old duck pond area, and his own grandchildren carry on using the Mead as he does himself. His grandchildren's pastimes and recreations are various, some different from what his had been but they are ongoing. To say that any part of Picket Mead is not used would only show that whoever said it did not have knowledge of the life of the village and the village green.
- 7.61. The aim is to protect Picket Mead as it is without further loss, not even the track would be acceptable. The track is not there for Picket Mead House alone.
- 7.62. Picket Mead House was built around 1600 he thought, as just a jumble of a stone cottage and outhouses. It may indeed be that Picket Mead House was an encroachment on the original common.
- 7.63. In any event, whether by foot, horse, cart or motor car, the access route to it was used by various people.
- 7.64. He confirmed that the tarmacked footpath from the north to the south end of Picket Mead was put in in 1966. The path was earth before that.
- 7.65. He accepted that youngsters did not sign the evidence questionnaires: why would they?
- 7.66. When the Mead is dry people do use it more. He also understood that the grass of the Mead is cut from time to time by the Council.
- 7.67. *In cross-examination* Mr Jones said that a hedgerow along the western side of Picket Mead was there when he was young. The ground was not as wet then. It used to be more like a meadow, but changed when the waterworks to the west were put in and the previous hedgerow was taken away. His childhood was in the 1940s. He would go out to play with other children when no bombing was taking place during the war.

- 7.68. The tarmac path was then only an earth track, and then the tarmac path was put in which led to water being accumulated behind it. Also the old hedgerow is no longer a dam to keep water out.
- 7.69. During the period 1992 to 2012 his own use has predominantly been for walking on Picket Mead. There is nowhere on the Mead that he does not walk. He has met many people who go on the Mead to do just that. Also the duck pond is full of frogs.
- 7.70. His children were growing up in the 1960s and 70s. They have in fact provided statements. They are Mrs Williams and Andrew Jones.
- 7.71. A group of local people got together and objected to the suggestion in the local development plan process that development might take place on Picket Mead. The group got together as quite a large group with no need ever to advertise for people to join it. The group did seek legal advice to an extent. It was only a small amount of advice that was sought, to see how they should handle this case. Mr Jones knows that this land is registered common land, but it always should have been a village green. He knows that you can de-register common land. He had not known that he had a right to access this common land, he had simply used the land.
- 7.72. *Mr Simon Arthur*, the Applicant, gave his address as 54 Summerland Lane, Newton. That is in fact his mother's house, and not where he currently lives. He now lives in Sketty, in Swansea but away from Newton.
- 7.73. In his evidence Mr Arthur said confirmed what he had said in his declaration and evidence questionnaire supporting the original application. He had lived in close proximity to Picket Mead for the majority of his life, about 39 years. The house where he lived is located about 200 – 300 yards from Picket Mead.
- 7.74. The vista of the Mead over the years has gradually changed, and the land has become a lot boggy. Today the Mead is slowly and visibly being degraded due to outside influences resulting from the removal of hedgerows, increasingly becoming a wetland and not being helped due to movement of excessive ground water. The land used to resemble a meadow but now appears as a wetland.
- 7.75. During his early years he often played on the Mead with friends, playing football, cricket, cycling and playing war amongst friends. They played more towards Picket Mead House as the ground was firmer there. He was a sixer in the local cubs located in the scout hut adjacent to the Mead, and they used the Mead for various group activities. Most of all he remembered learning the skills of tracking where he received his cub badge which he completed successfully, like many others. He also recalled the talk about the wildlife of the Mead and the variety of flora among the old hedgerows, indicating how old the hedgerows were. As far as he could remember most of his friends were members of the cubs and scouts.

- 7.76. The Mead was also a general meeting place, and there was a pond on the Mead which attracted Newts and Frogs. That was in the same place as the pond still is. He also recalled that his mother's friend made elderberry wine from elderberries possibly from the boundaries of the Mead, as she lived adjacent to the Mead.
- 7.77. He recollected that his class in Newton Primary School went over to the Mead for nature study, and they were encouraged to draw their findings on their return and displayed them on the wall. He also distinctly remembered the bonfires where many of the locals attended. It was the highlight of the year. Everyone was disappointed when the bonfire was stopped because of safety considerations.
- 7.78. On numerous occasions past and present he had walked in front of Picket Mead House and used the cinder track to avoid the centre of the Mead, especially as on one occasion he almost lost a shoe when it was sucked into the mud.
- 7.79. When they had 'Crofty' their lassie dog, they used to play on the Mead with it from about 1990 to 1996, like many other people do to this day. This was one of the main areas where he would take Crofty for a walk.
- 7.80. When the local development plan was under discussion by Mumbles Community Council, there was an error on the map which was produced which gave a boundary for Picket Mead which included people's gardens. He himself in that context had suggested that a village green designation would be a strong option for greater protection than the local development plan. They did not include the reservoir site in the application, as they believed at the time that it was owned by West Glamorgan Water Board.
- 7.81. The proposed village green on the Mead was used for the National Jubilee in 2012, for which there was a requirement to pay insurance.
- 7.82. He had seen children playing on the Mead, cycling, jogging, football, cricket. All these things he had seen over the years. Throughout his experience the Mead has been constantly used by locals. No-one had ever been restricted or access refused, no-one had had to pay or been told not to use it, to the best of his knowledge.
- 7.83. *In cross-examination* Mr Arthur said that he had used Picket Mead for walking, playing and taking the dog there up until 1996. Since then his use had not been as frequent as it had been when they had the dog. Nevertheless he does walk across the Mead sometimes, from Summerland Lane. Normally he walks on approximately the line of what is shown on the map as an east/west path just to the north of the grounds of Picket Mead House, because the ground is firmer there.

- 7.84. People do walk with dogs down the path, which can sometimes be awkward with flooding at the lower end when there has been a lot of rain.
- 7.85. All his activities on the land as a child were pre-1992. His use of the Mead has reduced since the family's dog had died. One grows out of things but then a new generation comes and uses the land. He accepts that the Mead has got boggier over the years. It does depend on the weather though. With decent weather there would be greater use of the Mead, although Swansea generally is a wet place.
- 7.86. He would not say that children do not play there because of that. For example there has been a tyre attached to a tree branch which children play on, and children make dens in the undergrowth. Nevertheless the house where he lived is not 'on top of' the Mead so he doesn't see everyone using it. He personally had not seen the scouts or brownies on the land in recent times, but he had seen a letter from the leader of the group saying that they do still use it. It would be most odd to think that people might be said to have been trespassing on Picket Mead.
- 7.87. Picket Mead does have the appearance of a public authority's open space. There had been an application for some swings to be put there but that was declined. However a bench was put in, and then it was replaced later. He thought that the benches on Picket Mead had possibly been provided by Mumbles Community Council. In the early 1980s he thought a bench had been put in and then renewed later, and then another one was put in more recently.
- 7.88. There was a Jubilee event in the summer of 2012 on the Mead, and then another event there shortly afterwards.
- 7.89. It used to be the case that flotillas and floats for the Mumbles Carnival used to start their route on the cinder track on Picket Mead. That ceased about the year 2000 he thought. The carnival floats used to start from Picket Mead. It was a cavalcade which then ended up in Mumbles itself. So Picket Mead was part of the procession route essentially.
- 7.90. As for chickens being seen on Picket Mead, they are put there by the gentleman called Winston who also has pigeons. His reference in his questionnaire to ferrets being walked on the land was a true reference, and it has happened since 1992. There is a lady from No.58 Summerland Lane who takes a ferret onto the land, on the path generally.
- 7.91. Mr Arthur had not done research as to when the land was acquired by Swansea Council from the Duke of Beaufort. The Gower Society said that the land had been bought from the tenth Duke, he understood.

- 7.92. There had been two petitions in relation to the land, which were against specific proposals, and to sound out people as to whether they wanted a village green.
- 7.93. He accepted that there had been some misreporting by journalists. They had wrongly suggested for example that Carrington Moore were proposing a development actually on Picket Mead; he accepted that it would be ridiculous to build houses on Picket Mead itself.
- 7.94. He and his colleagues had spoken to local residents and explained things to people. Some petitions were just left in the village shop. Then there was later a campaign in respect of the proposed grasscrete on the track.
- 7.95. The local development plan process had caused much uncertainty for local people. The village green application was not made in order to thwart development proposals. Mr Arthur had had no idea that there would be or might be another planning application. He and his colleagues had asked the Mumbles Community Council in relation to the application because they had no professional legal advice. They did ask the Community Council for assistance in this regard, but got none.
- 7.96. Mr Arthur was aware that the gentleman, Mr Philip Winston Williams, of 177 Newton Road, had been approached by a lady from Morgan La Roche for a statement. Other people in Newton Road had been asked for statements as well.
- 7.97. The core members of the group supporting Mr Arthur were obviously himself but also Mr Jones, Miss Harry, Mrs Humphreys and Mr Collier.
- 7.98. *To me* Mr Arthur confirmed that the proposed grasscrete on the track leading across Picket Mead to Picket Mead House had not been laid down yet. He understood that grasscrete was not recommended to be used on boggy land.
- 7.99. Local inhabitants are very concerned about Picket Mead, it is a very sensitive site.

## **8. The Submissions for the Applicant**

- 8.1. In his opening submissions Mr Arthur said that he was acting on behalf of a local action group in favour of registration of Picket Mead as a Village Green. That group in turn represents local people who have regularly used Picket Mead, or have seen it being used, for well over the stipulated period of 20 years. This use has been for legitimate sports and pastimes. The right to make such use should be preserved in perpetuity.
- 8.2. The group are concerned that common land (which Picket Mead is currently registered as) can be de-registered at any time, which has already occurred in some

places. This is especially possible where the rights over the land, such as to graze 18 head of cattle or whatever, are the primary purpose of the common land. This application land has never been fenced in, implying that animals would be free to roam over the whole of the common. On no occasion during the relevant period at all has there been any mention of any such animals using the land over the past 20 years, making use of alleged commoners' rights.

- 8.3. Evidence would be produced by Mr Arthur and others in relation to their use of the land, and documentary evidence also showing how the land has been held by the City and County of Swansea. The Applicant's case was that there had been "*as of right*" use for lawful sports and pastimes on this registered piece of common land. There had been three historic drovers' ways over the land. Mr Arthur and his group believe that Picket Mead was wrongly registered in 1970 as common land instead of a village green.
- 8.4. The Council in its capacity as landowner had not made an objection to the village green application. Carrington Moore Estates Limited had not originally objected to the village green application, and had only raised a partial objection later on, when asked if they wished to make any comments or observations about the application. It was only in later submissions, relatively shortly before the inquiry, that it was argued on behalf of Carrington Moore that there was a complete objection to registration of Picket Mead as a village green.
- 8.5. 41 evidence questionnaires had been completed by inhabitants of the relevant neighbourhood, which Mr Arthur suggested was the village of Newton. That evidence shows that the land is in general use by the local community for informal recreation, rather than just occasional use by individuals. A good approach to the boundary of Newton as a neighbourhood would be to use the Newton Electoral Ward, whose boundaries have not changed during the relevant 20 years. [Plans were produced at the inquiry showing the boundaries of the Newton Electoral Ward].
- 8.6. The Application Site at Picket Mead is not the totality of the land which was registered as common land in the area. Indeed some parcels of that common land had been deregistered. The remaining acreage subject to the application was thought to be 2.52 acres or 1.02 hectares. It was understood that proceedings aimed at deregistering as common land some other parts of the common land might still be taking place.
- 8.7. The history of Picket Mead is understood to stem from its being manorial waste in the Parish of Oystermouth, where the local people used the land as an integral part of everyday village life in Newton. This was achieved through the use of drovers' paths connecting the cottages, farms and fields in every direction. These crossed the Mead historically and that still applies. Access was from the south or the north. And both these accesses and the Mead have been regularly used by locals in the

past and currently. There were old drovers' ways which converged on the Mead, many of which are still detectable as routes within Newton.

- 8.8. There are still remains of a duck pond on the site which can be clearly seen on the Ordnance Survey Map of 1900. That pond was an essential part of the manorial waste, and was used for the benefit of villagers. Villagers had the opportunity to water their livestock. This would be particularly useful for donkeys, geese, ducks and cattle. The Mead would also be a meeting place for local people. Even in recent times the duck pond has attracted the return of wildlife.
- 8.9. The removal of historical hedgerows around the duck pond and their replacement by stone and brick walling is an unacceptable substitute. There was also a removal of historic hedgerow along the boundary with the land believed to have been owned by the West Glamorgan Water Board. That resulted in the destruction of hedgerow which provided a natural wildlife habitat, and also acted as a dam discouraging groundwater movement over the Mead. That hedgerow was replaced by a chain-linked fence which destroyed the natural habitat and vista. After local complaints the chain-link fence was removed to be replaced by trees with no earth bank. That is what encouraged the free movement of groundwater. The Mead is becoming a sedge land instead of meadow land.
- 8.10. Water remains a problem on the land. The complete area of Picket Mead consists of a layer of boulder clay less than a foot below the ground, making it impervious to water and compounding the water issues that exist. That affects the playing area at certain times of the year, limiting many areas in terms of the pastimes they can be used for.
- 8.11. However the appearance of the Mead is inviting to its being used. When people do use it at wet times they can then be bogged down to quite a surprising depth.
- 8.12. The drovers' ways across Picket Mead have always been used by local residents in an unrestricted way. Commoners and local people have rights over the whole application land. Village green status can incorporate these drovers' ways for the benefit of all. It is notable that Swansea City Council regards Picket Mead as an informal village green or common land, and should be taken as having welcomed the application by providing no objection to it.
- 8.13. There appears to be a misconception that village green status could prohibit the inclusion of the drovers' ways. It is a historic fact that there has always been access to all neighbouring properties from the Mead. That has been accepted over many centuries. It is not the intention of the application for village green status to exclude anyone.
- 8.14. As for the question of a significant number of local inhabitants using the land, the number has to be sufficient to show that the land is in general use and not



occasional use by a trespass. Newton Ward had a population of 3,274 in the 2009 census, and the Mead is located in a developed village with its own school, chapel, church and amenities. The village layout is still very much centred around its traditional core, of which the Mead is an integral feature. All of this is supported by the evidence from local people.

- 8.15. As far as the question of neighbourhood and locality is concerned, Mr Arthur submitted that that could be regarded as being the area of Newton village, or the post code, or the Ward of Newton or indeed the community known as Newton.
- 8.16. The land of the application site refers to all of the land over which the inhabitants have indulged in lawful sports and pastimes, including any paths that cross the land. Those paths are capable of being part of a village green. Thus the registration of a track can fairly be regarded as part of the same land that has been used for lawful sports and pastimes. The cinder track across Picket Mead, proposed to be changed to grasscrete, is certainly not a private access just in favour of Picket Mead House. It is understood that the track was maintained by Swansea City Council in the past, and not by the previous owner of Picket Mead House (Dr Cousens).
- 8.17. The Applicant's view is that local people have used the claimed village green as of right, in other words in the same manner as people would if they had a legal right to do so.
- 8.18. Notices were put up in September 2015 on Picket Mead by the landowner, Swansea City Council, indicating that no cars are allowed to park on the common. That resulted principally from local residents complaining in relation to damage to the common. However there is no basis for thinking that Picket Mead has been formally provided by the Council for recreational use. This is not a case to which the principle of the *Barkas* judgment of the Supreme Court applies. Therefore the use by the local neighbourhood was not a statutory right here, rather it was 'as of right'. The *Barkas* judgment recognises that a local authority must validly and visibly commit the land to public recreation before the land can be exempt from registration as a town or village green. In this instance Swansea Council has not validly committed the land for recreational use. It is still registered as common land, even if only in name.
- 8.19. The kind of activities engaged in by local people on Picket Mead are absolutely the things which the courts have found to count as lawful sports and pastimes. Throughout the majority of the twentieth century these pastimes have evolved. For instance, during the 1920s and up to the Second World War, the flying of pigeons was a common pastime. Then that declined. The exhibited photographs show pictorial evidence of the variety of pastimes. The Mumbles Carnival commenced from Picket Mead common over many decades, ending around the turn of the millennium. Local inhabitants' witness statements indicate the variety of lawful sports and pastimes that have occurred over the generations. Indeed there used to

be stables located at the rear of 175 Newton Road up to the 1980s, and the Mead was used by horses from those stables, as of right. There are also numerous dog walkers who have used and continue to use the Mead.

- 8.20. The use of the Mead by local people has certainly taken place for well over the 20 years required. The use has been continuous and not interrupted for any significant period of time. The land is used when it is needed and available when required, and this has never been prevented by the owner. Local people continue to use Picket Mead daily. It thus follows that the legal criteria necessary to justify village green registration have been met.
- 8.21. In summary, the Objector concedes that the application land has been used by a significant number of inhabitants for more than 20 years. The application land and the relevant neighbourhood can be clearly identified. The Objectors have not proved or indeed claimed that residents were excluded from the land at any time. It is clear that the Objector does not appreciate the historical encroachment on Picket Mead Common. Very little paperwork has been supplied by the Objectors on any point. They have relied mostly on unproved assertions. No part of Picket Mead Common is used by right as opposed "*as of right*".
- 8.22. In closing submissions at the end of the inquiry, Mr Arthur referred to a letter dated 26<sup>th</sup> January 2010 from the Open Spaces Society, which made observations about the application which had been made at that time by Carrington Moore Estates Limited to be allowed to lay grasscrete and underground services across the track on Picket Mead Common giving access to Picket Mead House. It is noted that Swansea City Council has granted an easement to Carrington Moore Estates Limited, but it is suggested that consent cannot be granted for illegal action such as driving on a section 193 common.
- 8.23. The Objector's suggestion that there is a knockout blow which prevents the application from succeeding is extremely presumptuous. It is jumping to conclusions prior to the end of official proceedings. The Objector's counsel conceded that use of the Picket Mead Common contravening **section 193** of the ***Law of Property Act 1925*** is potentially punishable by a fine.
- 8.24. The assertion by the Objector's counsel that common land is unable to be registered as town or village green is wrong in law. The facts of the case and the application of the law to it show that the submissions for the Objector should not be given any weight or relied on in determination of this application. The argument for the Objector in relation to implied permission is self-contradictory, as the Objector's counsel alluded to numerous witnesses arriving on the land. It is wrong to think that they would assume that they were being permitted to use the land by Swansea City Council as owners. The Objector's counsel has conceded that the witnesses did not feel like trespassers.

- 8.25. The suggestion that there was a statutory or implied trust for the public to use the land is in essence a smoke screen. There is no basis for concluding that there was such a trust and no evidence or documentation has been submitted on the point.
- 8.26. The Objector's suggestion that usage of the Mead for lawful sports and pastimes has not been adequately demonstrated is entirely rebutted by the witness evidence. It is accepted that the Mead has served a wide variety of uses within the auspices of lawful sports and pastimes.
- 8.27. The inquiry's attention was drawn to the two sets of petitions which had been put forward, one of which deals directly with the village green aspect. About 1,373 inhabitants in Newton had signed that petition. Newton village is a neighbourhood within a locality. There is also an ecclesiastical parish of Newton.
- 8.28. Any suggestion by the Objector that there is a lack of significant use is entirely refuted by the evidence of regular and daily use of the application land by a diverse range of inhabitants, e.g. dog walkers, joggers, cyclists, school children and pedestrians. This had applied during the whole relevant 20 year period.
- 8.29. It should also be noted that no minutes granting permission for the Objector to give evidence had ever been submitted to the inquiry. This case raises important issues of both law and fact. It is further complicated by the landowner's acquiescence in respect of breaches of their duties in relation to the protection of common land.
- 8.30. At the conclusion of his submissions Mr Arthur applied to amend the application in this case such that the disputed "*cinder path*" or access track leading to Picket Mead House, be removed from the application plan. The application would therefore seek that the residual area be officially determined as qualifying for town or village green status under section 15(2) of the *Commons Act 2006*.

## 9. THE CASE FOR THE OBJECTOR – EVIDENCE

- 9.1. *Mr Charles Kaminaris* lives at 59 Caswell Drive, Caswell, Swansea. He said that his parents live at 91 Summerland Lane, and have since the time when he moved to Newton with them as a youngster. He was away in Neath Port Talbot, around 2005 and 2006 probably, but he now lives in Caswell Drive with his wife and three children aged 12, 9 and 7.
- 9.2. He and his family used to use the footpath across the Mead regularly. When he was living with his parents he would walk dogs on the path. He and his present family walk that way with their children for various reasons.

- 9.3. The Mead can be extremely boggy underfoot. Hence they always put their dog on a lead. Mr Kaminaris himself would stick to the path because the land only rarely dries out. It is usually treacherous.
- 9.4. He recalled when there was some sort of fete held on the Mead about 3 or 4 years ago. It packed up early as the ground became very muddy and boggy and the children became filthy. His children do not use the Mead to play. It would be convenient but they never use it for that purpose because of the conditions under foot. He himself had never seen anyone playing recreationally on the Mead. He could not recall anyone using the Mead other than going across the path really.
- 9.5. He had had no involvement with meetings or petitions in relation to the site. He thought there had been some misinformation about it, for example people thought that building was being proposed on the Mead.
- 9.6. He moved to Newton in 1999 with his parents. He then went away to University in Cardiff, and lived in Neath Port Talbot for a short period of time. He moved back to Newton in 2004 and built his own property.
- 9.7. During the time that he has lived in Newton, he has always been aware that there is an access road running from Newton Road up to Picket Mead and to the back of various properties. He has over the years seen people using the road to access Picket Mead House both on foot and with vehicles.
- 9.8. He is aware that the access road along with the remainder of the land shown on the village green application all forms part of the village green application. Given the position of the access road and the fact that it is so well used in terms of access, he is not convinced that the road should have formed part of the application. That is on the basis that his understanding was that if the road is registered as part of a village green no one would be permitted to drive over it. That surely cannot be the case, given that it is the only way in and out of a number of properties.
- 9.9. Mr Kaminaris had never seen anyone using the access road for recreational purposes, only for access. However he had witnessed individuals walking dogs and using the large green area to the side of the access way for recreational purposes. He also understood that the land subject to the application is common land and that it is maintained by the Council in any event. In all these circumstances he supported the objection put forward by the Objector.
- 9.10. *In cross-examination* Mr Kaminaris accepted that the access route across the common may well provide access to the rear gardens of other properties in the corner of the common. He did not really accept that there were three distinct tracks or paths over the common. There was only the tarmac path down the western side of the land, and the cinder track leading to Picket Mead House.

- 9.11. He had never seen chickens on the land at the eastern side of the access track, nor flowers.
- 9.12. He did frequently walk across Picket Mead, until he and his family got rid of their dog a couple of months ago. Now he thought he visited Picket Mead every couple of days. The Mead would be ideal as a place for children to play except that it is very boggy. There is also a main road alongside. If it was less boggy it was debatable whether he or his family would use the land.
- 9.13. **Councillor Anthony Colburn** lives at 14 St Peter's Road, Newton. He explained that he is a member of the Council of the City and County of Swansea. He had in fact produced one of the completed evidence questionnaires in support of the application in this case, but was now giving evidence for the Objectors. He is also a member of the Mumbles Community Council.
- 9.14. Councillor Colburn said that he is 77 years of age, and has lived in Newton since 1966. Prior to that time he had lived elsewhere in Swansea. He had spent most of his spare time throughout his life in and around the Mumbles area.
- 9.15. Having had dealings with the Applicant group, and reread the evidence questionnaires and considered the plan attached to the application, he wished to update what he had originally put in his evidence questionnaire. When he made his original statements in the questionnaire in January 2012, he was all in favour of the application, and he remains firmly of the opinion that the majority of the land subject to the application should be registered as a village green if possible.
- 9.16. He is aware that in recent months members of the Applicant's group had approached Mumbles Community Council requesting that they take on and finance the cost attributable to the application and the public inquiry. The Community Council made enquiries of its solicitors as to the estimated cost of advice as to the viability of the application, and requested copies of all the relevant papers from the Applicants. Councillor Colburn had also obtained authority from the group to approach the solicitors acting for the Objector, and to suggest some sort of without prejudice meeting, along with an adjournment. Councillor Colburn had understood that in principle that was agreed between the parties.
- 9.17. He was keen to assist, having signed the original application and having a strong interest in preserving and protecting Newton generally. Nevertheless having reconsidered the application it was brought to his attention that an issue had been raised with regard to the usage of the access way across the common. He had been advised that the Objectors had taken issue with that area of land being registered as part of a village green. He had not appreciated the significance of this objection until he realised that if the access way is registered as part of a village green, then strictly speaking no-one will be able to drive over it. Clearly that would cause significant problems for the owner of Picket Mead House and for the Objector, as this is the only route in and out. It would also cause inconvenience for residents of

Newton Road, some of whom gain access to the rear of their properties via the access road on Picket Mead.

- 9.18. However, before talks took place the Applicants decided they no longer wished Councillor Colburn to be involved. While he had no problem with that approach, his concern was that the access way should never have formed part of the application, and that unnecessary costs are being incurred.
- 9.19. His personal first recollection of the access way was when he was a child. He used to walk up the access way in order to get to the stables there, which were run by a gentleman called Alfred Owen. He vividly recalled riding the horses and using the access way to gain access in and out. He also recalled the residents of Picket Mead House and those living on Newton Road using the access way in order to get to their properties. He particularly remembered a Morris 1000 associated with Picket Mead House being regularly parked on the cinder track.
- 9.20. Over the years that access way had been in pretty much constant use by local residents, and in particular those seeking to access their homes. He had witnessed vehicles passing and parked on the access way on a weekly basis. In terms of recreational usage, he could not say that he had seen anyone using the access road for recreational purposes. It is a cinder track which is not very attractive, and thus he cannot imagine that anyone would want to use it for recreational activities. He had over the years had other dealings in relation to this parcel of land, which is in fact owned and maintained by the City Council. Over the years he personally had fought to ensure that the land continued to be maintained by the City Council, and indeed that the grass is cut and other facilities such as the benches are maintained. He could confirm that all of those works are carried out at the expense of the City Council.
- 9.21. The object of his intervention in the matter had been to seek to save public money.
- 9.22. He recalled activities on the Mead, for example the Royal Jubilee Street Party, which was partly on the Mead, with people playing cricket and children playing games. Subsequently he could remember a function there with some small marquees, but there was some difficulty with boggy ground.
- 9.23. When he personally walks there he has stuck to the tarmac path, with his dog. After 1992, and prior to the ground becoming so boggy, it was well used by children as a play area. Then about 15 years ago the Council talked of stopping cutting the grass there. At that time it was still possible to play on the land; it was not so boggy. In the past 15 years or so he had not seen much activity on the boggy areas of the land. He had seen a few very muddy dogs, and also vehicles which had driven onto the land and become bogged down there. The grass on the land is now cut twice a year at most; that could be reduced. It was cut more regularly in the past, and cut down to a relatively short height. The cutting has

been less often for some years now. The grass is too long really for children to play ball games on the land, and this has been the case for at least 4 years or so.

- 9.24. *In cross-examination* Councillor Colburn said that he was attending the inquiry as a resident of Newton.
- 9.25. He could recall that there was a furore when a Candidate Site Notice in relation to the local development plan process was published in 2011, and parts of people's back gardens had been included in error within the site under consideration. Subsequently he became involved in proposals that an application should be made for town or village green status. Back at the time of the LDP process the City Council put everything they owned on the Candidate Site Register; in a lot of cases the land was very inappropriate for development, and people got upset. Picket Mead was an example of that. Councillor Colburn believed it had been submitted as a possible development site by a private individual. He himself had supported the proposal to register it as a town or village green. It is indeed still his wish that this area should be safeguarded for the future. Where he disagrees with the application is the inclusion of the driveway or access track.
- 9.26. He believed that Mumbles Community Council had supported the idea of this land becoming a town or village green.
- 9.27. He accepted that other properties bordered onto the cinder access track, and not just Picket Mead House.
- 9.28. **Mr Andy Moore** lives at 5 Buttercup Court, West Cross, Swansea. He said he was providing his evidence in his capacity as a former Director of Carrington Moore Estates Limited, the Objector. Carrington Moore Estates Limited was incorporated in 2008 for the purposes of the development of building projects.
- 9.29. At present the sole director of the Objector company is Mr David Carrington. Despite the fact that Mr Moore is no longer a director of the company, he is still heavily involved in running the business, and indeed with the development of the land at Picket Mead.
- 9.30. Mr Moore started visiting the Mumbles regularly about 14 years ago, which is when he first met his girlfriend, now his wife. He is originally from Cardiff. They would regularly visit Newton as that was where her parents lived. Her parents still live in Newton and have done so for at least 20 years.
- 9.31. He and his wife loved the area and so they decided to buy a house locally and to settle down. They therefore decided to buy a property at West Cross, which is less than 2 miles from Newton, in 2001. He and his wife have two small children who go to school locally.

- 9.32. He specifically remembers driving past Picket Mead House and the present application site when he first started visiting Newton. The house itself is quite a striking building and full of character. His understanding is that it is several hundreds of years old and has been a focal point in the village for many years. For many years however the property has been run down. He understood that the owner had been elderly and had let it fall into some disrepair.
- 9.33. When that property was put up for sale he discussed it as a potential investment with his co-director. Not only was the property itself quirky and full of potential; it was also surrounded by a substantial area of land. Mr Moore and his co-director therefore made arrangements to view the property and decided to go ahead with the purchase and submit various applications that would assist in the proposed development of the land.
- 9.34. They were advised that the land outside Picket Mead House was common land and that it was registered as such in 1970. Prior to purchasing the land they were also given sight of a statutory declaration by Dr Stuart Henry Cousens dated 25<sup>th</sup> September 2001. That statement by Dr Cousens detailed his knowledge of the right of way leading to the house.
- 9.35. On 24<sup>th</sup> September 2008 Swansea Council entered into a Deed of Easement with the Objector company relating to the access way. After a number of unsuccessful planning applications and appeals, a successful planning appeal achieved permission for development in the grounds of Picket Mead House, which permission was obtained in September 2012.
- 9.36. On 23<sup>rd</sup> November 2012 an application was made under *Section 38* of the *Commons Act 2006* for consent to carry out restricted works on common land. These works comprised the digging of a temporary trench to accommodate permanent underground service media, the construction of a grasscrete access road, and the installation of fencing while the works take place. Consent was given via a decision dated 19<sup>th</sup> August 2013. In September 2013 the Objector company sold Picket Mead House itself to Ms Julie Halliday.
- 9.37. The present village green application was eventually drawn to Mr Moore's attention, and clearly indicated the access road area leading to Picket Mead House as included within the application. He therefore instructed solicitors to look into the matter and to prepare a brief objection that was submitted by a letter dated 23<sup>rd</sup> September 2013. That was then followed up by a substantive objection of some length submitted on 6<sup>th</sup> October 2015.
- 9.38. Mr Moore noted in relation to the present application that it itself made reference to there being a public footpath over the land, and also to seats having been erected on the land in order to encourage recreational activities. He also noted that many



individual witnesses supporting the application had made specific reference to the public pathway over the land. Many of the statements supporting the application had also acknowledged that the land was owned and controlled by Swansea City Council, and/or that the land is common land. All of those statements are indicative of the fact that some of the applicants acknowledge that there is a public footpath open to all on the land, and that the Council ultimately has control over the land.

- 9.39. He was aware that a number of witnesses on the Applicant's side had made statements acknowledging the fact that there is and always has been an access way crossing the land to Picket Mead House and other property. From his own perspective the usage of that right of way could not have been more obvious, and indeed he produced photographs showing such use taking place. The condition of that access road itself is not good, and it is riddled with potholes. He himself has certainly never witnessed anyone engaging in recreational activities on the access road. The poor condition of that road would not lend itself towards sports and pastimes. All he has ever witnessed is that road being used for access. As far as he is aware the access road is in use on a daily basis by the current owner Julie Halliday and her workmen. It is also used by some of the residents of Newton Road.
- 9.40. It can be seen from a number of the photographs that the grassy land on the application site is extremely boggy and waterlogged. In his opinion when there is wet weather the land is virtually unusable as it is far too wet.
- 9.41. He had also noted that over the last few weeks the Council had erected signs on the land saying 'City and County of Swansea Land, No Parking'. This clearly demonstrates that the Council are in control of the land and they are attempting to restrict the usage of parts of it.
- 9.42. It is extremely surprising that some of the witnesses supporting the application, including Mr A Jones of 169 Newton Road, include people who actually use the roadway to obtain vehicular access to the rear of their own properties. Mr Moore did not think that Mr Jones had fully appreciated what he was signing in terms of the application, in terms of wanting the roadway registered as a village green, which would mean that neither he nor his family or visitors would be able to drive to the rear of his property.
- 9.43. Given that the road clearly must have been in situ for well over 100 years, Mr Moore was surprised to learn that none of the local residents who submitted questionnaires in support of the village green application made mention of the fact that there is an access road bisecting the land.
- 9.44. *In cross-examination* Mr Moore accepted that he had expressed support for a village green being established on Picket Mead back in 2011; he has no dislike for the concept of a village green in that general location. However the motives for the

application he thought were wrong. He also believed that there was sufficient protection for the land arising from its status as common land. The application in this case was simply not put together properly.

- 9.45. He is aware that common land can in theory be deregistered.
- 9.46. There are not really three paths over Picket Mead now. There is no east/west path visible in reality now.
- 9.47. Mr Moore said he had been familiar with Picket Mead for about 19 years; his wife and former girlfriend had lived in Caswell. Local people call it "*the Mead*".

## 10. **The Submissions for the Objector**

- 10.1. I note that the original objection on behalf of the Objector company was made in a letter from its solicitors to the Registration Authority dated 23<sup>rd</sup> September 2013. That letter was in apparent response to a communication from the Registration Authority shortly before that date pointing out to the Objector the existence of the Applicant's application, and the fact that the application site appeared to include land in respect of which the Welsh Government had in a decision letter of 19<sup>th</sup> August 2013 granted consent to Carrington Moore Estates Limited under **Section 38** of the **Commons Act 2006** for certain physical works to be carried out on the common land, in connection with the intended development of some houses within the grounds of Picket Mead House to the south.
- 10.2. The objection letter of 23<sup>rd</sup> September 2013 appeared to focus on the aspect of the present application which affected the access road over which the Objector company had rights, and in respect of which it had just been granted the consent mentioned in the previous paragraph. It was suggested in the letter that the requirements of **Section 15(2)** of the **Commons Act** could not have been satisfied in respect of the part of the application site which constituted the access road. Nevertheless the letter of 23<sup>rd</sup> September 2013 concluded with a generally expressed request on behalf of the Objector that the present application should be refused.
- 10.3. On 6<sup>th</sup> October 2015 the solicitors for the Objector submitted a very much more substantial and fully reasoned written objection to the present application, in the context of the run-up to the Inquiry, which had already been announced, and as part of the Objector's actions aimed at complying with the Directions for the Inquiry which had been issued on behalf of the Registration Authority. Although further submissions were also made on behalf of the Objector at the Inquiry, as noted below, it was made plain that the written objections lodged in October 2015 were still relied on, and it is therefore appropriate that I seek at least to summarise that material in my Report.

- 10.4. It was pointed out that the land of the application site is in the freehold ownership of the City and County of Swansea, but the Objector did not know the purposes for which or the capacity in which the land was held by the Council. That limited the extent to which the Objector could comment on certain legal aspects of the matter.
- 10.5. The application land is already registered under the *Commons Act* as common land, and has been so registered since October 1970. On 24<sup>th</sup> September 2008 the Objector company entered into a Deed of Easement with the City and County of Swansea, in the latter's capacity as landowner, which granted to the Objector rights of vehicular and non-vehicular access over, and the placing of servicing under the land within the present application site which has generally been referred to as the access road or the access track.
- 10.6. Planning permission had been granted for the development of new houses on the land surrounding Picket Mead House, and a consent under the *Commons Act* had been granted by the Welsh Ministers for works to the access road over Picket Mead, which I have referred to above.
- 10.7. The present application under *Section 15* of the *Commons Act* had not properly identified or specified either a locality or a neighbourhood to which the claim was intended to relate. The obligation on an applicant for registration of a town or village green to establish on the balance of probability that a significant number of the inhabitants of a locality or neighbourhood had used the claimed green for lawful sports and pastimes for the relevant period was emphasised. Attention was drawn to the guidance which the Courts have given as to the way in which the terms "*locality*" and "*neighbourhood within a locality*", within the legislation, should be understood.
- 10.8. In respect of the requirement that local inhabitants should have indulged in lawful sports and pastimes on the relevant land, the relatively broad way in which that requirement is interpreted was noted, but it is important to draw a distinction between use of the land as a whole for that sort of purpose and use of land as part of the using of formal or informal paths for getting from one point to another; thus trips or walks along paths which are really journeys to or from school, work or to conduct other daily business, such as shopping, would not constitute lawful sports and pastimes. Such use as there might have been for lawful sports and pastimes must also be more than trivial or sporadic. It was questioned whether the written evidence thus far lodged on behalf of the Applicant was sufficient to meet the requirements of the Act in these respects. There was lack of precision in the Applicant's material as to whether the requirement that a full 20 years user for the relevant period between January 1992 and January 2012 had been met.
- 10.9. Considerable attention was given in the October 2015 Objection to the requirement in *Section 15(2)* that the use made by local people of the land in question must have been "*as of right*". Extensive jurisprudence has arisen around this question.

- 10.10. The burden of proof lies upon the Applicant in respect of all of the aspects of the statutory test. If an application fails on one element, it must fail overall. Where there is a fundamental flaw in an application, a claim cannot be rescued by success in relation to the other elements of the application.
- 10.11. Specific attention should be paid to the provisions of **Section 193** of the **Law of Property Act 1925**. That section is headed “Rights of the Public Over Commons and Waste Lands”. It provides that members of the public have rights of access for air and exercise to any land which is a common, which is wholly or partly situated within an area which before April 1974 was a borough or urban district. Before the local government reorganisation in April 1974 Swansea was a County Borough, and this land was even then within the area administered by Swansea County Borough Council. Therefore it appears that for at least the whole of the relevant 20 year period from 1992 to 2012 the application land as a whole was subject to statutory public rights of access for air and exercise. It follows therefore that use of Picket Mead Common by local inhabitants for lawful sports and pastimes was a matter of statutory right, and therefore could not meet the requirement for “*as of right*” use contained within **Section 15** of the **Commons Act 2006**. The application must therefore fail.
- 10.12. Even if those rights under **Section 193** of the **Law of Property Act 1925** did not apply here for some reason, then nevertheless recreational user over the majority of the application land would have been authorised by **Part 1** of the **Countryside and Rights of Way Act 2000**, which would have made the land “*access land*” within the meaning of that legislation. However it was acknowledged that these provisions of the **2000 Act** would not apply to a situation where the **1925 Act** provisions were already in force.
- 10.13. In submissions made by counsel for the Objector at the inquiry, it was argued further that the fact that the whole of the application land is registered common land is a “*knockout blow*” to this town or village green application. The land here was registered as common land in October 1970. It is a common which is wholly within an area which before April 1974 was a borough or urban district. Members of the public thus have rights of access for air and exercise under **Section 193** of the **Law of Property Act 1925**. That fact was also recorded by the Planning Inspector who considered the **Section 38 (Commons Act)** application in respect of the land, when he recorded the views of the Open Spaces Society at that time. The common land rights under that legislation would encompass all of the lawful sports and pastimes claimed in this case. The courts have given a broad interpretation to such rights for air and exercise. The rights conferred by the land’s status as common land have rendered any use of it by local people “*by right*”.
- 10.14. The point was repeated that the burden of proof in respect of all aspects of the **Section 15 (Commons Act) 2006** criteria falls upon the Applicant. If the application fails on any one element it must fail overall. The Applicant had still failed to identify a qualifying neighbourhood or locality, and until he did so the Objector was unable to make proper submissions on that element of the test, and as

to whether the evidence submitted is sufficient to demonstrate that there has been qualifying user by a significant number of the relevant inhabitants.

- 10.15. The key elements of the “*as of right*” test were analysed. It was pointed out that, as had been explained recently by the Supreme Court in ***R (Barkas) v North Yorkshire County Council*** [2015] AC 195, use “*as of right*” is effectively the antithesis of use “*of right*” or “*by right*”. In order for use to be as of right it is imperative that the use takes place without permission. The application land here is common land which has been registered as such since October 1970. Because of **Section 193** of the ***Law of Property Act 1925*** it follows that for the whole of the relevant 20 year period the application land was subject to statutory public rights of access for air and exercise. The case of ***R v Secretary of State for the Environment, ex parte Billson*** [1999] QB 374 was referred to. That case showed that rights of access for air and exercise on common land should be interpreted in the broadest possible way, subject only to limitations set out in **Section 193** itself. The rights conferred would therefore include all of the lawful sports and pastimes relied on in the present case.
- 10.16. The possible relevance of the ***Countryside and Rights of Way Act 2000*** as a fall-back position was again alluded to.
- 10.17. It was also arguable that permission can be inferred from overt acts which shows that the landowner was exercising its rights over the land and that the public’s use of that land has been by permission. It is clear that Swansea Council in this case maintained the land and encouraged people to use it for lawful sports and pastimes. Indeed the Applicant himself had pointed out that the local authority maintains the Mead, and has erected seats. The Applicant also acknowledged that these matters represented a positive encouragement to enjoy recreational activities on the land.
- 10.18. It is also important to consider the quality and nature of the use which was made of the land in question, and how it would have appeared to a reasonable landowner. If use of a piece of land appears to be referable to formal or informal paths, as opposed to lawful sports and pastimes on the land, such activities may not found town or village green registration. The nature and quality of such use is a question of fact, but the decisive factor is how matters would have appeared to the reasonable landowner, with the benefit of any doubt being given to the landowner in favour of the lesser right, i.e. use of a footpath. In this case there are a number of references to the use of a footpath across the application land to cross from one side of the village to the other. That is not evidence of town or village green use and should be discounted.
- 10.19. One must also adopt a common-sense approach when considering whether qualifying use has in fact taken place over the whole of the application land. It seems clear that where an applicant is unable to demonstrate sufficient use over the whole of the application land, the Registration Authority is entitled to register only that part of the land where the statutory test has been satisfied. In this case there is

no evidence to indicate that recreational use took place on the access track on the land, which is unsurprising given that it is an unattractive rough cinder track. Indeed a number of witnesses have provided statements which say that although they saw people on other parts of the land using it for recreation, they never saw people using the track for recreation.

- 10.20. In submissions made at the inquiry it was argued that the only potential lawful sports and pastimes which are not covered by **Section 193 (Law of Property Act)** rights are the lighting of bonfires and the driving of an electric car on the land, which had both been referred to in some of the evidence. But it is a criminal offence to light fires on common land, under **Section 193** of the **1925 Act**, and is also a criminal offence to drive any vehicle on common land without lawful authority. These pastimes, to the extent that they took place, would therefore not have been ‘lawful’ pastimes. If the vehicle concerned was only ever driven on the land to access the rear entrances to properties backing onto the common, that would have been a form of right of way use, not a “*lawful sports and pastimes*” use of an open piece of land. But the key point is that these could not have constituted lawful sports and pastimes on a piece of common land, because they are criminal activities to the extent that they were not lawfully permitted for some other reason, such as the exercise of an easement (a private right of way).
- 10.21. Events which had been referred to such as the Golden Jubilee party may also fall outside the **Section 193** rights, but they are also not lawful sports and pastimes since they do not constitute a sport or pastime. They also appear to have post-dated the relevant period in any event. It is also unknown whether permission had been sought from the Council to hold any of these activities on the land. The carnival procession which had been referred to seems only to have passed through the Mead en route. These activities would also demonstrate that the land was on those occasions in general use by a much wider community than the neighbourhood or locality relied on.
- 10.22. Other activities relied on by the Applicant which are probably not covered by the **Section 193** rights would similarly not be lawful sports and pastimes. For example the grazing of poultry on the land which the Applicant had referred to is grazing, not a pastime. Protests against the Objector company’s development proposals are also not lawful sports and pastimes as such.
- 10.23. Accordingly any use for lawful sports and pastimes that was made during the relevant period was “*by right*” and not “*as of right*”. Common land in urban areas is in effect incapable of being registered as town or village green, even if this is no longer spelled out expressly in statute.
- 10.24. The **Section 193** right thus forms a complete knockout blow to the application, and there should be no need for the Registration Authority to have to go further and consider any of the evidence of any on the other elements of the test in **Section 15**

of the *Commons Act 2006*. However, if a different view were to be taken on this, there are a number of other reasons why the application is bound to fail.

- 10.25. This is municipal open space. It is clear that anyone arriving in the area would be in no doubt that the Council was inviting them to use it, as was confirmed by several of the Applicant's witnesses. There is a hard surfaced path, the grass is maintained, and there are benches and a dog litter bin. Local people had apparently asked the Council (although this was possibly the Community Council) to erect swings on the land, knowing that this is Council owned land and that they needed the Council's permission for new facilities (as opposed to access). The Council refused. This was apparently a question of resources, rather than an indication that people were not allowed on the land.
- 10.26. All witnesses confirmed that they did not feel like trespassers when they were on the land. That was a correct view; they were not trespassers; they had and continue to have a right to be there. In any event the Council's maintenance of the Mead and provision of facilities shows that permission was implied, and witnesses certainly understood this. This was a clear case of implied permission.
- 10.27. In fact this is just the kind of municipal land where there may well be (it was argued) a statutory or implied trust for the public to use it. The position is unknown, since no investigation has been carried out (as far as the Objector was aware) of the minutes and records pertaining to the original purchase by the Council of the land here. If the Registration Authority does not reject the application for other reasons, it should make investigations to satisfy itself that there is no express or implied statutory trust in this case. This is necessary to ensure that the decision is made on a proper legal basis.
- 10.28. Oddly, notwithstanding the inviting facilities provided by the Council, and the rights of access as common land, it was abundantly clear from the evidence that there has in fact been very little use, if any, of the vast majority of the Mead for at least the latter part of the relevant period. Various developments in the area, and the removal of hedgerows, have rendered the land extremely boggy. It has been noted by a witness that the land is ten times worse than it was before. The Council has also reduced the regularity of grass cutting, which is now only done twice a year, so that the grass is too long for ball sports, and was so at least by the end of the relevant period.
- 10.29. Thus, as Mr Kaminaris said, children do not play there, even if as in the case of his family, it would be the nearest open space to home. Similarly dog walkers using the tarmac path keep their dogs on a lead so that they do not come home covered in mud. That was also confirmed by several of the Applicant's entirely credible witnesses who said that nearly all walking, dog walking, jogging or cycling is confined to the paths. Even the ferret whose walking was referred to was apparently walked on a lead on the path. The tarmac track forms a direct short cut between Murton Lane and Summerland Lane; it provides a convenient access to

the church, chapel and shops, and is also used by school children. The only instance referred to by Miss Harry of people leaving the path was to go and see the duck pond or to step out of the way of school children. Such deviations from the path are still in the nature of 'path use' since they are ancillary or incidental to use of the path. Use that is referable to paths cannot found a town or village green application.

- 10.30. Mr Alcwyn Jones, no doubt cognisant of the line of questioning at the inquiry by the time he gave his evidence, sought to suggest that he had walked over every inch of the Mead and stood in puddles or ponds. His credibility must be called into some question, given the way the assertions of use of the grassy areas increased as the Applicant's case progressed, and given Mr Jones's clear involvement as part of the core group supporting the application, and his express opposition to people coming into the area and seeking to change it. In any event, even if he had walked over every inch of the Mead, that would appear to be contrary to the recollection of several others of the witnesses and would represent an isolated use.
- 10.31. The evidence suggested that children's games were necessarily confined to a very limited period during the summer when conditions on the Mead allowed it. It was highly relevant that none of the children referred to, despite being by now of adult or nearly adult age, gave any evidence whatsoever to the inquiry or in respect of the application. On the other hand the vast majority of the witnesses' evidence about sports and pastimes appeared to be from their own childhoods well prior to the start of the relevant period. It is unclear the extent to which the scouts or brownies used the land in the relevant period, and furthermore it is unknown if those children are from the claimed neighbourhood or locality, or indeed whether permission was sought from the Council for the use.
- 10.32. Once all of the use referable to paths or activities which are not lawful sports and pastimes are discounted, there is hardly any qualifying use left. That is wholly insufficient to establish the assertion of town or village green rights by a significant number of local inhabitants. It is far too trivial and sporadic, and there is no indication that the grassy area as opposed to the paths has been in general use by the local inhabitants throughout the relevant period. This is particularly so in relation to the latter part of the period when it is clear the land became increasingly boggy. No doubt some of the written evidence purported to relate to use of the land as a whole, but in principle that should be given less weight. Also one should not assume that the written evidence was about the relevant period rather than earlier periods. The written evidence as a whole was unreliable as to the relevant period.
- 10.33. As for the questions of locality or neighbourhood, the Objector accepts that the Electoral Ward of Newton is an administrative area and thus could be a qualifying locality, subject to having been in existence in its current form throughout the relevant period. That latter point is one for the Registration Authority to satisfy itself upon.



- 10.34. This area does not however appear from the map to be a good delineation for a neighbourhood, since it includes a large amount of open space, e.g. areas of beach and a golf course, and due to urban sprawl it appears that the Newton “*neighbourhood*” does not have identifiable boundaries any more. This fact was commented on by Dr and Mrs Peters who moved to the USA, and thus have in effect been able to observe ‘snapshots’ of geographical changes in the area when returning to visit. In their written statement dismay is expressed as to how the village quality of Newton has been eaten away by expanded housing areas and the disappearance of most fields and hedgerows. If a neighbourhood is to be relied on with the boundary of an Electoral Ward, the Objector has concerns that its northern and eastern boundaries, which bisect areas of close-knit housing, do not translate into clear boundaries on the ground such as to give it the necessary cohesiveness and distinct identity. In any event, where an administrative unit is proposed, as it has been here by the Applicant, then in the Objector’s submission it should properly be regarded as a locality, not a neighbourhood.
- 10.35. Either way, the population of the area is apparently 3,274 (2009 Census). The trivial amount of use claimed in this case cannot possibly be significant in the context of that population.
- 10.36. The application in this case was put in as a result of misconceived fears about development of the Mead. This was fuelled by misreporting in the local press about the Objector company’s proposals. No legal advice has been obtained by the Applicant. It became abundantly clear during the inquiry that local residents had not understood that a potential consequence of their application was to deny a right of vehicular access to several properties, which they purported to wish to protect. The application, and the Applicant’s position, are wholly misguided and bound to fail for many reasons, but the clear knockout blow is that the public already have a right to use the land for air and exercise under the *Law of Property Act 1925*.
- 10.37. It is regrettable that public and private money has been spent on this application. The application could have been resolved or rejected at an earlier stage. None of the Applicant’s fears as to access, or protection of the Mead for use by the public, have any basis in reality. The public have and continue to have a legal right to use the land. The Objector company does not own the land, and therefore cannot do anything to stop them. Neither can the Objector stop people using the cinder access track for vehicular access to their properties. Local residents’ fears are thus in any event unfounded.

## 11. **DISCUSSION AND RECOMMENDATION**

- 11.1. The application in this case was made under *Subsection (2)* of *Section 15* of the *Commons Act 2006*. That section applies where:

*"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have*

*indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.”*

and

*“(b) they continue to do so at the time of the application.”*

The application in this case was dated, and received by the Council as Registration Authority, on 17<sup>th</sup> January 2012, so that date represents the ‘time of the application’, from which the relevant 20 year period needs to be measured (backwards).

### **Assessing the Facts**

- 11.2. In this case there was some dispute in relation to aspects of the underlying factual background as to the history and extent of the use of this site over the relevant years. The law in this field puts the onus on an applicant to prove and therefore justify his case that all of the various aspects of the statutory criteria set out in **Section 15(2)** have in reality been met on the piece of land concerned.
- 11.3. To the extent that any of the facts were in dispute, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether the statutory criteria for registration have been met or not.
- 11.4. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point canvassed at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, completed ‘evidence questionnaire’ forms and the like, which have not been subjected to any such opportunity for challenge.
- 11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of ‘findings of fact’. Rather, what I propose to do, before explaining my overall conclusions, is to consider in turn the various particular aspects of the statutory test under **Section 15(2)** of the **2006 Act**, and to assess how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

### Unusual additional aspects of this case

- 11.6. The historical background of this case has a number of somewhat unusual aspects, not all of which attracted substantial submissions from the parties at the Inquiry. The first of these perhaps was that the same council that is the Registration Authority, the City and County of Swansea, is also the freeholder of the land concerned (not in itself particularly unusual), but that the Council as owner is not among the objectors to the application.
- 11.7. I do not believe it is right to infer from that, as the Applicant seemed to do at one point, that the Council as landowner therefore *supports* the application. Rather I take it that the Council as landowner had decided to remain neutral in the matter in this instance.
- 11.8. The second somewhat unusual feature is that the land of the present application site is part of a somewhat larger area which is already included in the Registers maintained by the Council under the **Commons Act**, but as ‘Common Land’ rather than Town or Village Green. It did appear once to be the case, within the original scheme of registration under the **Commons Registration Act 1965**, that it was not possible for the same piece of land to be registered both as ‘Common Land’ and as a ‘Town or Village Green’. However the legislative provisions which led to that consequence were repealed and not replaced when the **Commons Act 2006** was enacted, so that on the face of things there is no longer a bar on the same piece of land being in both categories.
- 11.9. I and the Registration Authority, in the Directions issued before the Inquiry, did invite the parties to consider, and if appropriate make submissions on, the point as to whether the same piece of land can lawfully be in the **Commons Act** Register in the two different categories. In the event neither party to the Inquiry (nor anyone else who provided material in writing) made any suggestion or submission that such dual registration is inherently impossible, under the present law.
- 11.10. There was some passing suggestion in the Applicant’s representations that the original registration as ‘Common Land’ rather than village green had been an error, but that is a different point, and also one which was not pursued with any vigour in the Applicant’s submissions. The Objector did forcefully argue a point, which I consider later, to the effect that because of the public’s statutory rights to use common land in urban areas for ‘air and exercise’, it is *de facto* impossible to generate a claim by 20 years ‘prescription’ based on “*as of right*” use on a piece of such land; but that again is a different point.
- 11.11. I therefore take the view, and so advise the Registration Authority, that there is no inherent reason, based simply on the **Commons Act** legislation itself, why the same piece of land cannot be in the Register as both ‘Common Land’ and ‘Town or Village Green’.

- 11.12. A third unusual feature of the factual background here is that, by the time this application has fallen for determination by the Registration Authority, there has already been a decision issued (by the Planning Inspectorate) on behalf of the Welsh Assembly Government, dated 19<sup>th</sup> August 2013, granting consent to the present Objector, under *Section 38* of the *Commons Act 2006*, to carry out certain physical works on part of the present application site (the access track from Murton Lane to the land associated with Picket Mead House). It was my understanding from comments made at the Inquiry that these physical works had not yet been carried out.
- 11.13. Although this was a relatively unusual situation, in the context of a *Section 15 (Commons Act)* application, neither party argued that it had any particular or special bearing on the way the application should be determined.
- 11.14. The same applies to the further fact that the Objector company was the beneficiary of an agreement for a formal easement, to be granted by the Council as landowner, for the benefit of the land at Picket Mead House, allowing use of the access track, and the laying of ‘service media’ beneath it. That agreement had been entered into in September 2008.
- 11.15. Once again, although these facts were alluded to by both parties to the Inquiry, it was not argued that they have a direct bearing on the resolution of the present application.
- 11.16. Nevertheless I would observe that in my view it was entirely correct and appropriate, and in accordance with the principles of natural justice, that the Registration Authority should in these circumstances have drawn the existence of the Applicant’s application to the attention of the Objector company, and invited it to consider whether it wished to make any comments or observations. The Objector in responding did indicate an objection to the Applicant’s application. In my view it was further correct, and in accordance both with the principles of natural justice, and the *Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007*, that the Registration Authority thereafter treated the Objector company as an objector whose representations and evidence should be considered in the determination of this application.
- 11.17. I make these observations because there appeared, in some of the written documentation lodged on behalf of the Applicant before the Inquiry, to be some implicit criticism of the Registration Authority for having allowed the Objector company’s representations to be considered as an objection to the Applicant’s application. I note however that the Applicant did not pursue with any force or vigour an argument of this kind at the Inquiry itself.
- 11.18. He did however draw attention to private correspondence dating from February 2012 between the Objector’s solicitors and Mr Arthur himself, in which it had been

said that the Objector had (at that time) no objection to “*any application to register Picket Mead ... as a Village Green*”. While this might be mildly surprising in view of the Objector’s subsequent position, it does not in my view detract from the correctness of what I have set out above, based on the formal correspondence and communications between the Objector’s solicitors and the Council as Registration Authority, from September 2013 onwards, in which it was made clear that the Objector company does indeed object to the Applicant’s application.

**“Locality” or “Neighbourhood within a locality”**

- 11.19. The Applicant’s application as originally lodged had been deficient, in that although the answer given to the appropriate part of the application form (Form 44, section 6) had indicated that a relevant Map had been attached, there was in reality no such map. In fairness, the ‘Justification’ given in Section 7 of the application form had made some reference to the village of Newton; but it had not been indicated by the applicant what particular area was being put forward as the one to whose inhabitants the claim related, or whether it was being put forward as a ‘locality’ or a ‘neighbourhood’.
- 11.20. This deficiency of the application as originally lodged was expressly drawn to the Applicant’s attention by the Registration Authority in a letter dated 6<sup>th</sup> September 2013. In the event, however, it was not really dealt with by the Applicant until the material he produced in late 2015, in the run-up to the Inquiry, and at the Inquiry itself (December 2015).
- 11.21. In the Applicant’s material produced before the Inquiry there was reference once again to the area of ‘Newton Village’ as the potential locality or neighbourhood. But there were also some rather confusing additional references to the local postcode area, the electoral ward of Newton, etc. An element of confusion on the part of applicants in relation to the ‘locality’ or ‘neighbourhood’ question is not entirely surprising (and indeed is quite common), as there is very little guidance in ‘Form 44’ which assists lay applicants as to the rather particular views which the higher courts have taken as to the meaning of the terms “*locality*” and (to a lesser extent) “*neighbourhood*”.
- 11.22. At the Inquiry itself Mr Arthur said that he relied on the Electoral Ward of Newton as the relevant ‘neighbourhood’, and plans were produced (with the assistance of the Registration Authority) showing the boundaries of that Ward. He and others gave evidence that they believed those ward boundaries had been the same for the entire relevant 20 year period, although that fact had not apparently been checked with the Council’s officers responsible for electoral matters. (It clearly would be capable of being checked, if required).
- 11.23. Counsel for the Objector conceded that this Electoral Ward was capable of being a relevant ‘locality’ (if it had been in existence for long enough), but criticised it as a ‘neighbourhood’ on the grounds (in effect) of its being somewhat arbitrary and not ‘cohesive’ enough, and not having logical enough boundaries.

- 11.24. It appeared to me, from my observation of the area, that Newton is a fairly cohesive-seeming village, with its own character, even though parts of it seem to like to call themselves ‘Caswell’ (which, I was told, is locally perceived to have a slightly more ‘upmarket’ tone). That fairly cohesive village of Newton seems to be entirely within the electoral Ward of Newton, as shown on the map provided.
- 11.25. It is true (as was pointed out for the Objector) that the Ward also includes some countryside areas, mainly to the south and west, outside the obviously built-up village, and that on its eastern and north-eastern edges modern development has produced the result that the boundary runs through some built-up areas, with housing stretching away on either side of it.
- 11.26. It seems to me however that it would be unjust and somewhat perverse to hold that a ‘neighbourhood’ consisting of an historic village cannot exist for the purposes of this legislation just because modern development had produced the result that on some of its outer boundaries it merges relatively imperceptibly with neighbouring settlements or areas. It also seems to me not to cause any legal difficulties or potential injustice to an objector to take the view that a ‘neighbourhood’ can legitimately be understood to include the adjacent areas of relatively (but not completely) open land just outside its more built-up parts.
- 11.27. Thus the view I have formed from my observation of Newton itself, is that there is a cohesive neighbourhood of the village of Newton, and that (as it happens) the Electoral Ward called Newton represents a perfectly reasonable definition of its boundaries. I am fortified in taking this view by the point that the Electoral Ward of Newton seems highly likely to constitute a valid ‘locality’ as well, as the Objector in effect conceded.

***“A significant number of the inhabitants”***  
***“lawful sports and pastimes”***  
***“at least 20 years”***  
***“they continue to do so”***

- 11.28. I am taking all of these aspects of the statutory criteria together, as they appear to me to be inextricably linked in this case.
- 11.29. The ‘neighbourhood’ of Newton (Ward) apparently had a population of 3,274 in 2009. It is clear however from the case-law that ‘a significant number’ does not mean any particular percentage, and (in particular) does not necessarily mean that a high percentage of the total inhabitants must be shown to have used the land. It is more a question of the level of use being sufficient to show to a reasonably observant landowner that use was being made by the local community in general, and not just by isolated and sporadic ‘trespassers’.

- 11.30. The evidence given to the Inquiry was entirely convincing that, over many decades, going back to the childhoods of those (in many cases elderly) witnesses who gave evidence, and of their own (mostly now grown up) children, the main grassy area of Picket Mead, to the west of the ‘access track’ to Picket Mead House, was quite well used by local people for a variety of recreational activities. Much of this went well back beyond the 20 year period of most relevance to *Section 15(2)*.
- 11.31. This is not in the least surprising, as Picket Mead is an area of open grassy land, entirely unfenced on its boundaries to Murton Lane and Summerland Lane, and which was regularly maintained by mowing by the Council. There have also been benches placed on the land for people to use.
- 11.32. The evidence was also clear, however, that during more recent years (including a significant part of the most relevant 20 year period), changes along the boundaries of the land had produced the result that its surface has in large part become increasingly muddy and waterlogged for much of the year. This has clearly made it much more difficult and less agreeable to use, except during long, mostly dry periods.
- 11.33. The consequence, as was clear from the evidence given to me, is that there has been a much greater tendency in the latter years than hitherto, for local people using Picket Mead during wet periods to tend to confine themselves more to using the (relatively dry) tarmac path up the western side of the Mead, and the ‘access track’ itself, and one or two other parts of the Mead which have tended to stay rather dryer. It has become considerably less common for local people routinely to use the wide grassy area of the Mead generally, though the evidence did suggest that such use continues to take place, more particularly during dryer times of the year.
- 11.34. What are the implications of all this as far as the legal criteria are concerned? One must bear in mind, it seems to me, that the courts have held that the legal effect of the ‘significant number’ test is to express the requirement that it be shown that the land was in general use by local people, sufficient to get the point across to an observant landowner, rather than sporadic use by trespassers.
- 11.35. The conclusion which I have formed, on the evidence here, is that it must have been abundantly clear to the ‘observant landowner’ that this land (to the west of the access track) was in sufficiently wide recreational use by local people “*for a period of at least 20 years*”, even if the evidence also suggests that the general use had declined somewhat during the latter half (approximately) of the most relevant 20 year period.
- 11.36. I also conclude on the balance of the evidence that there was sufficient use of this land, during the “*period of at least 20 years*”, specifically for ‘lawful sports and pastimes’ on the land as a whole (west of the access track), as distinct from use of the western footpath, or of the eastern ‘access track’, or of any other ‘through

routes' as means of crossing the land 'from A to B', and associated activities which were merely incidental to such crossings.

11.37. Undoubtedly the evidence did show that there is plenty of use of Picket Mead just for crossing it along (relatively) fixed routes, but that does not detract from my finding above that there has also been more general use of the land as a whole (west of the 'access track') for lawful sports and pastimes, for a period of at least 20 years. Such general use, on my understanding of the evidence, has continued, albeit at a reduced rate (as discussed above), right through to the date of the Applicant's application.

***"On the land"***

11.38. As I have already indicated in my preceding paragraphs, my finding that there has been a sufficient level of "*lawful sports and pastimes*" use by local people for at least 20 years is limited to that part of Picket Mead (the application site) to the west of the 'access track'.

11.39. By 'the access track' I make it clear that I mean the whole of the eastern access track from Murton Lane to the vicinity of Picket Mead House, including the part which then turns westward along the northern boundary of Picket Mead House. In other words I mean the entirety of the land over which the Council as landowner agreed to grant an easement to the Objector company. Several plans showing this access track were produced to the Inquiry, so all parties will be clear exactly which piece of land is being referred to.

11.40. It was perfectly clear to me that, unlike the position on the more grassy area immediately to the west, there was no substantial or convincing evidence showing that the area of the access track itself has been used to any significant extent for "*lawful sports and pastimes*", as opposed to being used as a route of passage by people either in vehicles or, more commonly, on foot (there was also a small amount of evidence of equestrian use).

11.41. It is perfectly true that a significant element of the pedestrian use will have been by local people walking (with or without dogs) for health or recreation, but the evidence suggested that such use was typically more in the nature of walking a route or path than forming part of the use of the whole Mead more generally. Indeed the evidence also suggested that (particularly in the latter years) this walking of a particular route, including the access track, was considerably more regular than the 'lawful sports and pastimes' use I have found took place on Picket Mead more widely.

11.42. Therefore, if I were otherwise minded to advise and recommend that Picket Mead generally should be registered as a 'town or village green', I would nevertheless be recommending that the access track should be excluded from the area so registered.



- 11.43. That then leaves a narrow ‘strip’ of the present application site, of very uneven width, running down the extreme eastern side of the application site, between the ‘access track’ and the overall site’s eastern boundary. Most of this strip is grassy, though there is some other vegetation, and the evidence also suggested that at least one adjacent resident might have planted some flowers on parts of this strip - though this was not obvious at the time of my site visit.
- 11.44. It was also suggested that the same (I understood) neighbouring resident had from time to time allowed some free range domestic fowl to ‘graze’ (if that is the correct term) on this narrow strip east of the access track. This evidence, such as it was, was rather sketchy and in any event does not amount, on my understanding of the law, to evidence that ‘lawful sports and pastimes’ were carried out to any material extent by the local inhabitants on the strip concerned.
- 11.45. I also note that this appears to be the strip, albeit a very narrow one at the relevant points, across which I was told, in evidence called for the Applicant, that occasional vehicular and other access had been taken for many years by the residents/owners of two long domestic plots whose frontages are on Newton Road (one of whom was Mr Winston Williams of No. 177).
- 11.46. I should also note again at this point that right at the very end of the Inquiry, at the conclusion of his closing submissions, Mr Arthur the Applicant finally decided to apply to amend his application by removing from it what he called the “*cinder path*”, which in the context was clearly understood by all present to mean the same thing as what I have called the ‘access track’. Coming at that point in the Inquiry, the application to amend was not as helpful as it might have been. Had the issue been dealt with earlier, it might have been discussed in a more useful way between all in attendance – the Applicant and the Objector and myself.
- 11.47. As it was, in my view the Applicant, in terms of the common sense of the situation, made an error of judgment in not also applying to exclude from the application site the narrow strip to the east of the ‘access track’ or ‘cinder path’, as well as the track itself. However, for the reasons I now discuss in the remaining paragraphs of this Report, it would make no difference to my overall conclusion and recommendation whether the Applicant’s very late application to amend is accepted or not.

***“As of right”***

- 11.48. I have already noted that the entirety of the application site, from 1970 onwards, has been included within an area of registered ‘common land’, initially under the ***Commons Registration Act 1965***, latterly under the ***Commons Act 2006***. It was also clear from the evidence, and not disputed by anyone, that the part of the present City and County of Swansea where Picket Mead lies was, before the local government reorganisation of April 1974, within the area of the previous County Borough of Swansea.

- 11.49. As such, it seems to be completely clear that (as the Objector has argued) Picket Mead, including the application site, has at all material times been a registered ‘common’ within a former ‘borough or urban district’. As such it has, again at all material times, been subject to the express statutory right given to members of the public to use such commons “*for air and exercise*”, granted by **Section 193(1)** of the ***Law of Property Act 1925***.
- 11.50. It has also been completely clear, at least since the decision of the Supreme Court in ***R (Barkas) v North Yorkshire County Council [2014] UKSC 31***, if not before, that where the public have an actual *right* or permission to use a piece of land recreationally, there cannot be “*as of right*” use for such a purpose, so as to satisfy the ***Commons Act*** test. “*As of right*” means, effectively “*as if of right*”, i.e. people must have been using a piece of land as if they had a right to do so, but when in fact they did not.
- 11.51. In this instance I accept the submissions for the Objector that there was no convincing evidence at all of “*lawful sports and pastimes*” activities by local people on Picket Mead, in circumstances when those people did not already have a clear statutory *right* to be indulging in those activities there. The application must therefore fail, in my opinion, on this important point of law.
- 11.52. I have noted that the Objector also argued that members of the public would additionally have had the right to use at least some of Picket Mead common, for the latter part of the relevant period, under the ‘access land’ provisions introduced by the ***Countryside and Rights of Way Act 2000***. However, on the facts here the legal position is so clear, in my opinion, under the ***Law of Property Act 1925*** that it is unnecessary and confusing to base the decision on another partially relevant provision of later legislation.
- 11.53. Somewhat similarly, I note also that the Objector argued that because of the small number of benches that have been positioned towards the periphery of this land, and the fact that the Council with reasonable (if not great) regularity has kept the grass mowed, there was an “*implied permission*” given to local and other people to use the land recreationally. If this land had not already been urban common land in the ownership of the Council, with statutory rights for the public to use it, this argument of ‘implied permission’ would have been worthy of consideration, but I do not think I would have found it particularly persuasive, given that the Supreme Court in ***Barkas*** made it clear that open, accessible land belonging to local authorities is not automatically exempt from ‘town or village green registration’. There has to be something more than just openness and availability.
- 11.54. In this case, of course, that ‘something more’ is abundantly present, given the public’s clear statutory rights to use Picket Mead for ‘air and exercise’.

### **Final conclusion and recommendation**

- 11.55. In the light of all the considerations which I have discussed above, my conclusion is that the Applicant has *not* succeeded in making out the case that any part of the application site (or the amended, smaller application site to which the Applicant referred in final submissions) should be registered pursuant to *Section 15(2)* of the *Commons Act 2006*. In particular he failed to establish that any part of the land was used “*as of right*” for the requisite purposes or period, within the legal meaning of that expression.
- 11.56. Accordingly, my recommendation to the Council as Registration Authority is that *no part* of the land of the application site should be added to the Register of Town or Village Greens, pursuant to the Applicant’s application under *Section 15(2)* of the *Commons Act 2006*, for the reasons given in my Report.

**ALUN ALESBURY**  
5<sup>th</sup> February 2016

Cornerstone Barristers  
2-3 Gray's Inn Square  
London WC1R 5JH

## **APPENDIX I**

### **APPEARANCES AT THE INQUIRY**

#### **FOR THE APPLICANT – Mr Simon Arthur**

He gave evidence himself, and called:

Mrs Christine Humphreys, of 16 Murton Lane, Newton

Miss Eirwen Harry, of 12 Melcorn Drive, Newton

Mr Victor Collier, of 26 Riversdale Road, West Cross, Swansea

Mrs Angela Williams, of 155 Newton Road, Newton

Mr Alcwyn Jones, of 169 Newton Road, Newton

#### **FOR THE OBJECTOR – Carrington Moore Estates Ltd**

Miss Annabel Graham-Paul, of Counsel

Instructed by: Morgan LaRoche, PO Box 176, Bay House, Phoenix Way, Swansea SA7 9YT

She called:

Mr Charles Kaminaris, of 59 Caswell Drive, Caswell, Swansea

Cllr Anthony Colburn, of 14 St Peter's Road, Newton

Mr Andy Moore, of 5 Buttercup Court, West Cross, Swansea

## **APPENDIX II**

### **LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY**

NB This (intentionally brief) list does *not* include the original application and supporting documentation, the original objections, or any material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared, paginated bundles of documents produced for the purpose of the Inquiry, on behalf of the Applicant and Objector, all of which were provided to the Registration Authority (and me) as complete bundles.

#### **FOR THE APPLICANT:**

Written Outline of Legal Closing Submissions

#### **FOR THE OBJECTOR:**

Written Note of Closing Submissions

#### **BY THE REGISTRATION AUTHORITY:**

2 plans (1:2500 and 1:10,000) showing boundary of Newton Electoral Ward

# Agenda Item 6

CITY AND COUNTY OF SWANSEA  
DINAS A SIR ABERTAWE

Report of the Head of Economic Regeneration & Planning  
to Chair and Members of Planning Committee

DATE: 12<sup>TH</sup> APRIL 2016

<b>Bay Area</b> Team Leader Liam Jones - 635735	<b>Area 1</b> Team Leader: Ian Davies - 635714	<b>Area 2</b> Team Leader: Chris Healey - 637424
Castle Mayals Oystermouth St Thomas Sketty Uplands West Cross	Bonymaen Clydach Cwmbwrla Gorseinon Landore Llangyfelach Llansamlet Mawr Morrison Mynyddbach Penderry Penllergaer Penyrheol Pontarddulais Townhill	Bishopston Cockett Dunvant Fairwood Gower Gowerton Killay North Killay South Kingsbridge Lower Loughor Newton Penclawdd Pennard Upper Loughor

**Members are asked to contact the relevant team leader for the ward in which the application site is located, should they wish to have submitted plans and other images of any of the applications on this agenda displayed at the Committee meeting.**

Phil Holmes  
BS(Hons), MSc, Dip Econ  
Head of Economic Regeneration & Planning



## TWO STAGE VOTING

Where Members vote against officer recommendation, a two stage vote will apply. This is to ensure clarity and probity in decision making and to make decisions less vulnerable to legal challenge or awards of costs against the Council.

The first vote is taken on the officer recommendation.

Where the officer recommendation is for “approval” and Members resolve not to accept this recommendation, reasons for refusal should then be formulated and confirmed by means of a second vote.

**The application will not be deemed to be refused unless and until reasons for refusal have been recorded and approved by Members.** The reason(s) have to be lawful in planning terms. Officers will advise specifically on the lawfulness or otherwise of reasons and also the implications for the Council for possible costs against the Council in the event of an appeal and will recommend deferral in the event that there is a danger that the Council would be acting unreasonably in refusing the application.

Where the officer recommendation is for “refusal” and Members resolve not to accept this recommendation, appropriate conditions should then be debated and confirmed by means of a second vote. For reasons of probity, Member should also confirm reasons for approval which should also be lawful in planning terms. Officers will advise accordingly but will recommend deferral if more time is required to consider what conditions/obligations are required or if he/she considers a site visit should be held. If the application departs from the adopted development plan it (other than a number of policies listed on pages 77 and 78 of the Constitution) will need to be reported to Council and this report will include any appropriate conditions/obligations.

**The application will not be deemed to be approved unless and until suitable conditions have been recorded and confirmed by means of a second vote.**

Where Members are unable to reach agreement on reasons for refusal or appropriate conditions as detailed above, Members should resolve to defer the application for further consultation and receipt of appropriate planning and legal advice.

## CONTENTS

ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
1	2015/2527	438 Gower Road Killay Swansea SA2 7AJ <b>Retention and completion of a new shop front, two storey rear extension and change of use of ground floor residential (Class C3) to hot food take away (Class A3) and installation of external flue</b>	APPROVE
2	2016/0055	Land West of Victoria Road Victoria Road Gowerton Swansea <b>Creation of Trampoline Centre (Class D2) associated car parking and access</b>	APPROVE



ITEM 1

APPLICATION NO.

2015/2527

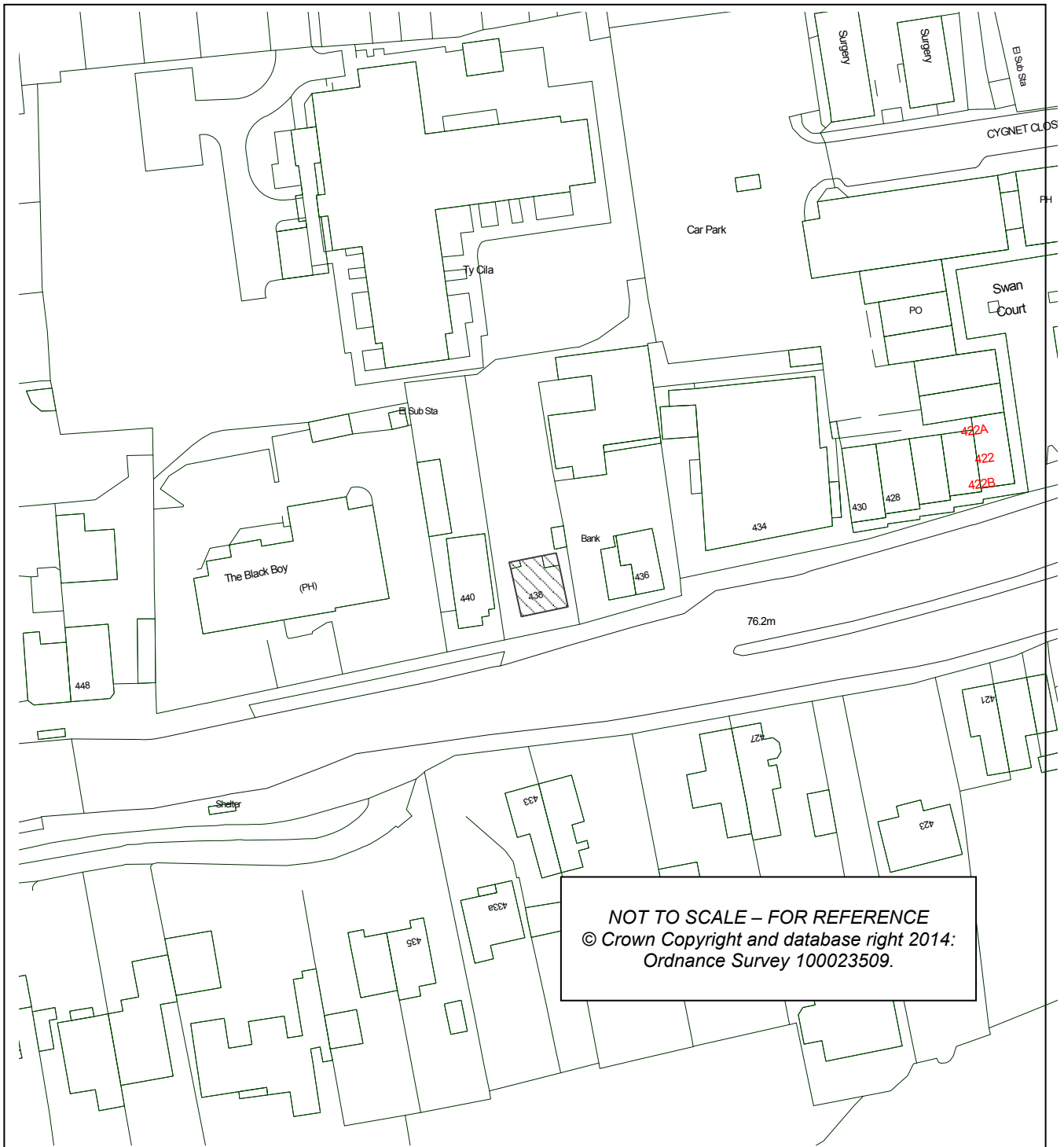
WARD:

Killay South

**Location:** 438 Gower Road Killay Swansea SA2 7AJ

**Proposal:** Retention and completion of a new shop front, two storey rear extension and change of use of ground floor residential (Class C3) to hot food take away (Class A3) and installation of external flue

**Applicant:** Mr Abdul Latif



**BACKGROUND INFORMATION****POLICIES**

<b>Policy</b>	<b>Policy Description</b>
Policy EV13	Proposals for new or renovated shopfronts, including security grilles, should be sympathetic to the character of the building, adjacent properties and the surrounding area. (City & County of Swansea Unitary Development Plan 2008)
Policy AS6	Provision of car parking in accordance with adopted standards. (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 EV40	Development proposals will not be permitted that would cause or result in significant harm to health, local amenity, natural heritage, the historic environment or landscape character because of significant levels of air, noise or light pollution. (City & County of Swansea Unitary Development Plan 2008)
Policy EC5	Development within designated district centres will be encouraged where it is of a type and scale that maintains or improves the range and quality of shopping facilities and meets other specified criteria. (City & County of Swansea Unitary Development Plan 2008)
Policy ECNR	Proposals for non retail uses at ground floor level within shopping centres will be assessed against defined criteria, including their relationship to other existing or approved non retail uses; their effect upon the primary retail function of the centre; the proposed shop front and window display; the time the unit has been marketed for A1 uses, and its likelihood of continuing to be vacant; its location in relation to the primary shopping area; and its impact upon the vitality, viability and attractiveness of the centre. (City & County of Swansea Unitary Development Plan 2008)

**SITE HISTORY**

<b>App No.</b>	<b>Proposal</b>
2015/1242	Change of use from residential dwelling to a ground floor retail unit (Class A1) with flat above (Class C3), new frontage and part two storey part single storey rear extension and first floor rear extension Decision: Grant Permission Conditional Decision Date: 28/07/2015

2014/1738 Change of use from residential dwelling to a ground floor retail unit (Class A1) with flat above (Class C3), new frontage and part two storey part single storey rear extension  
Decision: Grant Permission Conditional  
Decision Date: 05/01/2015

## RESPONSE TO CONSULTATION

SIX neighbouring properties were consulted and the proposal was advertised on site. TWENTY SIX LETTERS OF OBJECTION were initially received which are summarised as follows:

- 1) Parking concerns
- 2) No need for another food outlet
- 3) Highway safety concerns
- 4) Noise and disturbance
- 5) Odours
- 6) Impact on other businesses
- 7) Litter and refuse problems
- 8) Unhealthy eating
- 9) Late night issues
- 10) We need a retail unit

Additionally a petition of objection has been received containing 77 signatures, raising the following concerns:

- 1) Parking concerns
- 2) Too many food outlets in Killay

ONE LETTER OF SUPPORT has been received which states that a choice other than chips or Chinese food is supported and that only people with a vested financial interest could object to the proposal.

A re-consultation exercise was carried out due to a change in the description of development (the original description did not refer to the shopfront or extension) – ONE ADDITIONAL LETTER OF OBJECTION has been received. This letter repeated some of the points of objection listed above, but also contained the following additional comments:

- 1) The unit is big enough to be converted into a restaurant in the future
- 2) Consent should not be granted to someone who has been found to be employing staff illegally.

**Head of Transportation and Engineering** – The site is located next to the shopping precinct and is next to the parade of shops along the Gower Road frontage with a restaurant and bookmakers either side of it. There are no parking facilities along the highway fronting the premises but there is a lay-by nearby that serves customers of the adjacent shops. There is a pedestrian crossing near to the site.

The submitted details indicate that the first floor flat will have a side parking space with room for a second vehicle on the drive that can be used in connection with the ground floor use. Additionally, the front boundary wall is shown to be removed and space to park on the forecourt available albeit limited.

Local concern has been raised regarding illegal parking along the Gower Road frontage. There is a lay-by within 25m of the shop unit and a car park facility at the rear of the adjacent precinct together with some limited waiting bays on the other side of Gower Road. If illegal parking takes place outside the premises, this would be a matter for enforcement of the parking regulations in force and is not normally grounds for refusing consent. Refusal on illegal parking grounds therefore would likely be difficult to justify at appeal. Whilst additional traffic could be attracted to the site this is unlikely to be of such a high volume as to make the proposal unacceptable on highway safety grounds.

On balance therefore, whilst recognising the concerns raised locally, I consider that refusal for highway safety reasons is not justified and therefore recommend that no highway objections are raised.

**Head of Pollution Control** - No objection raised subject to the imposition of conditions.

## **APPRAISAL**

This application is presented to Committee for determination at the request of Councillor Jeff Jones.

Full planning permission is sought for the retention and completion of a new shop front, two storey rear extension and change of use of ground floor residential (Class C3) to hot food take away (Class A3) and installation of external flue.

Planning permission was granted (ref: 2015/1242) for the change of use from residential dwelling to a ground floor retail unit (Class A1) with flat above (Class C3), new frontage and part two storey part single storey rear extension at this site. Whilst works have commenced, the ground floor use granted has not been implemented and therefore the current, lawful use at this site is still that of residential. The new shop front has already been installed. A new rear extension has also been constructed, albeit not in accordance with the 2015/1242 planning permission.

The site is situated within the designated District Centre of Killay and forms part of a Secondary Frontage where there is a presumption to support the retention and where possible the creation of retail units.

The main issues for consideration during the determination the application is the principle of this form of use at this location, the impact of the proposed shopfront, extension and flue on the appearance of the host property and the wider street-scene, the impact of the external works and proposed use on the residential amenities of the neighbouring properties and highway safety, having regard for the provisions of the adopted City & County of Swansea Unitary Development Plan 2008.

There are approximately 45 shopping units within this recognised District Centre and there is a mix of differing commercial uses which complement one another. The District Centre, Local Centre and Community Facilities SPG acknowledges that whilst appropriate supporting uses can complement retail shops, the shopping function of District and Local Centres can be eroded by incremental planning consents for non-retail use. Killay is split into an area with a primary frontage (around the precinct) and secondary frontage (towards the Black Boy Public House). The SPG states that the primary frontage should maintain a high level of retail units in order to safeguard the shopping frontage. National Planning Policy also emphasises the importance of ensuring ground floor use class changes are not permitted where this would create a predominance of non-retail uses that would lead to an unacceptable dilution of the retail frontage or undermine the attractiveness of the Centre.

Killay is one of the most vibrant shopping centres within the City and County of Swansea and in order to maintain its retail function, the Local Planning Authority has historically sought to resist the change of use of retail units to non-retail. In this instance, the applicant seeks consent for the change of use of the ground floor element of the building to an A3 use. As there is no implemented A1 use, there would be no loss of a retail unit and therefore the SPG and Policy ECNR are not applicable in this instance in terms of resisting non A1 use. In principle, therefore, the change of use is supported and will support the vitality and viability of this District Centre, by providing an additional commercial unit into the shopping centre.

Given that the building is surrounded by commercial properties, the proposed use is not considered to adversely affect the residential amenities of neighbouring/local residents by virtue of noise and disturbance over and above that already experienced in the area, due to the current mix of uses present. In this respect it should be noted that there are three other A3 uses within close proximity to the site.

Furthermore, it is considered that the proposed use would not cause undue noise and disturbance to any future occupiers of the first floor element of the building that would warrant a refusal of this application. The Head of Pollution Control has however recommended the use of a planning condition that requires the use of sound insulation measures to mitigate noise from being transferred between the proposed ground floor use and first floor flat.

With regard to visual amenity, the proposal involves the retention and completion of a two storey rear extension, new shop front and external extractor flue. The shopfront and extension (as built) are similar to those shown in the drawings forming part of planning permission 2015/1242.

The 2015/1242 permission related to the property's original rear extension being adapted and extended to either side. However, the original extension has been demolished and a new full width rear extension (with a flat roof) has been built instead. This application seeks to retain the new extension as built.

When viewed from the front, the flat roof of the new extension would appear as the previously approved scheme, as the two rear extensions (either side of the original extension) featured within that scheme also had flat roofs. The entire flat roof of the new extension will however be evident when viewed from the rear.

However, it is not considered that the general appearance of the extension will be compromised as a result of its entire flat roof design and the proposal broadly reflects the previously consented scheme. As such there is not considered to be any reason to refuse the extension element of the proposal on visual grounds. The proposed shopfront is identical to that approved as part of the 2015/1242 permission and is again considered to be acceptable in design/visual terms and complies with Policy EV13.

An extraction flue is proposed to the rear elevation of the extension, although technical specifications of this have not been provided. The Head of Pollution Control has confirmed that the proposal would be acceptable subject to a condition requiring technical details of the extractor system to be used, prior to the proposed use commencing. It is considered that subject of the imposition of such a condition, any odours emanating from the proposed use will be mitigated to an unacceptable degree. The extraction flue is considered to be acceptable in visual terms, giving its siting to the rear elevation of the building. For this reason, it will not be unduly prominent within the street scene.

In terms of the physical impact of the proposed extension on the amenities of the occupiers of neighbouring properties, the siting, size and height of the extension is almost identical to that previously considered acceptable and approved as part of the 2015/1242 permission and the current scheme presents no additional adverse factors to consider in this respect. Therefore, the extension is considered to respect the living conditions of local occupiers and also respects nearby businesses.

On the basis that the Head of Transportation and Highways is satisfied with the proposal in parking/highway terms, the proposal is not considered to be to the detriment to highway safety (these issues are discussed above in the 'Response to Consultations' section of this report).

With regard to the points of objections listed in the Response to Consultations section of this report, points 1, 3, 4 and 5 have been addressed above. With regard to points 2, 6, 8 and 10, these are not material planning considerations and therefore cannot be taken into consideration when determining this planning application.

With regard to litter (objection point 7), it is not considered that the addition of an extra A3 unit in this area would give rise to a discernible rise in the level of litter being dropped in the area. Notwithstanding this, such matters are controlled via separate legislation and do not necessarily fall within the remit of the planning process. In terms of late night opening (objection point 9), the applicant has indicated that they are to cease trading at 11pm. This is considered appropriate for an A3 use and falls in line with other A3 units in the vicinity. A condition is recommended to ensure the opening times are controlled.

In terms of the issues raised in the petition of objection, the parking concerns are addressed above. With regard to the point highlighting the number of A3 premises in the area, it is unclear if this relates to competition of trade or impact upon amenity. In terms of competition, this does not fall within the remit of the planning process. In terms of the impact upon amenity, this has been addressed above.

With regard to illegal staff claims, this is non material to the determination of the planning application and therefore not taken into consideration. It is acknowledged that the building is large enough to operate as a small restaurant.

However, there would be no objection in principle to the use of the building as a restaurant and hence no justification in prohibiting the future use of the building for this purpose (in the event that this current application is approved).

In conclusion, the proposal will complement the existing offer in Killay and would likely help improve the vitality of Killay District Centre and is in compliance with Policies EV1, EV13, EV40, AS6, ECNR and EC5 of the Swansea UDP and the Supplementary Planning Guidance Document entitled 'District Centres, Local Centres and Community Facilities'. Accordingly, approval is recommended.

**RECOMMENDATION:**

**APPROVE, subject to the following conditions:**

- 1 This planning permission relates to the following approved plans and documents: Block Plan and Location Plan - 07, Proposed Elevations - 05, Proposed Ground and First Floor Plan - 06, received 21st December 2015.  
Reason: To define the extent of the permission granted.
- 2 The hot food takeaway hereby approved shall not be used by customers before 11:00am nor after 11:00pm on any day.  
Reason: To safeguard the amenities of the occupiers of neighbouring/local properties.
- 3 Notwithstanding the drawings hereby approved, before the hot food take away use hereby approved commences, a detailed scheme of ventilation and fume extraction, including full details of the equipment to be installed for that purpose, including its location, shall be implemented in accordance with a scheme to be first submitted to and agreed in writing by the Local Planning Authority.  
Reason: To prevent any nuisance from fumes and/or cooking odours to the occupiers of neighbouring premises.
- 4 Before the hot food take away use hereby approved commences, a scheme which specifies the provisions to be made for any condensing units relating to the refrigeration and freezing of products shall be submitted to and agreed by the Local Planning Authority in writing. The works that form part of the agreed scheme shall be completed before the hot food take away use commences  
Reason: In the interest of residential amenity.
- 5 Before the hot food take away use hereby approved commences, a scheme shall be submitted to and approved in writing by the Local Planning Authority that adequately restricts the flow of sound energy through party walls and floor between the proposed ground floor commercial use and first floor residential use within the building. The scheme supplied shall be designed to meet a minimum  $D_{nT,w} - (Ctr)$  of 48dB for the ceiling/floor between the commercial and residential uses. The agreed scheme shall be implemented before the hot food take away use hereby approved commences.  
Reason: In the interest of the residential amenity of the occupier(s) of the first floor flat.

**INFORMATIVES**

- 1 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
  - 2 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: AS6, EV1, EV13, EV40, EC5 and ECNR.
  - 3 The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water Industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of [www.dwrcymru.com](http://www.dwrcymru.com) The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water on 0800 085 3968 to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.
-



ITEM 2

APPLICATION NO.

2016/0055

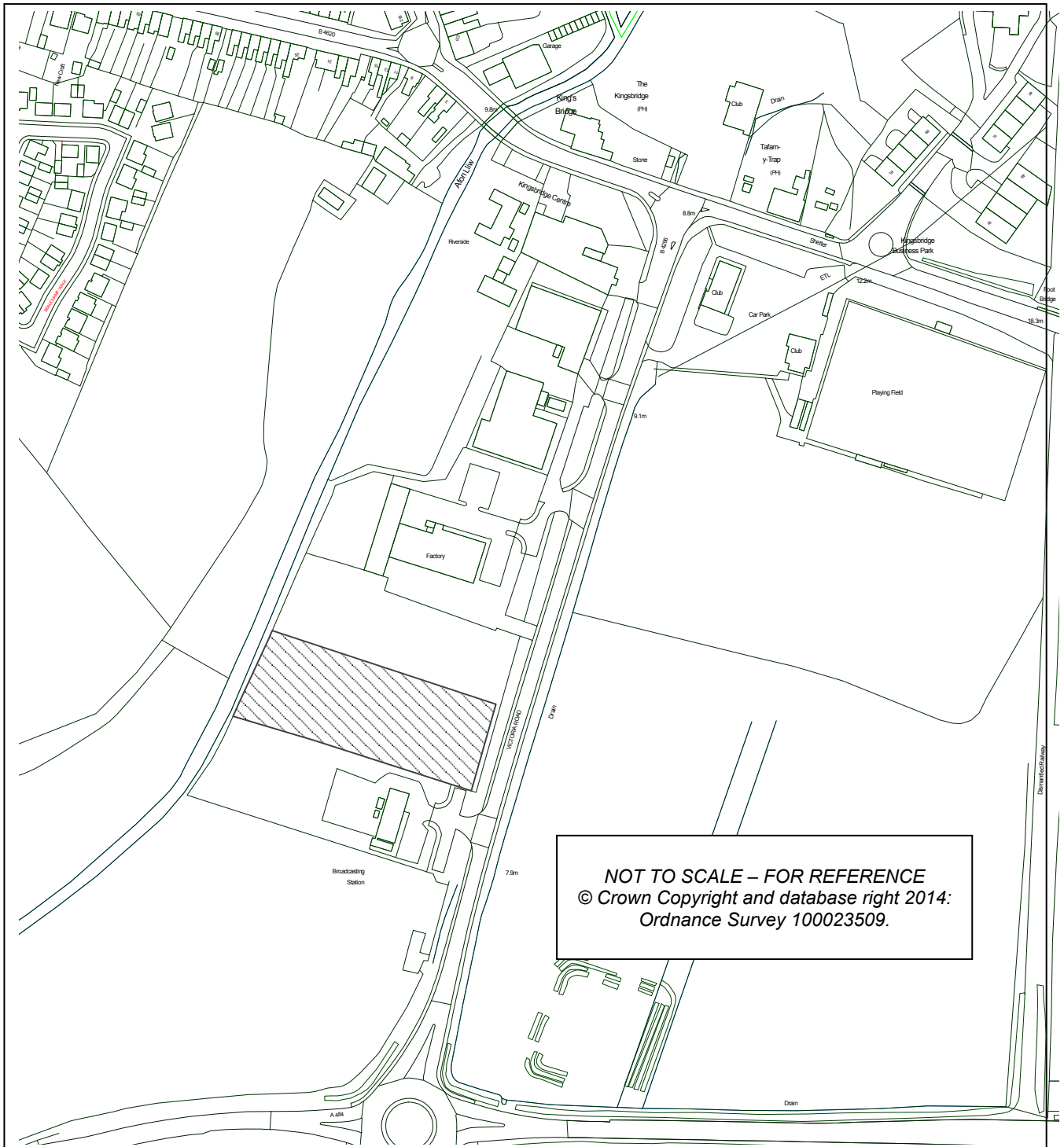
WARD:

Kingsbridge

**Location:** Land West of Victoria Road Victoria Road Gowerton Swansea

**Proposal:** Creation of Trampoline Centre (Class D2) associated car parking and access

**Applicant:** CZ Investments



**BACKGROUND INFORMATION****POLICIES**

<b>Policy</b>	<b>Policy Description</b>
Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
Policy EV36	New development, where considered appropriate, within flood risk areas will only be permitted where developers can demonstrate to the satisfaction of the Council that its location is justified and the consequences associated with flooding are acceptable. (City & County of Swansea Unitary Development Plan 2008)
Policy HC18	New leisure facilities will be permitted at suitable locations within the urban area subject to compliance with a defined list of criteria including proven need, no harm being caused to vitality and viability of city centre and district shopping centres, passing the sequential test, acceptable access and car parking, and capacity of the local highway network. (City & County of Swansea Unitary Development Plan 2008)
Policy AS6	Provision of car parking in accordance with adopted standards. (City & County of Swansea Unitary Development Plan 2008)

**SITE HISTORY**

<b>App No.</b>	<b>Proposal</b>
2006/2819	One industrial unit (Class B8) Decision: Grant Permission Conditional Decision Date: 30/11/2007
2007/1728	Mixed use development comprising of general industrial (Class B2) car valet, storage (Class B8) and public house/restaurant (Class A3) and associated parking (outline) Decision: Grant Permission Conditional Decision Date: 03/12/2008
2002/0066	Construction of Motor vehicle dealership comprising car showroom, workshop and ancillary offices with associated car parking areas, landscaping etc Decision: Grant Permission Conditional Decision Date: 06/08/2002
2015/1090	Pre-application - Use of land as a Travelling Showpersons Site Decision: Mixed Response Decision Date: 04/08/2015

**RESPONSE TO CONSULTATIONS**

Two neighbouring properties were directly notified, and the application was advertised by way of a site notice and a press notice

No objections have been received.

**Natural Resources Wales (NRW)**

Having reviewed the additional information provided, we do not object to the above proposal, but wish to make the following comments.

**Flood Risk**

We note the provision of the Flood Consequences Assessment (Ref: 5124/MNJ/FCA), dated 15 March 2016, by Vale Consultancy. The FCA has utilized existing information from NRW and from a site level survey, in order to provide an assessment of flood risk to the proposed development. The site is marginally affected by zone C2 (the FCA incorrectly states C1), at the entrance point to the site. Nevertheless, we consider the scope of the FCA to be appropriate, given the less vulnerable nature of the development and the elevated nature of the majority of the site (where development is to occur), along with the intention to retain existing levels on other parts of the site, in order to minimize changes. The FCA also confirms that the vast majority of the site is above known and predicted flood levels and therefore the proposed development is likely to remain flood free over its lifetime. We advise that the recommendations within the FCA regarding; floor levels, flood management and resilience form part of any planning permission that your Authority may be minded to grant.

**Memorandum of Understanding (MOU)**

As your Authority is aware, since 2007, issues have come to light regarding the foul and surface water drainage networks in this area. This has resulted in additional pollution and nutrient loading spilling to the Burry Inlet (which includes the Loughor WFD waterbody). As such, a Memorandum of Understanding (MOU) has been prepared and agreed by all relevant parties to enable development in this area to go forward. Protection of the water environment is a material planning consideration and your Authority must be satisfied that the proposed method of foul and surface water drainage from the proposal will not cause any detriment to water quality. We would recommend that your Authority consult with Dwr Cymru/Welsh Water (DCWW) to ensure hydraulic capacity exists at the treatment works to accommodate the flows from this development, without causing pollution.

We would also remind your Authority that to accord with the terms and content of the agreed MOU, foul connections should only be allowed when compensatory surface water removal or suitable improvement scheme has been implemented within the same catchment. The agreed relevant details must be recorded on your Authority's register of compensatory surface water disposal.

In addition to capacity and hydraulic overload issues, the Burry Inlet is understood to be sensitive to nutrient enrichment, notably to Phosphorus – a constituent of sewage-related discharges. Consequently, in respect of Phosphorus, the UK has an obligation under the Water Framework Directive (WFD) to protect sensitive water bodies from deterioration. We would therefore recommend that a corresponding amount of Phosphorus is removed to that expected to be produced by this development at the time of completion. This would prevent further deterioration in levels of Phosphorus in the Burry Inlet.

### Ecology

We have not considered possible effects on all species and habitats listed in section 42 of the Natural Environment and Rural Communities (NERC) Act 2006, or on the Local Biodiversity Action Plan or other local natural heritage interests.

To comply with your Authority's duty under section 40 of the NERC Act, to have regard to conserving biodiversity, your decision should take account of possible adverse effects on such interests. The Wales Biodiversity Partnership's website has guidance for assessing proposals that have implications for section 42 habitats and species.

### River Corridor

In addition, we would advise that as the Afon Lliw is adjacent to the site and is a designated a Main River, formal consent will be required from NRW for any works in, under or over the channel or within 7m of the top of the banks. We would not normally grant consent for activities within the 7m berm that would restrict access along the river bank.

### Pollution Prevention & Waste Management

Given the proximity of the Afon Lliw any works should be carefully planned, so that contaminated water cannot run uncontrolled into any watercourses (including ditches). As best practice, we would advise the developer to produce a site specific construction management plan / pollution prevention plan, with particular reference given to the protection of the surrounding land & water environments.

We would also recommend that a Site Waste Management Plan (SWMP) is produced. Completion of a SWMP will help the developer/contractor manage waste materials efficiently, reduce the amount of waste materials produced and potentially save money. Guidance for SWMPs are available from the DEFRA website: ([www.defra.gov.uk](http://www.defra.gov.uk)). We acknowledge that a SWMP may be something best undertaken by the contractor employed to undertake the project. Furthermore, we note that these documents are often 'live' and as such may be best undertaken post permission.

**Welsh Water / Dwr Cymry** – Standard condition and informatives

**Loughor Town Council** – No objection.

### **Gwent Glamorgan Archaeological Trust (GGAT)**

We noted this application when we reviewed your weekly planning list; consequently we have consulted the detailed information contained on your website and identified that the proposal has an archaeological restraint. As you may remember we commented on previous application for this site (2007/1728), in our letter dated 18th October 2007, and our understanding of the archaeological resource of the area remains unchanged.

Information in the Historic Environment Record indicates that the proposed development is located approximately 95m to the northwest of the Roman Practice Camp on Stafford Common, a Scheduled Ancient Monument (Cadw ref. GM502) and approximately 230m south of the Roman road (RR60d) linking the forts at Loughor and Neath, and along which archaeological material has been discovered.

However, it is unlikely that archaeological features of major significance would be located within the proposed development area, although this does remain a possibility. As the application is located within such close proximity to a Scheduled Ancient Monument, Cadw should be consulted over the proposals.

In order to mitigate the impact of the development on the archaeological resource we recommend that a condition, requiring an archaeological watching brief to be conducted during the groundworks for the development should be attached to any planning consent granted in respect to the current application. This should include all ground breaking activities. This recommendation is made following the guidance given in Planning Policy Wales 2016 (Edition 8) Section 6.5.3 with additional advice being provided in Welsh Office Circular 60/96, section 22. It is suggested that the condition should be worded in a manner similar to model condition 22 given in Welsh Government Circular 016/2014.

No development or site clearance shall commence until the local planning authority have been informed in writing of the name of a professionally qualified archaeologist who is to be present during the undertaking of any excavations in the development area so that a watching brief can be conducted. No work shall commence until the local planning authority has confirmed in writing that the proposed archaeologist is suitable. A copy of the watching brief report shall be submitted to the local planning authority within two months of the archaeological fieldwork being completed. Reason: To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.

We also recommend that a note should be attached to the planning consent explaining that: The archaeological work must be undertaken to the Chartered Institute for Archaeologists (CIfA), "Standard and Guidance for an Archaeological Watching Brief" ([www.archaeologists.net/codes/ifa](http://www.archaeologists.net/codes/ifa)) and it is recommended that it is carried out either by a CIfA Registered Organisation ([www.archaeologists.net/ro](http://www.archaeologists.net/ro)) or an accredited Member.

### **Highway Observations**

This proposal is for a leisure facility on land off Victoria Road, Gowerton. The applicant has submitted a Transport Statement in support of the development. The facility is intended to accommodate 80-100 users and includes access to a car park of 106 spaces, including disabled user spaces. Servicing and refuse collection is also catered for. The projected number of users and the car parking will cater adequately for the proposed use and will enable new users to park whilst existing users are vacating the premises.

There is not expected to be any am peak time use and afternoon peak users are indicated to generate 20 movements in and 20 movement out on average. There is likely to be higher usage during school holidays where pm usage will likely amount to 50 in and 50 out. This volume of use is unlikely to result in any significant detriment to traffic movements on the highways in the vicinity of the site.

The applicant has indicated a priority junction accessing the site with an alignment that encourages left -in and left-out only. However, this is reliant on compliance by users and cannot be enforced and it is my view that a safer option would be for a dedicated right turn lane to be installed at the access point. This may require extending to accommodate the adjacent junction (The Wave) depending on detailed design. This option would also be able to accommodate pedestrian crossing facilities which would otherwise be lacking.

On balance, I recommend no highway objection subject to the following;

1. No work shall commence on site until detailed access design plans have been submitted and approved. Such plans to include for dedicated right turn lane and pedestrian crossing facilities. All access works must be completed in accordance with approved plans prior to beneficial use commencing.
2. All internal access and parking facilities shall be completed and ready for use prior to beneficial use commencing.

Note: The Developer must contact the Highway Management Group , The City and County of Swansea , c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Access works will require a temporary access licence and an agreement under Section 278 of the Highways Act 1980 for works in the highway. Please contact the Senior Engineer (Development) , e-mails to [mark.jones@swansea.gov.uk](mailto:mark.jones@swansea.gov.uk) , tel. no. 01792 636091

### **Japanese Knotweed**

Planning condition CL12 must be placed upon this application. A detailed scheme for the eradication of Japanese Knotweed shall be submitted to and approved in writing by the Local Planning Authority, and shall be implemented prior to the commencement of work on site.

Reason - In the interests of the ecology and amenity of the area.

In order for the condition to be discharged, the developer must devise an appropriate and suitable method statement, acceptable to the Officer, for the control of the plant.

### **Drainage Observations**

We have reviewed the submitted application and would recommend the following.

#### **Condition 1**

Finished floor levels shall be set no lower than 8.50mAOD as stated in the Flood Consequence Assessment ref 5124/MNJ/FCA dated 15<sup>th</sup> March 2016. Reason : To protect the development from fluvial flooding.

#### **Condition 2**

No development shall take place within 7 metres of the Afon Lliw measured from the top of the bank. Reason : To protect maintenance access to the Afon Lliw to enable flood risk maintenance activities and works.

#### **Condition 3**

No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how surface water and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SuDS) for surface water drainage, details of any connections to a surface water drainage network and maintenance plans for said network. The development shall not be brought into beneficial use until the works have been completed in accordance with the approved drainage scheme, and this scheme shall be retained and maintained as approved unless otherwise agreed in writing by the Local Planning Authority. Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment and to minimise surface water run-off.

**Ecology Observations**

There is a water course at the far end of the site; it is likely that this is used by animals including otters and bats. The stream corridor should remain undisturbed and unlit. Informatives relating to birds and reptiles should be attached.

**APPRAISAL**

The proposal is classed as a major development incorporating over 2,000 square metres in floorspace and, therefore, the application is reported to Committee for determination for this reason.

Full planning permission is sought for the creation of a Trampoline Centre at Land West of Victoria Road, Gowerton. The application site is located on the western side of Victoria Road some 160m north of the roundabout controlled junction which links Gowerton with Gorseinon. There is broadcasting station located to the south of the site and a range of commercial activities to the north of the site.

The ground floor of the proposed building will include the trampoline area, storage space, an office, toilets and video games area, and within the first floor area there will be a combination of 'party rooms', a kids play area, toilets and a kitchen area with seating. The kitchen area with seating is considered to be an ancillary cafeteria and this will be conditioned as such..

The main issues for consideration are the principle of the proposed use in this locality, impacts upon the visual amenities of the area, impacts upon residential amenity, impacts upon parking and highway safety and impacts upon flooding and ecology with regard to Policies EV1, EV36, HC18, and AS6 of the City and County Unitary Development Plan 2008. There are considered to be no overriding issues with regard to the Human Rights Act.

Policy HC18 of the Swansea Unitary Development Plan states that new leisure facilities will be permitted at suitable locations within the urban area subject to the policy criteria. The general thrust of the policy is to direct leisure facilities to city centre, district centre and edge of centre sites. Away from such location at out-of-centre locations, the need for facilities must be assessed and justified. Proposals must not either singularly or cumulatively undermine the vitality and viability of the city centre and district shopping centres. Sites must be accessible by a number of modes of transport, provide appropriate levels of parking and not result in any significant effect on traffic flows.

As the site is located outside the defined Gorseinon District Centre, in accordance with the policy criteria, the applicant has submitted a sequential evaluation to demonstrate both the need for the facility and that a sequential approach has been applied in selecting the site.

A sequential assessment has been submitted which includes the analysis of four areas in Swansea and the suitability of the potential sites located within those areas. It was concluded that the proposed site is the most suitable as it has good transportation links and is surrounded by similar leisure uses being the Gym located further up Victoria Road towards Gorseinon and Garden Village AFC. Furthermore, given the size of the proposed building it was considered difficult finding a suitably sized site to accommodate a building of this size and scale. Overall therefore the proposal is considered to accord with the provisions of Policy HC18.

In terms of the impacts upon visual amenity, the building whilst large in terms of its size, (approximately 80m in length x 30m in width) is not considered to have a negative impact on the surrounding area given that the area comprises of a mixture of building styles which are mostly relatively utilitarian in appearance. The proposed building incorporates a ridge height of approximately 7.2m which whilst considered relatively high for a building of this scale, is not considered to have a harmful impact given the nature of the surrounding area. Similarly the proposed materials are considered suitable for a building of this type. These comprise of steel faced roof and wall panels. The proposals, therefore, are considered to be in keeping with the character and appearance of the surrounding area and, therefore, comply with the relevant Development Plan Policies.

In terms of residential amenity considerations, given there are no residential properties located within the immediate surrounding area it is not as such considered that the proposed building would result in any such implications.

### **Burry Inlet Habitat Regulations Assessment**

#### Introduction

The City and County of Swansea, as the competent authority, is required under Regulation 61(1) of the Conservation of Habitats and Species Regulations 2010 (known as the 'Habitat Regulations') to undertake a Habitat Regulations Assessment of any project likely to have an effect on a European Site, or candidate/proposed European Site, either alone or in combination with other plans or projects, that is not necessary to the management of the site for management of the site for nature conservation.

In this instance, the European sites potentially affected are the Carmarthen Bay and Estuaries European Marine Site (CBEEMS), the Carmarthen Bay Special Protection Area (SPA) and the Burry Inlet SPA and RAMSAR site. Before deciding to give permission we must therefore first consider whether this development is likely to have a significant effect on the CBEEMS either alone or in combination with other plans or projects in the same catchment area.

Following an investigation of likely significant effects on the CBEEMS features water quality was identified as the only factor that might have an effect this is discussed below.

#### Water Quality

With regard to the water quality issues in the Burry inlet and Loughor Estuary, the City and County of Swansea has followed the advice of their statutory advisor, and has commissioned a preliminary assessment under the above Regulations which is limited to the assessment of potential wastewater effects only.

This assessment notes that as part of their review of consents (RoC) under regulation 63 the Environment Agency (EA) undertook a detailed Habitats Regulations assessment in relation to the effects of their consented activities. Consent modifications were identified to enable the Environment Agency to conclude no adverse effect on the integrity of the CBEEMS in respect of their consents operating at their maximum consented limits.

As the consents in question have already been subject to a full assessment (alone and in-combination) under the provisions of the Habitat Regulations, there is no need for the City and County of Swansea to undertake a further assessment where development can be accommodated within the post RoC discharge consent limits.



It is the opinion of the authority that this development can be accommodated within the post RoC discharge consent limits, and will not be likely to have a significant effect either alone or in-combination on the Carmarthen Bay and Estuaries SAC, the Carmarthen Bay SPA, or the Burry Inlet SPA and RAMSAR. Such effects can be excluded on the basis of the objective information available through the Environment Agency review.

#### Other Possible Effects on CBEEMS features

In addition, it is considered that there are no other potential adverse effects from this development proposal, either alone or in combination with other plans or projects on the above protected European sites.

#### Conclusion

On this basis there is no requirement to make an appropriate assessment of the implications of the proposed development in accordance with regulation 61(1).

#### Ecology Issues

The Authority's Ecologist has stated that the water course at the far end of the site is likely to be used by animals including otters and bats and, therefore, the stream corridor should remain undisturbed and unlit. The development is not considered to cause any disturbance to the stream corridor given the distance between the rear of the building and the rear boundary; however, to ensure it is left unlit a condition is attached requiring a lighting scheme to be submitted.

#### Flooding

Natural Resources Wales and the Authority's Drainage Officer have assessed the Flood Consequences Assessment (FCA) submitted and consider that it addresses their previous concerns. Therefore, conditions are attached regarding the implementation of recommendations made in the FCA.

#### Highways

The Head of Transportation and Engineering Services has recommended that no highway objections are raised subject to the the imposition of conditions relating to the submission of detailed access plans and that the parking facilitated shall be completed prior to the use commencing.

#### Conclusions

In conclusion, having regard to all material considerations including the provisions of the Human Rights Act, the proposal is considered an appropriate form of development that is compatible with the surrounding land uses and will not harm the visual amenities of the area nor compromise current highway safety standards. The proposal is therefore considered to comply with the requirements of Policies EV1, EV36, HC18 and AS6 of the Swansea Unitary Development Plan.

#### RECOMMENDATION

**APPROVE, subject to the following 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 The development shall be carried out in accordance with the following approved plans and documents: [GTP01 Site location plan received 11th January 2016. GTP02 Rev B Block plan, GTP03 Rev A Site plan and elevations, GTP04 Rev E Site plan and GA building dimensions received 9th March 2016. GTP05 Rev A GA Plan - Ground and first floor plan received 31st March 2016]  
Reason: To define the extent of the permission granted.
- 3 A detailed scheme for the eradication of Japanese Knotweed shall be submitted to and approved in writing by the Local Planning Authority, and shall be implemented prior to the commencement of work on site.  
Reason: In the interests of the ecology and amenity of the area.
- 4 No development or site clearance shall commence until the local planning authority have been informed in writing of the name of a professionally qualified archaeologist who is to be present during the undertaking of any excavations in the development area so that a watching brief can be conducted. No work shall commence until the local planning authority has confirmed in writing that the proposed archaeologist is suitable. A copy of the watching brief report shall be submitted to the local planning authority within two months of the archaeological fieldwork being completed.  
Reason: To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.
- 5 No development approved by this permission shall be commenced until a Pollution Prevention Management Plan (PPMP) with particular reference given to the protection of the surrounding land and water environments is submitted to and approved in writing by the Local Planning Authority.  
Reason: Prevent pollution of controlled waters and the wider environment.
- 6 No development shall be commenced until a Site Waste Management Plan (SWMP) has been produced and submitted in writing for approval by the Local Planning Authority. The development shall thereafter be carried out in accordance with the recommendations contained within the approved SWMP.  
Reason: To ensure waste at the site is managed in line with the Waste Hierarchy in a priority order of prevention, re-use, recycling before considering other recovery or disposal option.
- 7 Finished floor levels shall be set no lower than 8.50m AOD as stated in the Flood Consequence Assessment ref 5124/MNJ/FCA dated 15th March 2016.  
Reason: To protect the development from fluvial flooding.

- 8 No development shall take place within 7 metres of the Afon Lliw measured from the top of the bank.  
Reason: To protect maintenance access to the Afon Lliw to enable flood risk maintenance activities and works.
- 9 No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how surface and foul water and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SuDS) for surface water drainage, details of any connections to a surface water drainage network and maintenance plans for said network. The development shall not be brought into beneficial use until the works have been completed in accordance with the approved drainage scheme, and this scheme shall be retained and maintained as approved unless otherwise agreed in writing by the Local Planning Authority. No further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.  
Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment and to minimise surface water run-off.
- 10 Prior to the commencement of development a lighting scheme for the whole shall be submitted to and agreed in writing with the Local Planning Authority and maintained thereafter in accordance with the details thereby approved.  
Reason: In the interests of safeguarding ecology.
- 11 Prior to the commencement of any development on site, full details of the flue extraction system, air conditioning units and any other associated plant and machinery (including means of enclosure) shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the details thereby approved.  
Reason: In the interests of pollution control.
- 12 Prior to the commencement of any work on site, full detailed access design plans shall be submitted to and approved in writing by the Local Planning Authority. Such plans to include for dedicated right turn lane and pedestrian crossing facilities. All access works must be completed in accordance with agreed plans prior to beneficial use commencing.  
Reason: In the interests of highway safety.
- 13 All internal access and parking facilities shall be completed and ready for use prior to beneficial use commencing.  
Reason: In the interests of highway safety.

- 14 The cafeteria shall only be operated ancillary to the main use as a Trampoline Centre and shall not be open outside of the operational hours associated with the Centre.  
Reason: To safeguard the amenities of the occupiers of neighbouring properties.
- 15 No development shall take place without the prior written approval of the Local Planning Authority of a scheme for the landscaping of the site. The landscaping scheme shall be carried out within 12 months from the completion of the development. Any trees or shrubs planted in accordance with this condition which are removed, die, 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.
- 16 Before the development hereby approved is occupied the means of enclosing the boundaries of the site shall be completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.  
Reason: In the interests of visual amenity and general amenity.

## INFORMATIVES

- 1 The Developer must contact the Highway Management Group , The City and County of Swansea , c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Access works will require a temporary access licence and an agreement under Section 278 of the Highways Act 1980 for works in the highway. Please contact the Senior Engineer (Development), e-mails to [mark.jones@swansea.gov.uk](mailto:mark.jones@swansea.gov.uk), tel. no. 01792 636091
- 2 **STANDING ADVICE - DEVELOPMENT LOW RISK AREA**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining.

Further information is also available on The Coal Authority website at:

[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com)

This Standing Advice is valid from 1st January 2015 until 31st December 2016

- 3 The applicant is advised of the need to obtain separate consent under the Town and Country Planning (Control of Advertisements) Regulations 1992 for any advertisements requiring express consent which it is intended to display on the premises.
- 4 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: (Policies EV1, EV36, HC18 and AS6 of the Unitary Development Plan)
- 5 The archaeological work must be undertaken to the Chartered Institute for Archaeologists (ClfA), "Standard and Guidance for an Archaeological Watching Brief" ([www.archaeologists.net/codes/ifa](http://www.archaeologists.net/codes/ifa)) and it is recommended that it is carried out either by a ClfA Registered Organisation ([www.archaeologists.net/ro](http://www.archaeologists.net/ro)) or an accredited Member.
- 6 The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of [www.dwrcymru.com](http://www.dwrcymru.com) The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water on 0800 085 3968 to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.
- 7 Birds may be present in this building and grounds please note it is an offence under the Wildlife & Countryside Act 1981 (as amended) to intentionally (intentionally or recklessly for Schedule 1 birds) to:
- Kill, injure or take any wild bird
  - Take, damage or destroy the nest of any wild bird while that nest in use or being built
  - Take or destroy an egg of any wild bird
- Care should be taken when working on buildings, trees and clearing bushes particularly during the bird nesting season, March to August
- 8 Reptiles may be present. All British reptiles are protected under Schedule 5 of the Wildlife and Countryside Act 1981 as amended. It makes it an offence to intentionally kill or injure adder, slow worm and common lizard. If the reptiles listed above are encountered work must cease immediately and the advice of Natural Resources Wales sought before continuing with any work (01792 634 960).

## Report of the Head of Economic Regeneration and Planning

Planning Committee - 12 April 2016

Planning Application Ref: 2008/0512

Residential Development (outline)  
Land off Brithwen Road Waunarlwydd Swansea SA5 4QX

### 1.0 Background

1.1 This application was reported to the Area 2 Development Control Committee on the 25<sup>th</sup> June 2013 with the recommendation that planning permission be approved subject to conditions and subject to the applicant entering into a S106 planning obligation in respect of:

- i) The provision of 30% Affordable Housing, which shall be “pepper potted” throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.
- ii) Prior to beneficial use of the site commencing, the provision of road safety enhancements shall be undertaken on Swansea Road.

A copy of the report to Planning Committee is attached as Appendix A.

1.2 Following the committee resolution, the applicant has stated that the viability test for the site shows that the scheme could not support the affordable housing contribution of 30%. As a result, the Section 106 agreement has not been signed and the planning permission has not been issued.

### 2.0 Main Issues

2.1 The applicant has submitted numerous viability tests over the last few months, and following an assessment of the submitted viability appraisals, a meeting and further negotiation, it is considered that a reduction in the level of affordable housing is appropriate. The applicant has offered 15% affordable housing, based on a scheme of 27 units, which equates to 4 affordable housing units.

2.2 In this location, the Housing Enabling Officer has confirmed that the ‘need’ is for social rented housing rather than for low-cost home ownership. The affordable housing price for social rented is 42% Acceptable Cost Guidance (ACG). The level of ACG cannot be negotiated as the Registered Social Landlord (RSL) cannot take social rented housing for higher than 42% ACG.

2.3 The application is in outline form with all matters reserved. As no actual numbers of units are specified within the application, it is considered that the density of the site can be increased from the 27 units quoted within the applicants viability appraisal to accommodate the required number of affordable units without making the site unviable.

### 3.0 Recommendation

3.1 It is recommended that:

The applicant entering into a S106 planning obligation in respect of:

- ii) The provision of 15% Affordable Housing, with an ACG of 42% which shall be “pepper potted” throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.
- ii) Prior to beneficial use of the site commencing, the provision of road safety enhancements shall be undertaken on Swansea Road.

If the Section 106 planning obligation is not completed within 3 months of the foregoing resolution then delegated powers be given to the Head of Economic Regeneration and Planning to exercise discretion to refuse the application on the grounds of non-compliance with policies HC17 and HC3 of the City and County of Swansea Unitary Development Plan (November 2008).

## **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.

<b>Contact Officer:</b>	<i>Ian Davies</i>	<b>Extension No:</b>	<i>5714</i>
<b>Date of Production:</b>	<i>1<sup>st</sup> April 2016</i>	<b>Document Name:</b>	<i>Brithwen Road.</i>

# Appendix A

ITEM

APPLICATION NO.

2008/0512

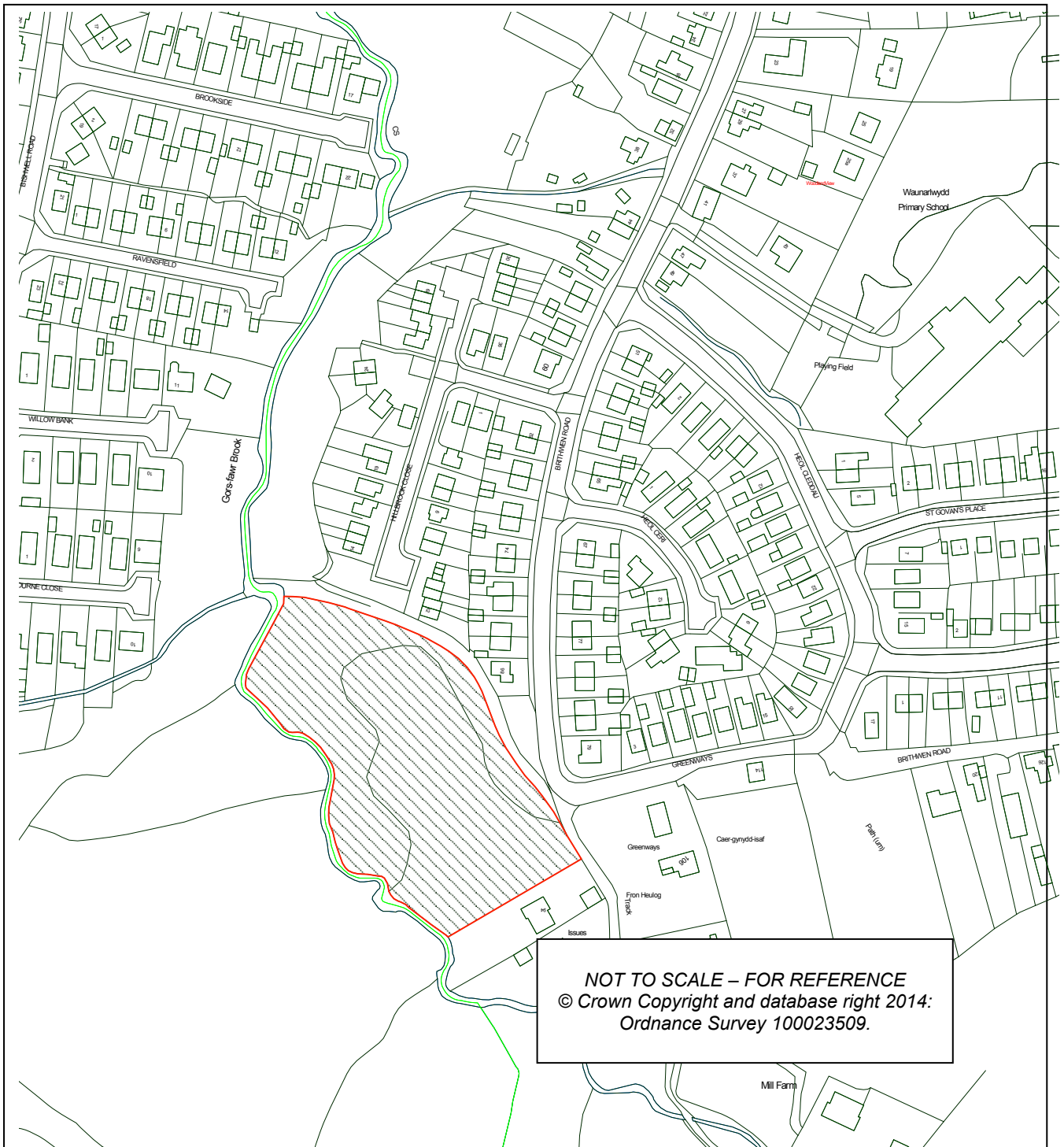
WARD:

Cockett  
Area 2

**Location:** Land off Brithwen Road Waunarlyydd Swansea SA5 4QX

**Proposal:** Residential development (outline)

**Applicant:** Liberty Properties (Homes) Ltd





This application was DEFERRED at the Area 2 Development Control Committee on the 16<sup>th</sup> April, 2013, for the provision of further clarification on various issues including land availability; the capacity of the sewerage system; ecology; impact on the bridleway; school capacity; and mine workings. I have expanded on these issues in more detail in my report, but would summarise the key points as follows:-

### Land Availability

As indicated in my report the majority of this application site (apart from a small strip of land adjacent to the river) has been allocated for residential development for many years (since approx 1989), and was originally allocated in the Swansea Local Plan and is currently allocated for residential development in the City and County of Swansea Unitary Development Plan. The principle of this land being suitable for residential development has therefore been long established. As an allocation in an adopted development plan this land is considered to be committed for development and forms part of the committed land bank.

The selection of allocated housing sites for the UDP has been based on an adopted land use strategy set out in the UDP (refer to paragraphs 3.3.1 – 3.3.3, page 83), which explains the sequential testing process. This highlights that existing sites, such as Brithwen Road which are in the committed land bank, were considered together with previously developed land and brownfield land, before considering any new infill or greenfield sites. The site at Brithwen Road also met the rigorous selection criteria set out in Planning Policy Wales, with no known constraints that could not be overcome.

The current housing allocation was subject to higher scrutiny at the last UDP Inquiry when the Welsh Government Inspector agreed that the allocation should remain in the Plan. Moreover, since the UDP Inquiry the EAW (now NRW) have revised their Flood Maps so that no part of this site is now in the critical C2 Zone, and there is therefore no flooding constraint to the development of the site.

In conclusion, whilst there may be brownfield sites in the area, these would not take priority over this committed land bank site and would be considered on their own merits, having regard to any constraints to development. There are no known grounds to depart from the UDP policy allocation which allocates this site in West Swansea for up to 30 houses under Policy HC1 (127).

### Capacity of the sewerage system

This development will separate surface water and land drainage from foul water, so the only drainage impact on the existing sewerage drainage system to Gowerton WwTW would be the foul connections. It is estimated that the maximum foul flow (from a maximum of 24 houses) from this site will be the equivalent of removing surface water from approximately two existing small houses, which is very small in hydraulic capacity terms, and can easily be accommodated by compensatory water savings already made from other brownfield developments in the area.

Dwr Cymru Welsh Water has not objected to this scheme. Whilst the Environment Agency (now Natural Resources Wales) raised concerns last autumn regarding the impact of new residential development on the water quality of the estuary, there is no conclusive evidence that supports this view, and the Agency has since agreed to the Council's adopted Habitats Regulation Assessment. The HRA conclusions are based on **objective information available through the 2010 Environment Agency's own Review of Consents of Gowerton WwTW.**

**The current outline application if approved will be subject to planning conditions controlling drainage, including the use of SUDs, and will require further detailed information to be submitted at Reserved Matters stage. On this basis, there is no known evidence to justify refusal at outline planning stage on drainage grounds.**

### Ecology

The Department's ecologist has revisited the site this month and has reviewed the Ecological Survey information previously submitted, and is satisfied that this is still representative of the ecological footprint on this river meadow site. In addition to the 7m berm along the river protected by Bye Law and the TPO's, my report recommends conditions and informatives to protect the high value species and habitats along the river. These include a requirement for further surveys to check for roosting birds or dormice if any future work is planned along the public footpath or riparian corridor. In conclusion, it is considered that there are sufficient controls available to the Council and NRW to protect the most important habitat which is the riparian corridor and TPO trees.

### Impact on Bridleway

The site boundary is drawn up to and adjacent to the bridleway but does not physically encroach onto it, apart from a very small area of dual use where the new highway access would enter the site. As such there is no direct harm to the continued use of this bridleway.

### School capacity

As previously indicated in my report, the latest capacity school figures (published by the Education Department in Autumn 2012) demonstrate that there are no current capacity issues at the local feeder schools. It should be noted that the trigger points identified in Part 3 of the current S106 guidance are not prescriptive and form the basis for negotiation. In this case, it is known that the abnormal costs of delivering this 'allocated UDP' site are high given the need for pre commencement ground investigations, etc. Moreover, the overriding need for 30% affordable housing in this area and the need for traffic calming on Swansea Road, are still considered to meet the S106 tests as being 'necessary' and 'reasonable' on this relatively small site, and would still, it is considered, take precedence over any other requests for contributions.

### Mine workings

The application was submitted with a supporting document, 'Geoenvironmental, Geotechnical & Mining Desk Study Report', and due to the presence of the nearby conjectured coal seams and relatively shallow depths, a Coal Authority report was sought by the applicants, which does not raise any issues or objection to this development.

### Additional correspondence

The report has also been updated to include four further letters of objection, which have not raised any fundamental issues not already addressed in the report.

## Conclusions

My report has been updated to provide further clarification and detail of the above issues. In the light of these further considerations, my recommendation remains for APPROVAL, subject to conditions and a S106 requiring 30% affordable housing and highway contributions.

## **BACKGROUND INFORMATION**

### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
Policy EV36	New development, where considered appropriate, within flood risk areas will only be permitted where developers can demonstrate to the satisfaction of the Council that its location is justified and the consequences associated with flooding are acceptable. (City & County of Swansea Unitary Development Plan 2008)
Policy HC1	Allocation of housing sites for 10 or more dwellings. (City & County of Swansea Unitary Development Plan 2008)
Policy EV34	Development proposals that may impact upon the water environment will only be permitted where it can be demonstrated that they would not pose a significant risk to the quality and or quantity of controlled waters. (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 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 EV3	Proposals for new development and alterations to and change of use of existing buildings will be required to meet defined standards of access. (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 EV23	Within green wedges development will only be permitted if it maintains the openness and character of the green wedge and does not contribute to the coalescence of settlements or adversely affect the setting of the urban area. (City & County of Swansea Unitary Development Plan 2008)

- Policy EV24 Within the greenspace system, consisting of wildlife reservoirs, green corridors, pocket sites and riparian corridors, the natural heritage and historic environment will be conserved and enhanced. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV25 Development, alone or in combination with other plans or projects, which is likely to adversely affect the integrity of a European protected site (SAC, Marine SAC, SPA and Ramsar Sites) and is not directly connected with or necessary to the management of the site. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV30 Protection and improved management of woodlands, trees and hedgerows which are important for their visual amenity, historic environment, natural heritage, and/or recreation value will be encouraged. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV33 Planning permission will normally only be granted where development can be served by the public mains sewer or, where this system is inadequate, satisfactory improvements can be provided prior to the development becoming operational. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV35 Development that would have an adverse impact on the water environment due to:  
 i) Additional surface water run off leading to a significant risk of flooding on site or an increase in flood risk elsewhere; and/or,  
 ii) A reduction in the quality of surface water run-off.  
 Will only be permitted where it can be demonstrated that appropriate alleviating measures can be implemented. (City & County of Swansea Unitary Development Plan 2008)
- Policy HC3 Provision of affordable housing in areas where a demonstrable lack of affordable housing exists. (City & County of Swansea Unitary Development Plan 2008)
- Policy HC17 The Council will negotiate with developers to secure improvements to infrastructure, services, and community facilities; and to mitigate against deleterious effects of the development and to secure other social economic or environmental investment to meet identified needs, via Section 106 of the Act. (City & County of Swansea Unitary Development Plan 2008)
- Policy AS1 Accessibility - Criteria for assessing location of new development. (City & County of Swansea Unitary Development Plan 2008)
- Policy AS2 Accessibility - Criteria for assessing design and layout of new development. (City & County of Swansea Unitary Development Plan 2008)
- Policy AS3 Accessibility - Protection of public rights way. (City & County of Swansea Unitary Development Plan 2008)
- Policy AS6 Provision of car parking in accordance with adopted standards. (City & County of Swansea Unitary Development Plan 2008)

## SITE HISTORY

<b>App No.</b>	<b>Proposal</b>
89/0732/01	HOUSING DEVELOPMENT. Decision: Withdraw Decision Date: 05/11/1990
2005/1879	Detached dwelling (outline) Decision: Refuse Decision Date: 20/12/2005
2006/0868	One detached dwelling (outline) Decision: Grant Permission Conditional Decision Date: 24/10/2006
78/1088/01	RESIDENTIAL DEVELOPMENT Decision: Withdraw Decision Date: 01/08/1980
80/0120/01	RESIDENTIAL DEVELOPMENT Decision: Withdraw Decision Date: 01/01/2001
81/1697/01	RESIDENTIAL DEVELOPMENT Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 11/05/1982
75/0866/01	RESIDENTIAL DEVELOPMENT Decision: *HRP - REFUSE PERMISSION Decision Date: 22/12/1975

## RESPONSE TO CONSULTATIONS

### ORIGINAL SUBMISSION

The application was advertised on site and in the press as a development that may have a substantial impact on the amenity of the area in which it is situated, and two individual properties were consulted individually. A PETITION OF OBJECTION (562 INDIVIDUAL NAMES) and 17 NO. LETTERS OF OBJECTION were received and 1 NO. LETTER OF OBSERVATION, which are summarised as follows:-

### PETITION OF OBJECTION

1. Concerns regarding the initial advertising of the application, which was subsequently re-advertised in the Press as being of substantial impact.
2. Question why CCS is determining the application and concerns regarding the ethics given that the applicant receives sponsorship from the Council in other areas of its operations.

3. The development site is an area of water meadow and woodland, including oak woodland, lying south of current housing.
4. Concerns regarding the status of this land - Question whether the application site is in Green Belt.
5. Concerns regarding the nature reserve in this area.
6. Cumulative impact of this development with other development in the area.
7. Concerns regarding the validity given the timing of the survey, and provenance of its findings the ecological survey having regard to local knowledge on wildlife in this area.
8. This site is in a floodplain and concerns that building on this land will exacerbate flooding in this area.
9. Sewer in this area is known to have severe infiltration issues and attempts by Welsh Water in 2001/2 have failed to resolve this. Further development will make this situation worse.
10. Concerns regarding previous development in the area off Gorwydd Road that has caused problems.
11. Concerns regarding traffic on Brithwen Road.
12. Additional pupils in local primary where we are aware there are deplorable buildings and pupil numbers on the roll are already at capacity.
13. Pointed out that if there is a need for extra housing in the area the Alcoa site is ideal even though it is a huge development with infrastructure problems. (i.e. Existing development site not Greenfield).

#### LETTERS OF OBJECTION

1. Concerns that the scale of this development will have a substantial deleterious impact on the amenity of the area.
2. The land is a mature woodland and set-aside pasture located on the floodplain of the Gorsfawr brook, home to numerous species of wildlife.
3. Concerns that this land will cause flooding in this area.
4. Neighbours bought properties because the land was protected from development.
5. Land used by the community from walkers to cyclists and somewhere children can play safely.
6. Concerns that development will increase anti-social behaviour.
7. The capacity of Brithwen Road is poor with it being reduced to one lane due to cars being parked along it.
8. The access to Brithwen Road would need a mini roundabout at the junction of Brithwen Road and Swansea Road which would mean more highway for the Highways Department to maintain.

9. Development of this site will cause more pollution.
10. Concerns that electrical mains wiring work was taking place in Brithwen Road prior to the new development being granted approval.
11. Concerns regarding the validity given the timing of the ecological survey, and provenance of its findings. Reference to report from RSPB.
12. Concerns over flash flooding and drainage capacity in this area.
13. The land allocated for this development has the main 600mm diameter sewer from Upper Killay, Three Crosses, Dunvant and Killay passing through it. Known that this sewer has severe infiltration issues and attempts by Welsh Water in 2001/2 have failed to resolve this. Being monitored by third party contractor for CCS and DCWW. Further development will add more pressure to an aging sewer network that is struggling to cope with the demands of today.
14. Is the land fit for development given previous mining history in the area.
15. Noted that density and layout of previous development in the area off Gorwydd Road allowed at Appeal has caused problems.
16. Concerns regarding traffic from this development which could generate another 60 cars trying to exit the estate where there is already a very busy junction where Brithwen Road meets Swansea Road.
17. Concerns over impact on the local school and further development need at the school with loss of some of its land. Congestion of traffic at school time and additional traffic will cause hazards for children.
18. Concern that extra development will have on amenities and services in the area such as medical facilities which are already strained in this area.
19. Reference to alternative possible housing sites in the area such as the Alcoa site.
20. No objection in principle but made the following points:-
  1. Previous submission for building adjacent to 94 Brithwen Road (applications 93/0829 and 2006/0868) were refused on grounds that applicant required to conform to building line established with No. 96. Assume this should apply to any new development alongside 94 Brithwen Road.
  2. Environment Agency objected to 2006/0868 on flooding grounds as that development encroached in part into the Flood Zone. Presume the EA will make same recommendation to be consistent.
  3. The application contains a supporting survey from a commercial company who surveyed the trees with Tree Preservation Orders that could affect the application. Concern that this report is carefully inspected by Council's tree specialist.
  4. Cost of loss of habitat should be considered, and impact of traffic and need for mini roundabout considered, as well as future impact of detailed layout on No. 94 Brithwen Road.

## FURTHER ECOLOGICAL INFORMATION SUBMITTED (27/06/08)

Following the submission of further ecological survey reports, further consultations were carried out with neighbours and previous objectors, as well as Andrew Davies AM, the RSPB and Countryside Council for Wales. A subsequent letter was received confirming that the PETITION OF OBJECTION still stands. 1 Letter of OBJECTION was received reiterating a previous objection.

## AMENDED SITE PLAN SUBMITTED (14/07/09)

An amended site plan was submitted to ensure that the red line boundary abutted the nearest public highway. The application was accordingly re-registered and re-advertised in the press as a development that may have a substantial impact on the amenity of the area in which it is situated, and neighbours and previous objectors were re-consulted. PREVIOUS PETITION OF OBJECTION (562 INDIVIDUAL NAMES) and 9 No. LETTERS OF OBJECTION received reiterating previous concerns, and the following additional point:-

1. Concerns that one access off this site is not suitable for additional traffic. An access point from Hillbrook Close is essential.

## Environment Agency (17/04/08)

Original Observations summarised as follows:-

The Agency advised that the application be DEFERRED pending the submission of further information for review. The application site lies partially within zone C2, as defined by the development advice maps (dam) referred to under TAN15 Development and Flood Risk (July 2004). The Agency's Flood Map information, updated on a quarterly basis, confirms the site to be at risk of flooding. Request that the applicant should submit an Assessment of Flood Consequences. Also the applicant should submit details of the proposed surface water management. SUDs should be used where possible. If the above information is not forthcoming the Agency would in accordance with Para.11.2 recommend that the application be refused.

Updated response (4/03/09):- The Agency WITHDREW ITS OBJECTION on the basis that the site is no longer identified as falling in a flood risk area, and the Agency no longer require a FCA to be submitted. However, as the site is served by the Gowerton Sewerage Treatment Works the Agency raised concerns regarding the ability of this site to deal with new flows generated from this site during storm or wet weather flows, and the possibility of a storm discharge which could result in pollution of controlled waters. The application must be accompanied by a full surface water drainage scheme, which details (along with diagrams) how surface water with assurances that any discharge will not place additional stress on the STW. In addition the Agency recommends SUDs and Conditions to any planning permission.

Updated response (27/08/09):- Observations summarised as follows:-

Note that the plans now include access onto Greenways. No additional comments refer to previous letters on the 17/04/08 and 2/03/09.

Updated response (17/10/12) summarised as follows: -

OBJECTION on the grounds that the Agency understands that the combined sewage infrastructure which serves the location of this development is hydraulically overloaded. This has manifested itself in a number of spills from a downstream combined sewer outflow at Waunarwydd Caravan Site (Asset No. 70321 and Permit No. BP0243001). This CSO has an indirect impact on designated shellfish waters and should not spill more than 10 times per annum, averaged over a 10 year period. This is to ensure compliance with the EC Shellfish Waters Directive (2006).



This CSO has been modelled to currently have a spill rate of 33 times per annum averaged over a 10 year period. In the light of these concerns the Agency have grave concerns in allowing further connections and input to this hydraulically overloaded system. The EC are currently scrutinising the local situation with a view to possible infraction in relation to the Urban Waste Water Treatment Directive. Hence any further deterioration must be avoided. The Burry Inlet, in addition to the shellfish waters designation also constitutes part of the Carmarthen Bay and Estuaries European Marine Site, which is a sensitive receptor. Dwr Cymru is aware of the capacity issues on this part of the network and has provisionally programmed works to remedy the problem in AMP 7 (2020 – 2025). This would mean that the issue would not be addressed before 2020.

In summary, the Agency has suggested a Grampian condition restricting the start of development but has also noted that the timescale of 2020 takes us beyond the standard period for a planning permission (5 years). Therefore the Agency asks the LPA to consider an alternative mechanism. An example is for the developer to help pay for works to remove existing surface water from the system.

If the developer feels unable to wait for DCWW's programmed works and is unwilling/unable to enter into agreement with DCWW to undertake works to free up capacity in the short term, then the Agency would object to the application and recommend that the Local Planning Authority refuse the application.

In addition, the EAW referred to flood risk which now shows the site is outside the current flood outline. A Flood consequence assessment is not required but as the site lies adjacent to Gors Fawr Brook, classified as a main river, if recommended for approval the Agency requests a condition to protect the riparian corridor and protect the interests of maintaining access to the watercourse. The Agency also requests SUDs, Japanese Knotweed, and pollution prevention to be controlled by condition.

Dwr Cymru Welsh Water (29/04/08) –  
NO OBJECTION, subject to conditions and informatives.

E-mail response (4/03/13) summarised as follows:- DCWW are not objecting to this development; the overloading issue which the EA refer to is at Gowerton WwTW so its the MOU side of spills rather than the sewerage network between the site and the treatment works.

Countryside Council for Wales (27/05/08) -  
Original Observations summarised as follows:-  
OBJECTS as there is insufficient information for the Agency to assess the proposals. Requests a comprehensive survey of the possible adverse effects on otters, bats and dormice, which are European protected species under the Conservation (Natural Habitats &.) Regulations 1994. If necessary details of a scheme for conservation of the species should be submitted. Where these species are present a development may only proceed under a licence from the Welsh Assembly Government.

Updated response (31/07/08) –  
NO OBJECTION but CCW advised that scrub clearance should be undertaken between August and March and natural tree species planted as part of landscaping scheme. In addition a 7 metres undisturbed riparian corridor should be retained along the length of the stream bank to protect habitats for bats and a movement corridor for otters. All artificial lighting should be directed away from this corridor. The tree lines along all site perimeters should be retained.

Updated response (26/08/09) –

OBJECTS because there is not enough information to assess the possible effects on the Carmarthen Bay and Estuaries Special Area of Conservation (SAC), Burry Inlet Special Protection Area (SPA), and Burry Inlet RAMSAR. Recommend that a Test of Likely Significant Effect is undertaken prior to determination to assess whether the plans/project is likely to have a significant effect alone or in combination with other plans/projects. The issues to be included in the TLSE to include Surface water drainage and Foul Water drainage.

Updated response (13/03/13) –

CCW has NO OBJECTION in principle to the proposal.

HRA issues - CCW refer to the following document : “Habitats Regulations Assessment of the effects of wastewater associated with new development in the catchment of Carmarthen Bay and Estuaries European Marine Site: Final Version (v2) David Tyldesley Associates, 10 December 2012 “ , and confirm that they are content with the approach that the Council will be using for all planning applications in Swansea that drain within the catchment area for Burry Inlet and Loughor Estuary (unless there are ecological concerns that fall outside the water quality issues covered by the final report).

Site Drainage/Hydraulic Capacity issues - Also refer the Council to the advice of DCWW and EAW on hydraulic capacity and the surface water removal requirements/planning conditions for this application. Also refer to advice regarding the separation of surface water from the site and attenuation requirements. Whilst it has been demonstrated that this is no longer a HRA issue, it is in the interests of all stakeholders around the Burry Inlet to work towards improving the water quality , not only to help secure the long term objectives for the European and international nature conservation sites, but also to achieve compliance with the Water Framework, Urban Waste Water, Shellfish and Bathing Water Directives. Therefore, CCW recommend that the schemes should be provided to the satisfaction of the EAW and DCWW prior to determination.

Finally, CCW draw our attention to the additional comments in their letter of 26<sup>th</sup> August, 2009 regarding the ecological mitigation and recommendations in the Ecological Report (26 June 2008).

Public Rights of Way Officer (6/11/08) -

Observations as follows:-

There is a bridleway that runs adjacent to the proposed site which has been in existence for 160 years. Potential to redivert through the development that could be beneficial to the proposed development and the bridleway.

Housing Enabling Officer (27/11/08) - Observations as follows:-

The application is for outline planning for residential units, in an area of recognised housing need as identified in the Local Housing Market Assessment. As such the Housing Service would be requesting a provision of Affordable Housing in the region of 30% (mix of social rent and intermediate low cost home ownership to be determined/negotiated). The Housing Service would expect the AH units to meet the Welsh Housing Quality Standard and Development Quality Requirements guidelines of the Welsh Assembly Government (necessity for rental) and that the affordable units are pepper-potted throughout the development (where appropriate).

(27/03/13) - Observations on S106 request, to read as follows:- The provision of 30% Affordable Housing, which shall be “pepper potted” throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.

## Highways Observations

### Final Amended Recommendation (7/03/13)

This is an outline application for development of land adjacent to 96 Brithwen Road, Waunarlwydd. An indicative layout has been submitted which indicates 24 dwellings on the site and whilst the application is in outline form I have assessed the impact of up to 30 dwellings being erected. This does not mean that 30 houses are proposed and the figure has merely been used as a worse case scenario for assessing traffic impact.

Access to the site is intended from the junction of Brithwen Road and Greenways. Greenways is a privately maintained highway and therefore is not fully surfaced. The applicant will be required to construct a speed table at the site access to accommodate movements from the site, Brithwen Road, Greenways and the lane access to the south. Some road widening on the bend is likely to be required which will need to be accommodated from the application site. The internal layout would be subject to detailed plans and if consented will have to conform to adopted standards.

Brithwen Road is above the standard width that is normally required for a residential estate road and currently varies in width between 6.8m and over 8m wide in parts. Normal estate road width is 5.5m. Waunarlwydd Primary School is accessed from Brithwen Road and therefore traffic movements and on-street parking increases at the start and end of the school day. I estimate traffic movements associated with the proposal to be in the region of 22 vehicle movements in the peak hour (assuming 30 houses). This is not a high volume of movements and there is no technical reason why Brithwen Road could not support this number.

With regard to highway safety, I am satisfied that the improvements at the proposed junction will increase safety by controlling and slowing down traffic movements. The junction of Brithwen Road with Swansea Road is located near to the bend and whilst visibility is acceptable there is evidence of excessive speed in that vicinity. It would be prudent therefore for the development, if consented, to contribute towards the provision of road safety features in that vicinity. This would help to improve safety for the additional vehicle movements and also help to slow traffic down in that area.

### Local Concerns

Local concern has been raised with regard to the ability of Brithwen Road to accommodate the additional traffic and also the suitability of the access proposal. I am satisfied that the standard of Brithwen Road is sufficient to accommodate this relatively small increase in use and the proposed access layout will not prejudice highway safety. Also of concern is the Brithwen Road/Swansea Road junction and I would recommend that a contribution to road safety enhancement is made here.

### Recommendation

I recommend no highway objection subject to the following;

1. Prior to beneficial use of the site commencing, the developer shall complete the installation of a raised table junction and associated works at the site access in accordance with details to be submitted and approved.
2. Prior to beneficial use of the site commencing, road safety enhancements shall be undertaken on Swansea Road. (This will necessitate a contribution from the developer and will need to be secured via a Section 106 Agreement.)

3. All internal roads shall be constructed in accordance with details to be submitted and approved.
4. Each dwelling shall be provided with on-site parking in accordance with adopted parking guidelines.
5. A Travel Plan shall be submitted for approval within 12 months of consent and the approved Travel Plan shall be implemented on first occupation of the dwellings.

Note: The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary. Advice on Travel Plans can be obtained from Jayne Cornelius, SWWITCH Travel Plan Co-ordinator Tel 07796 275711.

Note: The Developer must contact the Network Manager City and County of Swansea, Highways Division, Players Industrial Estate, Clydach, Swansea, SA6 5BJ. Tel 01792 841601 before carrying out any work.

## APPRAISAL

This application is reported to Committee for decision at the request of Councillors Keith Morgan and Vanessa Webb. A Site Visit was held on the 16<sup>th</sup> April, 2013, as requested by Councillor Ann Cook because of local concerns

This application seeks outline planning permission for residential development, on land off Brithwen Road, Waunarwydd, and has been submitted with details of access derived solely off the adjacent highway of Brithwen Road, with all other matters reserved for future consideration. Whilst an indicative layout plan for approximately '24' dwellings has been submitted, this is for illustrative purposes only.

The 1.06 hectare greenfield site currently comprises an irregular shaped parcel of land located on the western side of Brithwen Road in close proximity to established housing areas to the north and east, and the site abuts two relatively new dwellings built in recent years immediately to the south of the application site (on part of the original allocated site for housing at Brithwen Road). The western boundary of the site is defined by the river, Gors Fawr with countryside designated as Green Wedge on the other side of the river.

This site is allocated in the City and County of Swansea Unitary Development Plan for residential development (Refer to Policy HC1 (127)) apart from a small strip approximately 7m in depth adjacent to the river defined as 'white land' on the UDP Proposals Map. The site has been allocated for residential development for many years (since @1989) and was included in the Swansea Local Plan, the SLP Review No. 1, and in the current UDP, adopted in 2008. As an allocation in an adopted plan this land is considered to be committed for development and forms part of the committed land bank. This clearly establishes the principle of the land being suitable for residential development.

During the course of this application amended plans and additional information have been submitted, which have necessitated further statutory consultation as detailed above. This has included further ecological information, and an amendment to the red line boundary to ensure the site has access up to the public highway, which required the application to be re-registered and re-advertised in July 2009.

This application has also been held in abeyance due to various concerns raised by the Environment Agency and Countryside Council for Wales relating to environmental issues.

At first this related to flooding issues on site, but this is no longer an issue following refinement in the Environment Agency Flood Maps. Latterly determination of the application has been delayed by strategic issues relating to drainage into the Loughor Estuary and Burry Inlet and the impact of development on the wider environment of the European protected sites, including Carmarthen Bay and Estuaries Special Area of Conservation; Carmarthen Bay Special Protection Area; and Carmarthen Bay RAMSAR (CBEEMs). A Habitat Regulation Assessment has been carried out by the Local Planning Authority, which considers the impact of this and other development projects on the water quality of CBEEMs, and concludes that an Appropriate Assessment is not required in this case. This assessment is described in more detail below.

In addition, as required by the provisions of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, the application was screened when it was originally submitted because it exceeds 0.5 hectares in area, but on the basis of the information received it was considered that an Environmental Impact Assessment was not required for this proposed development. Following the submission of the ecological survey and completion of the HRA, it is considered that there is no change in this assessment.

### Main Issues

The main issues for consideration with regard to this application relate to the acceptability of the residential development at this 'greenfield' site in terms of its impact on visual and residential amenity, highway safety and environmental interests, having regard to the prevailing provisions of the relevant policies of the City and County Unitary Development Plan, and National Planning Policy Guidance. There are considered to be no additional issues arising from the provisions of the Human Rights Act.

### Policy Considerations

Under the provisions of Section 54A of the Town and Country Planning Act 1990 (as amended) planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is the City and County of Swansea Unitary Development Plan (UDP) which was adopted on 10<sup>th</sup> November 2008.

The UDP comprises two parts, Part 1 and 2. Part 1 sets out the broad vision and aspirations for development and conservation together with the overall strategy for pursuing them. Part 2 translates these goals and objectives into more detailed policies and development proposals. The UDP policies relevant to this application are:-

- Part 1 Policies SP1, SP2, and SP3 (Creating a quality environment); , SP7 (Providing Homes and Community Facilities), and SP14 (Improving Accessibility).
- Part 2 Policies EV1(Design), EV2 (Siting and Location), EV3 (Accessibility), EV22 (Countryside), EV23 (Green Wedges), EV24 (Greenspace System), EV25 (Sites of International Importance), EV30 (Trees, Woodland and Hedgerow Protection), EV33 (Sewage Disposal), EV34 (Protection of Controlled Waters), EV35 (Surface Water Run-Off), EV36 (Development and Flood Risk), HC1 (Housing Sites), HC3 (Affordable Housing), HC17 (Planning Obligations), AS1 (New Development Proposals), AS2 (Design and Layout), AS3 (Public Rights of Way), and AS6 (Parking).

The following policy issues relevant to this particular site are expanded in more detail below:-

As referred to above, the majority of this site has been allocated for residential development in the Unitary Development Plan under Policy HC1(127) on land off Brithwen Road, Waunarlyydd. The UDP allocation indicates an estimate of 30 units which is based on the former planning history and is not a defined number for this site, following an original planning permission for residential development granted in 1982 - ref. 81/1697/01. Planning permission was also granted for one house on this land in 2006 (ref. 2006/0868). As an allocation in an adopted plan this land is considered to be committed for development and forms part of the committed land bank.

In line with the objectives of Planning Policy Wales 2012 and TAN 12: Design, UDP Policies EV1 and EV2 seek to ensure that new development is appropriate, inter alia, to its local context and integrates into the existing settlement with no detrimental impact on local amenity. In addition, UDP Policies EV3, AS1, AS2 and AS6 require that new development provide satisfactory access and facilities for parking, and AS3 relates to the requirements for protection of rights of way.

The current proposal needs to be considered in the context of the surrounding area. As an edge of urban area site, located close to designated Green Wedge, consideration needs to be given to the principles of Policies EV22 and EV23 which seek to protect and enhance the open countryside from adverse development that affects the setting. The natural environment of this site is further supported by Policies EV24 which protects the riparian corridor of the river and natural and wildlife heritage, and Policy EV30 which particularly seeks to protect and improve woodlands, trees and hedgerows.

With regard to drainage from this site, full regard has to be given in this case to Policy EV25 and the impact of drainage on the water quality of the European protected sites in the Carmarthen Bay and Estuaries Special Area of Conservation; Carmarthen Bay Special Protection Area; and Carmarthen Bay RAMSAR (CBEEMs), and the requirements of related Policies EV33, EV34, EV35, and EV36 regarding sewage disposal, surface water run-off, and development and flood risk.

This site falls within the Swansea West Strategic Housing Zone which is identified in Policy HC3 as an area where smaller sites such as this are considered for affordable housing. Policy HC17 allows the Local Planning Authority to enter into negotiations with developers to deliver planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), and these provisions should be fairly and reasonably related in scale and kind to the individual development.

### Future Policy

Finally, whilst this site has been put forward as a 'Candidate site' to be considered in the preparation of the Local Development Plan, (which will in due course supersede the Unitary Development Plan), the LDP is still in a very early stage of its preparation and it is considered premature to place any weight at this stage to this process.

### **Land Availability Issues**

As explained above, this application site (apart from a small strip adjacent to the river) has been allocated for residential development for many years and was originally allocated in the Swansea Local Plan and is currently allocated for residential development in the City and County of Swansea Unitary Development Plan. As an allocation in an adopted development plan this land is considered to be committed for development and forms part of the committed land bank.

The principle of this land being suitable for residential development has therefore been long established, (since @1989), and has been subject to higher scrutiny at the last UDP inquiry when the Welsh Government Inspector concluded in his report that, *'Planning permission for housing development on this site has already been granted. As such it is already committed for development, and allocation in the Plan simply acknowledges this fact. The allocation should therefore remain in the Plan, although consideration should be given to reducing the extent of the site as depicted on the Proposals Map to exclude any area determined as unsuitable for development as a result of its location within zone C2 of the flood risk development advice map.'*

As explained in more detail below, the EAW (now NRW) have reviewed their Flood Maps since the UDP Inquiry so this site is no longer in the critical C2 zone and there is no flooding constraint on the site.

With regard to the selection of sites for housing in the UDP, this has been based on an adopted land use strategy set out in the UDP (refer to paragraphs 3.3.1 – 3.3.3, page 83), which followed a rigorous selection process and tested each site against the selection criteria set out in Planning Policy Wales. In practice, the strategy followed established sequential principles which start by maximising use of the existing committed land bank (including this site at Brithwen Road) together with previously developed land and buildings in settlements (brownfield sites). These were considered before new infill sites and green field sites. In addition factors such as accessibility; capacity of infrastructure to accommodate development; impact on local community; and physical and environmental constraints were fully considered. A similar approach is now being applied for the selection of housing sites for the next Development Plan, the Swansea Local development Plan (LDP).

The Brithwen Road site was allocated in the UDP because it met the above tests and does not fall within the Green Wedge; will round off the settlement; and was previously allocated for housing; with no known constraints that could not be overcome.

The release of land allocated for housing in the UDP has not been phased and there is no requirement to develop brownfield allocations before greenfield ones.

In conclusion, whilst there may be brownfield sites in the area, these would not take priority over this committed land bank site, and would be considered on their own merits, having regard to any constraints to development. Based on the information known on this site, there are no grounds to depart from the UDP policy allocation, which allocates this site in West Swansea for up to 30 houses under Policy HC1 (127).

## **Visual Impact**

As advocated by the overarching objectives of Planning Policy Wales, and related TANs, the visual appearance of the proposed development, its scale and relationship to its surroundings and context are material planning considerations. Moreover, new housing development should be well integrated with and connected to the existing pattern of settlements. The expansion of towns and villages should avoid creating ribbon development, coalescence of settlements or a fragmented development pattern. Sensitive infilling of small groups of houses or minor extensions to groups may be acceptable, though much will depend upon the character of the surrounding area and the number of such groups in the area.

With regard to the surrounding context of built form and countryside, this application site is located in a field site abutting the southern limits of Waunarlwydd. In terms of its natural appearance this 1.06 hectare site is relatively flat and low lying next to the main river, Gors Fawr, but the whole site is currently overgrown with mixed woodland and shrubs.

It should be noted that a number of trees sited near the river and bridleway are protected by a Tree Preservation Order (TPO).

The bridleway runs adjacent to the eastern boundary of the site and therefore forms a physical buffer between the new development and existing houses at 84 and 86 Brithwen Road and No 12 Hillbrook Close. The site boundary is drawn up to and adjacent to the bridleway, but does not physically encroach onto it, apart from a very small area of dual use where the new highway would enter the site. As such there would be no direct impact on this bridleway. There are no current proposals being considered to divert this bridleway.

Whilst the PROW officer has indicated in his response that the route of the bridleway may be refined in future by diverting through the site, there are no current plans to divert this route and this will be considered in detail at reserved matters stage when further details of the design and layout are considered. As such there will be future control over this detail. In conclusion the outline proposal being considered does not affect the current route or continued use of the bridleway.

Whilst the red line of the proposed site extends just beyond the western boundary of the allocated UDP site up to the river banks, it is noted that the Environment Agency (now Natural Resources Wales) has notified the Council that there is a bye-law protecting a 7m wide berm along this river where no development can take place. As such there will be a restriction on how far any development extends up to the river and countryside boundary. It is considered that together with the protected trees along the river bank, this natural barrier will soften the interface of any new built development with the nearby countryside areas, as well as acting as an ecological barrier between this land and the river and designated Green Wedge to the west.

In terms of the character and appearance of surrounding residential development, this area of Waunarwydd appears to have developed incrementally over the years with a mix of housing that weaves in and out of the adjoining fields with no particular style or pattern. This site lies immediately adjacent to the current built up urban area of Waunarwydd, which wraps around the site along its northern, eastern and southern boundaries, with the western boundary defined by the river. The proposed residential development will have direct access off the highway which serves the neighbouring established houses and bungalows along Brithwen Road and Greenways. To the north and south the development will be screened by existing neighbouring houses, and to the east the site faces existing residential properties on the opposite side of Brithwen Road.

Whilst the illustrative layout indicates 24 housing units on site, the number of houses built will be governed by the natural constraints of the site including the protection of the TPO trees, the bridleway, and the 7m protected berm along the river. Details of the exact numbers and siting of houses, scale, design, and appearance will therefore be controlled at reserved matters stage. However, the illustrative layout indicates that it is possible to retain natural features such as mature trees on site, and further landscaping and planting could enhance any future layout. Currently there are no details of future land levels at this outline stage, but any change from the existing site and the impact on neighbouring properties will be properly considered at reserved matters stage, together with all landscaping and planting details.

In conclusion, it is considered that on the basis of the above considerations the proposed residential development of this site will satisfactorily "round off" the residential area of Waunarwydd at this location, up to a clear and defensible natural boundary.



As such, it is considered that, subject to a sensitive layout and design at reserved matters stage, a satisfactory residential development can be accommodated on this site without having an adverse impact on the character and appearance of the surrounding built up or countryside areas, in line with prevailing policies EV1, EV2, EV22, EV23, and HC1 of the Unitary Development Plan.

### Residential Amenity

Turning to the impact on the residential amenity of neighbours, whilst this application is outline with all matters reserved apart from access, the illustrative layout submitted demonstrates that a sensitively designed layout can be accommodated in this site without harming the residential amenity of future or existing residents. Any scheme on this site would have to meet the standards of separation between residential properties normally applied by the Council, and meet the normal requirements for amenity space and car parking requirements.

Having regard to the above considerations, and subject to an appropriately designed scheme at reserved matters stage it is not considered that the residential development of this site will result in any significant harm to the residential amenities enjoyed by future residents in line with the objectives of Policies EV1 and EV2 of the Unitary Development Plan.

### Highways Considerations

The highways response has been revised in the light of current considerations. An indicative layout has been submitted which indicates 24 dwellings on the site and whilst the application is in outline form the impact of up to 30 dwellings being erected has been assessed. This does not mean that 30 houses are proposed and the figure has merely been used as a worse case scenario for assessing traffic impact.

Access to the site is intended from the junction of Brithwen Road and Greenways. Greenways is a privately maintained highway and therefore is not fully surfaced. The applicant will be required to construct a speed table at the site access to accommodate movements from the site, Brithwen Road, Greenways and the lane access to the south. Some road widening on the bend is likely to be required which will need to be accommodated from the application site. The internal layout would be subject to detailed plans and if consented will have to conform to adopted standards.

Brithwen Road is above the standard width that is normally required for a residential estate road and currently varies in width between 6.8m and over 8m wide in parts. Normal estate road width is 5.5m. Waunarlwydd Primary School is accessed from Brithwen Road and therefore traffic movements and on-street parking increases at the start and end of the school day. The Highways Officer has estimated traffic movements associated with the proposal to be in the region of 22 vehicle movements in the peak hour (assuming 30 houses). This is not a high volume of movements and there is no technical reason why Brithwen Road could not support this number.

With regard to highway safety, the Highways Officer is satisfied that the improvements at the proposed junction will increase safety by controlling and slowing down traffic movements. The junction of Brithwen Road with Swansea Road is located near to the bend and whilst visibility is acceptable there is evidence of excessive speed in that vicinity. It would be prudent therefore for the development, if consented, to contribute towards the provision of road safety features in that vicinity. This would help to improve safety for the additional vehicle movements and also help to slow traffic down in that area.

Local concern has been raised with regard to the ability of Brithwen Road to accommodate the additional traffic and also the suitability of the access proposal. The Highways Officer is satisfied that the standard of Brithwen Road is sufficient to accommodate this relatively small increase in use and the proposed access layout will not prejudice highway safety. Also of concern is the Brithwen Road/Swansea Road junction and it is therefore recommended that a contribution to road safety enhancement is made here.

In conclusion there is no highway objection subject to the following;

1. Prior to beneficial use of the site commencing, the developer shall complete the installation of a raised table junction and associated works at the site access in accordance with details to be submitted and approved.
2. Prior to beneficial use of the site commencing, road safety enhancements shall be undertaken on Swansea Road. (This will necessitate a contribution from the developer and will need to be secured via a Section 106 Agreement.)
3. All internal roads shall be constructed in accordance with details to be submitted and approved.
4. Each dwelling shall be provided with on-site parking in accordance with adopted parking guidelines.
5. A Travel Plan shall be submitted for approval within 12 months of consent and the approved Travel Plan shall be implemented on first occupation of the dwellings.'

### Water Quality Issues

This application is one of a number of major planning applications that have been held in abeyance since 2009, due to ongoing concerns raised by Europe and Welsh Government regarding the water quality of the Loughor Estuary which is part of the following European protected sites: Carmarthen Bay and Estuaries Special Area of Conservation; Carmarthen Bay Special Protection Area; and Carmarthen Bay RAMSAR (CBEEMs). The City and County of Swansea as Local Planning Authority has followed the precautionary approach advised by its statutory advisor CCW towards all development that drains into CBEEMs, and carried out the following Habitat Regulations Assessment.

### Burry Inlet Habitat Regulations Assessment

#### Introduction

The City and County of Swansea, as the competent authority, is required under Regulation 61(1) of the Conservation of Habitats and Species Regulations 2010 (known as the 'Habitat Regulations') to undertake a Habitat Regulations Assessment of any project likely to have an effect on a European Site, or candidate/proposed European Site, either alone or in combination with other plans or projects, that is not necessary to the management of the site for management of the site for nature conservation.

In this instance, the European sites potentially affected are the Carmarthen Bay and Estuaries European Marine Site (CBEEMS), the Carmarthen Bay Special Protection Area (SPA) and the Burry Inlet SPA and RAMSAR site. Before deciding to give permission we must therefore first consider whether this development is likely to have a significant effect on the CBEEMS either alone or in combination with other plans or projects in the same catchment area.

Following an investigation of likely significant effects on the CBEEMS features water quality was identified as the only factor that might have an effect this is discussed below.

### Water Quality

With regard to the water quality issues in the Burry inlet and Loughor Estuary, the City and County of Swansea has followed the advice of their statutory advisor, and has commissioned a preliminary assessment under the above Regulations which is limited to the assessment of potential wastewater effects only.

This assessment notes that as part of their review of consents (RoC) under regulation 63 the Environment Agency (EA) undertook a detailed Habitats Regulations assessment in relation to the effects of their consented activities. Consent modifications were identified to enable the Environment Agency to conclude no adverse effect on the integrity of the CBEEMS in respect of their consents operating at their maximum consented limits.

As the consents in question have already been subject to a full assessment (alone and in-combination) under the provisions of the Habitat Regulations, there is no need for the City and County of Swansea to undertake a further assessment where development can be accommodated within the post RoC discharge consent limits.

It is the opinion of the authority that this development can be accommodated within the post RoC discharge consent limits, and will not be likely to have a significant effect either alone or in-combination on the Carmarthen Bay and Estuaries SAC, the Carmarthen Bay SPA, or the Burry Inlet SPA and RAMSAR. Such effects can be excluded on the basis of the objective information available through the Environment Agency review.

### Other Possible Effects on CBEEMS features

In addition, it is considered that there are no other potential adverse effects from this development proposal, either alone or in combination with other plans or projects on the above protected European sites.

On this basis there is no requirement to make an appropriate assessment of the implications of the proposed development in accordance with regulation 61(1).

The Countryside Council for Wales, as statutory advisor to the Council on the requirements of the Habitats Regulations, has recently confirmed that they are content with the above approach.

The LPA has therefore satisfied its obligations as the 'competent authority' under the Habitats Directive and associated Habitat Regulations. This is in line with the requirements of National Planning Policy guidance and Policy EV25 of the Unitary Development Plan.

### Hydraulic Capacity Issues in Gowerton WwTW drainage network

Last autumn the EAW (now NRW) raised further concern that there are outstanding Hydraulic Capacity issues in the Gowerton Waste Water Treatment Works catchment area. These are summarised above in their response dated 17<sup>th</sup> October, 2012, and appear to relate to wider concerns from Europe regarding the future water quality of the estuary. However, DCWW has not objected to the application, and there is no conclusive evidence that supports the NRW view that this development could harm the water environment.

Moreover, the Local Planning Authority is satisfied that it has addressed the water quality issues relating to the Habitats Regulations on this site, and the EAW (now NRW) has since agreed to the Council's adopted Habitats Regulation Assessment that covers all development in the drainage network area up to the end of 2014. As explained above this HRA is based on objective information available from the Agency's own Review of Consents of Gowerton WwTW, 2010.

In the past few months officers have given further consideration to the above, and in particular have sought further clarification from DCWW whether there is currently sufficient capacity in the foul drainage network for this particular development. DCWW have clarified that they are not objecting to this development as there are no hydraulic problems in the network between the site and the Gowerton WwTW, but support the Agency in requesting that the development meets the objectives of the Memorandum of Understanding signed in 2011 are met.

The Council has been working with the Agencies of Welsh Government who are seeking to resolve this problem is seeking to 'enhance' this situation, by improving the current drainage problems in the Gowerton drainage network, before new foul connections can be made. Where possible landowners and developers are being encouraged to remove surface water from combined sewers where possible and where there is a need to facilitate new development. As part of this initiative in 2011, DCWW adopted the findings of a study commissioned to investigate the problems and solutions relating to foul drainage in this drainage catchment area. They have also prepared a Plan of Improvements works for Gowerton WwTW catchment 2020 (AMP 7), and are currently indicating that schemes will be brought forward where necessary to facilitate development.

In addition, the Council has kept a register of savings made on brownfield sites and some of these have been completed. This register is required by the Memorandum of Understanding 2011 agreed and signed by the City and County of Swansea, together with its partners Carmarthenshire County Council, Dwr Cymru Welsh Water, Environment Agency Wales and Countryside Council for Wales.

#### Drainage Arrangements for this site

The drainage output from this site has been considered with officers from Drainage and DCWW, but discussions have been complicated because this is an 'old' outline application with no definite number of proposed housing units. This planning application was submitted prior to the change in the Planning Regulations that now requires outline planning applications to be more specific in terms of the total number of units. Therefore whilst there is an indicative plan for 24 units, no weight can be given to this number which is not under consideration at this stage, only the principle of 'residential development'

This has complicated discussions on the capacity of the drainage network to take this extra development. However, whilst details of the drainage arrangements have not been formally submitted at this outline stage, the applicant accepts that foul and surface water will have to be separated with surface water draining to the natural watercourse of the river. In addition, any development of this site will be subject to conditions controlling drainage and sustainable drainage systems, such as rainwater harvesting, grey water harvesting, etc. This would satisfy the SUDs requirements of our drainage officers and NRW and DCWW, and would ensure sustainable management of surface water. The only new drainage impact on the existing combined sewerage system to Gowerton WwTW would therefore be the foul connections.

This is considered satisfactory in principle, but it will be necessary to require further details of the drainage arrangements at reserved matters stage (prior to determination of reserved matters) to ensure that the actual number of housing units can be adequately serviced by the sub catchment of Gowerton WwTW. This can be controlled by condition.

However, based on a maximum of 24 dwellings, and applying the agreed formula of 0.013 litres/ second per residential property (refer to Appendix A of MOU 2011), it is estimated that this development would result in a maximum estimated flow of 0.312 l/s from this proposed development. This is the equivalent of removing surface water from approximately two existing small houses with combined roof area of 108m<sup>2</sup> (i.e. 2 x roof area of 6m by 9m) that currently drain their surface water to the combined system. In overall hydraulic terms this is very small.

Notwithstanding the above, given the length of time this application has been held in abeyance, it is considered that sufficient compensatory surface water savings have been made on other brownfield sites in the area that more than compensate for this relatively small development, and there is sufficient justification to use a small part of these savings secured on the Council's register to facilitate the development of this UDP allocated housing site.

### Conclusions

In conclusion, DCWW has not objected to this scheme, and there is no factual information to support the EA's (now NRW) concerns that the residential development of this site will harm the water environment. The Council's HRA which has been adopted for all development in the Gowerton WwTW drainage network area runs up to 2014 when it is understood that DCWW has planned upgrading works to this WwTW. The HRA has been agreed with EAW and Countryside Council (now NRW) as well as DCWW and Carmarthenshire County Council, and concludes that *'It is the opinion of the authority that this development can be accommodated within the post Review of Consents (RoC) discharge consent limits, and will not be likely to have a significant effect either alone or in combination on the Carmarthen Bay and Estuaries SAC, the Carmarthen Bay SPA, or the Burry Inlet SPA and RAMSAR. Such effects can be excluded on the basis of the objective information available through the 2010 Environment Agency review.'*

In summary, there are no known hydraulic capacity or new water quality issues to address, and there is no justification to refuse this proposal for outline planning permission on these grounds. Subject to further control by conditions, it is considered that the drainage arrangements for this scheme are acceptable and can meet the overarching aims of sustainable development in this area, and satisfy the provisions of Policies EV33, EV34, and EV35.

### Ecological Considerations on Site

During the course of this application the applicant commissioned and submitted an ecological survey of the immediate site. The survey has been considered by the Countryside Council for Wales. The Council's Ecologist has revisited the site this spring and has reviewed the ecological information previously submitted, and is satisfied that this survey is still representative of the current ecological footprint of this river meadow site.

The survey revealed that the site is used by several foraging bat species and nesting birds, however, it is unlikely that otters or dormice are using the site. The most important aspect of this site is the riparian corridor that runs along the river, and it is considered that this should be protected by a strip approximately 7m wide by the Department's ecologist, as well as CCW and the EAW. However as noted above the EAW already has a bye law that serves to protect the 7m berm area from development.

As such an informative will be added advising the applicant of this restriction and the need to ensure that any future layout proposed at reserved matters stage ensures that this protected area is kept free of any development.

Section 5 of the report contains a number of recommendations, these include restricting any artificial light falling on the stream corridor and providing compensatory planting. The corridor is used by feeding and commuting bats and it is important this is kept dark. It is suggested in the survey that this area is fenced off for the duration of any construction work to prevent any disturbance. This can be controlled by condition. CCW have asked that artificial lighting is aimed away from the riparian corridor, and this can be controlled by condition. In addition, the developer will be advised by Informative that if any tree removal is considered in the riparian corridor the site should be checked for signs of dormice.

In addition, it is noted that there are mature trees on site of nature conservation value. Some of these are protected by Tree Preservation Order, but the applicant will be advised by condition of the need to assess the trees on site for bat roosts prior to any work being undertaken. An informative will also be added advising that scrub and tree clearance should be undertaken out of the bird breeding season.

Furthermore, a full tree survey and arboricultural impact assessment will be required to be submitted at reserved matters stage, with all tree survey plans accurate and tree and canopy spreads plotted. There will inevitably be some loss of habitat on site but a landscaping scheme will be submitted at reserved matters stage and this should detail any losses and how these are mitigated, e.g. by suitable replacement habitat using native species in hedges, etc. to maintain the local character of this site.

It is also considered necessary and reasonable to add a condition requiring the removal of any invasive 'alien' species of plant found on site prior to development.

The developer will be made aware by informative of their responsibilities regarding these ecological issues, however precise details of landscaping and planting matters as well as lighting will be the subject of further detailed consideration at reserved matters stage. In conclusion, it is considered that there are sufficient controls available to the Council and NRW to protect the most important habitats which is the riparian corridor and TPO trees.

### S106 Contributions

Policy HC17 allows the Local Planning Authority to enter into negotiations with developers to deliver planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), and these provisions should be fairly and reasonably related in scale and kind to the individual development. In addition the Council has adopted Supplementary Planning Guidance on S106 negotiations in March 2010, but it should be noted that the submission of this application pre dates this guidance. It should also be noted that the trigger points in Part 3 of the current S106 guidance are not prescriptive and form the basis for negotiation. When considering what contributions should be sought there has to be evidence of need, which is justified and relevant to the application being determined. Moreover, the guidance advises that an element of flexibility is required to ensure the viability of schemes is not prejudiced.

In this particular case, the following issues have been highlighted as particularly relevant to this site. The Housing Enabling Officer has confirmed that a figure of 30% affordable housing is required in this area. This provision should be a mix of social rent and intermediate low cost home ownership to be determined/negotiated. The Housing Service would expect the affordable units to be pepper potted throughout the site.

The amplification to Policy HC3 explains that the need for affordable housing is a material planning consideration and an essential element in contributing to community regeneration and social inclusion. This site falls within the Swansea West Strategic Housing Zone which is identified in Policy HC3 as an area where smaller sites such as this are considered for affordable housing. On this basis there is demonstrable need in the area and it is considered necessary and reasonable to require the above affordable housing provision.

As referred to above in the highways response, and following further consideration of the proposed development, it is now considered necessary and reasonable to require the provision of off site road safety enhancements to Swansea Road to be secured via a S106 agreement. These works will be required prior to the beneficial occupation of any housing units. As described above, the development will gain access off Brithwen Road that has a junction with Swansea Road. It is considered reasonable therefore for the development to contribute towards the provision of road safety features in that vicinity. This would help to improve safety for the additional vehicle movements and also help to slow traffic down in that area.

The above S106 planning obligations are considered fairly and reasonably related in scale and kind to the likely scale of the proposed development. Given the relatively small size of the site and its viability (due to likely high infrastructure overheads), no further consultation has taken place with other Departments.

Whilst it is noted that concerns have been raised in public consultation that the proposal will impact on local schools, the latest published figures on school capacity (September 2012) indicate that there is surplus capacity at Waunarlwydd Primary School has surplus capacity of 35 places (12.03%) and Ysgol Gynradd Gymraeg Login Fach has surplus capacity of 11 places (5.2%). There is also surplus capacity of 66 places at Gowerton Comprehensive (2.21%) and 198 places at Ysgol Gyfun Gwyr (21.4%).

In addition the numbers of reception class applications published for the local primary school appear to fall below the available places. The latest capacity school figures are only indicators of the pressure on the local schools, but given the relatively small size of the development site it is not considered that school provision is an overriding issue in this particular case. Similarly it is not considered necessary to require a contribution for open space provision given the edge of countryside site and the overriding EAW requirement for a development free berm of 7m depth along the river which will retain natural open space on the edge of the development.

In conclusion, it is known that the abnormal costs of delivering this 'allocated' site are high given the need for pre commencement ground investigations, etc. Moreover, the overriding need for 30% affordable housing in this area and the need for traffic calming on Swansea Road are still considered to meet the S106 tests as being 'necessary' and 'reasonable' on this relatively small site, and would still take precedence over any other contributions.

### Mine workings

The applicant has confirmed that the mining history of the site has been considered and has re submitted a coal authority report which raises no objection. The application was submitted with a supporting document, 'Geoenvironmental, Geotechnical & Mining Desk Study Report', which presents the findings of searches of the site and surrounds and investigated the risk to any proposed development from the former mining activity in the area. Due to the presence of the nearby conjectured coal seams and relatively shallow depths at which these reside a Coal Authority Report was sought by the applicants.

In summary, the response from the Coal Authority advises that the property is in the likely zone of influence from 1 seam of coal at 80m-130m depth last worked in 1903. There are no known coal mine entries within, or within 20m of the boundary of the property. No record of mine gas emission or coal mining subsidence or other hazards reported. No other concerns raised from the past, the present, or the future. Any development would need further drilling works to confirm extents and depths of thickness of seams.

In conclusion, the Coal Authority Report does not raise any issues or objection to this development.

### Other Material Considerations

The neighbour objections received during public consultation on this application include concerns regarding the UDP allocation of this site for housing, scale and impact on visual amenity, traffic, access, loss of habitat, environmental concerns, sewerage, pollution and flooding issues, and impact on local services and infrastructure, which are addressed above in the main body of the report.

### Conclusions

In conclusion, and having regard to all material considerations including the Human Rights Act, it is considered that the proposed residential development of this greenfield site with sole access off Brithwen Road represents a satisfactory form of development that complies with the provisions of the prevailing policies of the Unitary Development Plan. Approval is therefore recommended for outline planning permission, subject to appropriate conditions and the developer entering into a Section 106 Obligation in respect of the provision of 30% affordable housing and highway safety enhancements to Swansea Road.

### RECOMMENDATION

APPROVE, subject to the following conditions, and to the developer entering into a Section 106 Obligation in respect of:-

- iii) The provision of 30% Affordable Housing, which shall be “pepper potted” throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.
- ii) Prior to beneficial use of the site commencing, the provision of road safety enhancements shall be undertaken on Swansea Road.
- 1 Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.  
Reason: To ensure that the development is carried out in an orderly and satisfactory manner.
- 2 Detailed plans and drawings with respect to the matters reserved in condition (01) shall be submitted for approval by the Local Planning Authority not later than the expiration of three years from the date of this permission.  
Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that the development is determined within a reasonable period.



3 The development to which this permission relates shall be begun either before the expiration of 5 years from the date of this outline permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that development is begun within a reasonable period.

4 Prior to the beneficial use of the site commencing, the developer shall complete the installation of a raised table junction and associated works at the site access in accordance with details to be submitted to and approved in writing with the Local Planning Authority.

Reason: In the interests of highway safety.

5 Prior to the beneficial use of the residential properties, all internal roads shall be constructed in accordance with details to be submitted and approved by the Local Planning Authority.

Reason: In the interests of highway safety.

6 Each dwelling shall be provided with on-site parking in accordance with adopted parking guidelines.

Reason: To ensure that the proposed development does not prejudice the free flow of traffic or conditions of general safety along the neighbouring highway.

7 A Travel Plan shall be submitted for approval within 12 months of consent and the approved Travel Plan shall be implemented on first occupation of the dwellings.

Reason: In the interests of highway safety.

8 No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how foul water, surface water, and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SUDS) for surface water drainage and/or details of any connections to a surface water drainage network. The development shall not be brought into beneficial use until the works have been completed in accordance with the approved drainage scheme, and this scheme shall be retained and maintained as approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment or the existing public sewerage system and to minimise surface water run-off.

9 Unless otherwise agreed in writing with the Local Planning Authority, foul water and surface water discharges must be drained separately from the site and no surface water or land drainage shall be allowed to connect (either directly or indirectly) to the public foul sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system and pollution of the environment.

10 A landscaping scheme for the site shall be submitted as part of the reserved matters and the approved scheme shall meet the following requirements:-

(i) A detailed tree survey and arboricultural impact assessment to British Standard 5837:2012 Trees in relation to design, demolition and construction. Recommendations. The work must be carried out by an experienced and qualified Arboriculturalist. All tree survey plans must be accurate, scalable with tree positions and canopy spreads precisely plotted.

ii) Further details of the proposed planting and use of native species where possible;

(iii) Further details of the retention and planting in the protected 7m berm alongside the main river, Gors Fawr.

(iv) ) Further details of a programme for the clearing/removal of alien species such as Japanese Knotweed, etc.

No part of the trees or hedges shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of occupation of the first house, or the date of planting (whichever applies), other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority.

The approved scheme shall be carried out either as an integral part of the development and/or no later than the first planting season following completion.

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.

11 Before the development hereby approved is brought into beneficial use, any external lighting shall be completed in accordance with details to be submitted to and approved in writing with the Local Planning Authority, and retained as such unless otherwise agreed in writing with the Local Planning Authority. The detailed scheme should ensure that artificial lighting is aimed away from the 7m protected berm adjacent to the river and this buffer zone is kept dark.

Reason: In the interests of nature conservation.

12 Prior to any development commencing on site, the applicant shall submit a Method Statement to the Local Planning Authority for written approval, detailing measures for preventing pollution of controlled waters during site/construction works.

Reason: To prevent the pollution of the water environment (surface and groundwaters).

13 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority, a statement detailing how this unsuspected contamination shall be dealt with.

Reason: To prevent pollution of the water environment.

- 14 Before the development hereby approved is occupied the means of enclosing the boundaries of the site shall be completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.  
Reason: In the interests of visual amenity and general amenity.
- 15 The materials used for the external surfaces of the development shall be in accordance with details submitted to and approved in writing by the Local Planning Authority before the development is commenced.  
Reason: In the interests of visual amenity.
- 16 On first occupation of each dwelling within the site, a resident Travel Pack shall be issued, the details of which will be agreed in writing the Local Planning Authority prior to the beneficial occupation of any property.  
Reason: In order to promote more sustainable modes of transportation.
- 17 No development shall commence on site until a scheme for the retention and protection of trees to British Standard 5837:2012 - Trees in relation to design, demolition and construction has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include protection of trees in the 7m protected berm along the river bank. It shall include full details on all works that impact on the original ground conditions within the root protection areas, as detailed in BS5837:2012 and in particular details of protective fencing, ground protection & construction method, required tree surgery operations, service trenching position and any changes in ground level within the root protection areas of all retained trees. No development shall take place except in complete accordance with the approved scheme, and not before the works required by that scheme are in place. All protective fencing, ground protection etc shall be retained intact for the full duration of the development hereby approved, and shall only be removed, or altered in that time with the prior written approval of the Local Planning Authority.  
Reason: To ensure the protection of retained trees and the 7m protected berm on site during construction works.
- 18 No development including demolition work shall commence until all tree protection measures as detailed in the approved scheme have been implemented, inspected and approved in writing by the Local Planning Authority.  
Reason: To ensure the protection of retained trees on site during construction works.

## **INFORMATIVES**

- 1 Dormice may be present. Dormice are protected under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended) and are listed in Schedule 2 of the Conservation of Habitats and Species Regulations 2010. This legislation implements the EC Habitats & Species Directive in the UK making it an offence to capture, kill or disturb a European Protected Species or to damage or destroy the breeding site or resting place of such an animal. It is also an offence to recklessly / intentionally to disturb such an animal.  
If evidence of dormice is encountered e.g. live or dead animals or nests, work must cease immediately and the advice of Natural Resources Wales sought before continuing with any work (01792 634960).

- 2 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(Design), EV2 (Siting and Location), EV3 (Accessibility), EV22 (Countryside), EV23 (Green Wedges), EV24 (Greenspace System), EV25 (Sites of International Importance), EV30 (Trees, Woodland and Hedgerow Protection), EV33 (Sewage Disposal), EV34 (Protection of Controlled Waters), EV35 (Surface Water Run-Off), EV36 (Development and Flood Risk), HC1 (Housing Sites), HC3 (Affordable Housing), HC17 (Planning Obligations), AS1 (New Development Proposals), AS2 (Design and Layout), AS3 (Public Rights of Way), and AS6 (Parking).
- 3 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
- 4 It is an offence under the Wildlife & Countryside Act 1981 (as amended) to intentionally (intentionally or recklessly for Schedule 1 birds) to:
  - Kill, injure or take any wild bird
  - Take, damage or destroy the nest of any wild bird while that nest is in use or being built
  - Take or destroy an egg of any wild birdYou are advised that any clearance of trees, shrubs, scrub (including gorse and bramble) or empty buildings should not be undertaken during the bird nesting season, 1st March - 31st August and that such action may result in an offence being committed.
- 5 Bats may be present. All British bat species are protected under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended) and are listed in Schedule 2 of the Conservation of Habitats and Species Regulations 2010. This legislation implements the EC Habitats & Species Directive in the UK making it an offence to capture, kill or disturb a European Protected Species or to damage or destroy the breeding site or resting place of such an animal. It is also an offence to recklessly / intentionally to disturb such an animal.  
If evidence of bats is encountered during site clearance, work should cease immediately and the advice of Natural Resources Wales sought before continuing with any work (01792 634960).
- 6 The Developer must contact the Network Manager City and County of Swansea, Highways Division, Players Industrial Estate, Clydach, Swansea, SA6 5BJ. Tel 01792 841601 before carrying out any work.
- 7 The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary. Advice on Travel Plans can be obtained from Jayne Cornelius, SWWITCH Travel Plan Co-ordinator Tel 07796 275711.
- 8 As part of a sustainable drainage system the developer is advised to consider the use of sustainable drainage (SUDS) measures, such as permeable paving for the driveway access and car parking area, and rainwater or greywater harvesting from the new buildings, etc.
- 9 The developer is advised to contact Dwr Cymru Welsh Water on Tel. No. 0800 917 2652, e-mail developer.services@dwrwymru.com, regarding the adequacy of water supply, and the adequacy of the sewerage system serving this area, to be agreed independently with the Water Authority.

- 10 The developer is advised to contact the Natural Resources Wales at e-mail [planning@naturalresourceswales.gov.uk](mailto:planning@naturalresourceswales.gov.uk) regarding details of the intended pollution control measures required on site.
- 11 PARTY WALL ETC ACT 1996  
The developer is advised that the provisions of the Party Wall etc. Act 1996 may be applicable to the proposal and is advised to seek appropriate advice prior to any work commencing on site.
- 12 The proposed development lies within coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority.
- Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority.
- Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)
- 13 Natural Resources Wales and the Local Authority have permissive powers to maintain watercourses depending on the watercourse's definition as "Main River" or "Ordinary Watercourse". The responsibility for general maintenance of the river and its banks rests with the riparian owner. Any bankside trees or vegetation within 3 metres of the watercourse should be protected from development in order to promote conservation and preserve visual amenity.
- 14 Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or underground waters.
- 15 Any waste excavation material or building waste generated in the course of the development must be disposed of satisfactorily and in accordance with Section 34 of the Environmental Protection Act 1990. Carriers transporting waste must be licensed waste carriers.
- 16 The activity of importing waste into the site for use as, for example hardcore, must re-registered by the Environment Agency Wales as an exempt activity under the Management Licensing Regulations 1994.
- 17 Under the terms of the Water Resources Act 1991 and the Land Drainage Byelaws, the prior written consent of Natural Resources Wales is required for any proposed works or structures in, under over or within 7 metres of the top of a main river i.e. Gors Fawr.
- 18 It is an offence under the Town and Country Planning Act 1990 to:
- Cut down, uproot, top, lop, wilfully destroy or wilfully damage a tree protected by a Tree Preservation Order.
- Wilful damage to a protected tree includes damage to its surrounding rooting area by: excavation work, storage of materials or machinery, parking of vehicles, deposit of soil or rubble, disposal of liquids, or the mixing of cement.

- 19 The internal road layout being agreed with the Highway Authority under a section 38 agreement.

## **PLANS**

Site location plan, illustrative block plan received 20th March 2008, Amended block plan received 6th August 2009

## Report of the Head of Economic Regeneration and Planning

Planning Committee - 12 April 2016

Provisional Tree Preservation Order P17.7.4.599

Tavistock Road and Parc Wern Road, Sketty, Swansea

**To consider the confirmation, as a full Order, of the provisional Tree Preservation Order 599: Tavistock Road and Parc Wern Road, Sketty, Swansea. 2016.**

**Recommendation:**

**That the Tree Preservation Order: Tavistock Road and Parc Wern Road, Sketty, Swansea be confirmed**

**For Decision**

**1. Introduction**

1.1 The provisional Order was served on 28<sup>th</sup> January 2016

**2. Objections and Representations**

2.1 Two letters expressing objections have been received within the minimum required consultation period. No letters of support have been received.

2.2 Mr Booker of 17 Tavistock Road objects to the trees on his property being included due to the following reasons:

- they do not have amenity value
- that they are dangerous.
- that the procedural requirements of the Regulations have not been followed.
- that the method used for assessing the trees is vague and hardly a reason for implementing a TPO.
- none of the trees are rare or make a significant contribution to the character of the area
- The trees are not suitable in their current position
- Correspondence from neighbours was ignored and withheld from the Secretary of State at the time of Mr. Booker's objection to the original order.

2.3 Kevin Lane & Company Solicitors has objected on behalf of Dr and Mrs Andrews at 10 Queens Road to one of two copper Beech at their property being included.

- 2.3.1 The objection is on the grounds that the tree is causing damage to the boundary wall and they are fearful of it collapsing.
- 2.3.2 Kevin Lane & Company Solicitors also state that the tree impinges on the access of sun, light and air to the front of the property.
- 2.3.3 They also make a representation about the other copper Beech stating that they would like to prune it.

### **3 Appraisal**

- 3.1 A provisional tree preservation order P17.7.4.599 has been placed on trees at Tavistock Road & Parc Wern Road, Sketty; they were covered by an Order served in 1982. The Order was reviewed on 7th August 2015. 12 of the 30 trees covered by the original Order were missing or no longer merit a TPO. The makeup of the groups has changed. It was determined to remake the TPO with an amended schedule as TPO599.
- 3.2 All the trees provide considerable local amenity and contribute to the leafy suburban environment.
- 3.3 Mr Booker objected to the original TPO being served in 1982, he has also made applications in 1982 and 1999 to remove his trees. Neither unsuccessful application was appealed. Despite a site meeting with Mr Booker to explain the TPO process and the trees' value he maintains his objection. The trees were examined more closely at the time of this meeting and no reason was found to not include the trees in the TPO due to ill health or structural defects.
  - 3.3.1 The amenity value was demonstrated on site to Mr Booker; his trees can be clearly seen from Tavistock and Parc Wern Roads and are prominent landscape features.
  - 3.3.2 The Landscape Assistant (Arboriculturalist) made a closer inspection of the trees when meeting Mr Booker. No significant defects or signs of ill health were seen to suggest that the trees are dangerous.
  - 3.3.3 The procedural requirements were outlined to Mr Booker and the very fact that the meeting took place showed that the process was not "an arbitrary and undemocratic decision".
  - 3.3.4 The method for assessing the trees is a well-used system within the tree industry and the amenity value of the trees is the principal reason for implementing TPO status.
  - 3.3.5 None of the trees are rare; however this is not a requirement of a TPO tree. The trees are significant landscape features and can clearly be seen from the surrounding area, the tree lined streets and gardens of this area of Swansea are very much a landscape characteristic.
  - 3.3.6 The trees are at the end of the large garden of 17 Tavistock Road and are some distance from the house; this is replicated for the adjacent property in Parc Wern Road.



- 3.3.7 An objection cannot be escalated to the Secretary of State. An appeal can be made to the Secretary of State following confirmation on a point of law; this also applies to the new TPO.
- 3.4 The Beech tree at 10 Queens Road is cracking the boundary wall and causing a slight lean, but this is not excessive at this moment in time. If the damage worsens an application can be made to remove the tree, the circumstances at the time will be assessed on its own merits.
- 3.4.1 Removing such a tree to increase light levels would not usually be entertained if the tree is protected.
- 3.4.2 Kevin Lane & Company Solicitors has been informed of the procedure for applying to do work to protected trees.

#### **4. Recommendation**

It is recommended that the Tree Preservation Order: Tavistock Road and Parc Wern Road, Sketty, Swansea. 2016; TPO P17.7.4.599 be confirmed without amendment.

**Contact Officer:** Alan Webster  
**Extension No:** 5724  
**Date of Production:** 31st March 2016