



Dinas a Sir Abertawe

Hysbysiad o Gyfarfod

Fe'ch gwahoddir i gyfarfod

Pwyllgor Cynllunio

Lleoliad: Siambr y Cyngor, Neuadd y Ddinas, Abertawe

Dyddiad: Dydd Mawrth, 12 Ionawr 2021

Amser: 2.00 pm

Cadeirydd: Y Cyngorydd Paul Lloyd

Aelodaeth:

Cyngorwyr: C Anderson, P M Black, W Evans, M H Jones, M B Lewis, R D Lewis, C Richards, P B Smith, D W W Thomas, L J Tyler-Lloyd a/ac T M White

Gwyllo ar-lein: <https://bit.ly/2LDPBf7>

Agenda

Rhif y Dudalen.

- 1 Ymddiheuriadau am absenoldeb.**
- 2 Datgeliadau o fuddiannau personol a rhagfarnol.**
www.abertawe.gov.uk/DatgeluCysylltiadau
- 3 Cofnodion.** **1 - 3**
Cymeradwyo a llofnodi cofnodion y cyfarfod(ydd) blaenorol fel cofnod cywir
- 4 Gorchymyn Cadw Coed Dros Dro - GCC 671 Tir gerllaw 42 Llwyn Close, Sgeti, Abertawe.** **4 - 33**

Cyfarfod nesaf: Dydd Mawrth, 2 Chwefror 2021 ar 2.00 pm

Huw Evans

Pennaeth Gwasanaethau Democraidd

Dydd Mawrth, 5 Ionawr 2021

Cyswllt: Gwasanaethau Democraidd - 636923

Agenda Item 3



City and County of Swansea

Minutes of the **Planning Committee**

Remotely via Microsoft Teams

Tuesday, 1 December 2020 at 2.00 pm

Present: Councillor P Lloyd (Chair) Presided

Councillor(s)

C Anderson
W Evans
C Richards
L J Tyler-Lloyd

Councillor(s)

P M Black
M B Lewis
D W W Thomas

Councillor(s)

M H Jones
R D Lewis
T M White

Officer(s)

Gareth Borsden
Matthew Bowyer
Ian Davies
Sally-Ann Evans
Tom Evans
Liam Jones
Jonathan Wills

Democratic Services Officer
Principal Telematics Engineer
Development Manager
Lead Lawyer
Strategic Planning Team Leader
Area Team Leader
Lead Lawyer

Apologies for Absence

Councillor(s): P B Smith

1 Disclosures of Personal and Prejudicial Interests.

In accordance with the Code of Conduct adopted by the City and County of Swansea, the following interest was declared:

Councillor C Anderson - Personal – Planning Application 2020/0059/FUL – applicant is known to me.

2 Minutes.

Resolved that the Minutes of the Planning Committee held on 3 November 2020 be approved and signed as correct record.

3 Items for Deferral/Withdrawal.

None.

4 Provisional Tree Preservation Order - TPO 671 Land adjacent to 42 Llwyn Close, Sketty, Swansea.

The Head of Planning and City Regeneration presented a report which sought consideration of the confirmation, as a full Order, of the provisional Tree Preservation Order 671, Land adjacent to: 42 Llwyn Close, Sketty, Swansea (2020).

The background details to the matter were outlined.

Report updated as follows:

Late comments and photographs from an objector had been submitted along with a request from the objector for Committee to defer the application as he was unable to attend the meeting to make representations in person. (Note: The comments/photos referred to above were circulated to Members of the Committee and published on the Council's website prior to the meeting)

Resolved that report be deferred to the next scheduled meeting of the committee in order to give the objector an opportunity to attend.

5 Determination of Planning Applications under the Town and Country Planning Act 1990.

A planning application was presented on behalf of the Head of Planning & City Regeneration.

Amendments/updates to this schedule were reported and are indicated below by (#)
(Note: Updates to the report referred to below were circulated to Members of the Committee and published on the Council's website prior to the meeting)

1) the undermentioned planning application **Be Approved** subject to the conditions in the report.

#(Item 1) – Planning Application 2020/0059/FUL - Redevelopment of site to provide 21 no. self contained flats in one 4 storey block with associated works at 2-3 Tontine Street, Swansea

A visual presentation was given.

Report updated as follows:

Addition to Report at page 55

Affordable Housing

Proposals that included residential development on sites within settlement limits with capacity for 5 or more dwellings should ordinarily provide for affordable housing on site in accordance with the requirements of Policy H 3.

The application site is within the Central Area and that requirement would extend to 20%. Notwithstanding this normal policy requirement, the plan, at paragraph 2.4.17, specifically sets out that *'proposals for the conversion, demolition or change of use of commercial property will be exempt from the policy'*. On this basis, the provision of affordable housing at the site is not a policy requirement.

6 Local Development Plan First Annual Monitoring Report (2019-20).

The Head of Planning and City Regeneration presented a “for information” report which informed Members of the Committee that the first Annual Monitoring Report (AMR) of the Swansea Local Development Plan (LDP) had been published on the Council’s website, and provided a brief summary of the main findings and outlined that all the targets laid down are being achieved.

The meeting ended at 2.44 pm

Chair



Report of the Head of Planning and City Regeneration

Planning Committee – 12 January 2021

Provisional Tree Preservation Order - TPO 671 Land Adjacent to 42 Llwyn Close, Sketty, Swansea.

To consider the confirmation, as a full Order, of the provisional Tree Preservation Order 671, Land adjacent to: 42 Llwyn Close, Sketty, Swansea. (2020)

Recommendation:

That the Tree Preservation Order Land adjacent to: 42 Llwyn Close, Sketty, Swansea. (2020), be confirmed with modification of the Title to “*Land adjacent to: 42 Llwyn Mawr Close, Sketty, Swansea. (2020).*”

For Decision

1. Introduction

- 1.1 The provisional Order was served on 31st March 2020.
- 1.2 The order was made following the Landscape Team receiving reports that the large oak tree was being worked on. After a discussion with the contractor, the work was explained to be minimal and would retain the amenity value of the tree.
- 1.3 However, following a site visit and a desktop evaluation it was considered that the tree would be under repeated threat from the new land owners to the north and that further work may not be carried out as sympathetically.

2. Objections and representations

- 2.1 Two letters expressing objections have been received within the minimum required consultation period.
- 2.2 One representation was received from one of the Ward Members pointing out that the Title of the Order was slightly incorrect as the name of the road should be ‘Llwyn Mawr Close’ and not just ‘Llwyn Close’.
- 2.3 Objection 1 is summarised below and relates to tree T1; the full objection and replies from the Tree Officer is reproduced in the Appendix:
 1. The Council should have identified this tree for suitability for protection at an earlier stage;
 2. Leaf cover causes shade, blocks gutters and causes slippery surfaces;

3. Danger of falling branches to school children;
4. Tree may be unstable as it grows on wall;
5. Potential damage to attenuation tanks; and
6. The Objector is prepared to plant the bank to provide increased amenity.

These points are expanded upon in subsequent correspondence from the Objector, these are reproduced in full in the Appendix.

2.4 Objection 2 is summarised below and relates to tree T2:

1. Overhanging branches will break in bad weather or the tree might fall over.

3 Appraisal

Representation

- 3.1 The Title was taken from the Councils GIS system that shortened the road name at the scaled viewed. The title of the order can be modified at confirmation to avoid any future confusion.
- 3.2 Each objector was written to discuss the points raised in their objections. These letters are reproduced, as is the reply received from Objector 1 in the Appendix.

Objection 1

- 3.3 The tree would have been protected during construction by means of the planning conditions and by the fact that it is located off site. In fact the tree is shown as a retained tree on the approved landscape plan that has been supplied by the Objector, this is included in the Appendix. The landscape scheme approval would have considered the presence and retention of this tree. The Tree Officer could only give the response that the tree was not protected by a TPO when asked by the tree surgeons checking to see if the tree was protected.
- 3.4 Problems with falling leaves and shading are part of the natural process associated with urban trees. Acceptance of these problems are considered the necessary trade-off for enjoying the benefits such trees provide to all.
- 3.5 The serving of the TPO has not changed potential hazards from falling dead or faulted branches. Dead wood can be removed under the exemptions to the Regulations and should be considered by the tree owner to discharge their duty of care. Healthy branches can fail, but this would be expected in very high winds and removal of all trees to eliminate this small risk would be disproportionate leading to the loss of all trees in urban areas.
- 3.6 The tree appears to be growing from a remnant hedge bank that has large stones within it and does not appear to have a compromised rooting environment. If there is a demonstrable problem with this area, an application can be made to remove the tree.
- 3.7 The adoptable attenuation tank closest to the tree is at a depth of at least 1.6 metres and covered with a geotextile. The proximity of the tree should have been considered at the time of the installation of the tanks and designed accordingly; therefore, the roots of the tree are unlikely to affect this structure

at this distance from it. If conflicts are identified in the future, work can be applied for to prevent significant damage.

- 3.8 Planting of shrubs and young trees is unlikely to mitigate the loss of a mature tree. The Councils Enforcement Team have looked into the complaints made by the Objector relating to the landscape planning conditions attached to the site.

Objection 2

- 3.9 If work is required to deal with a perceived hazard it can be applied for by means of a free application; any immediate danger can be dealt with quickly by telephoning the Council and without application. Healthy trees can suffer breakages and windthrow in severe weather; however, at the time of serving no significant defects were observed.
- 3.10 Objector 2 has not made an application to carry out work since the time of the TPO being served, it is therefore assumed that they do not hold much fear of branch or tree failure.

Summary

- 3.17 Both trees covered by the Order provide considerable visual amenity to the area.
- 3.18 Most of the reasons given for the objections can be controlled through the application process or through work permitted under exemption.

4. Recommendation

That the Tree Preservation Order: 671, Land adjacent to: 42 Llwyn Close, Sketty, Swansea. (2020) be confirmed with the following modification:

- Correction of the Orders Title to “Land adjacent to: 42 Llwyn Mawr Close, Sketty, Swansea. (2020).”

Contact Officer: Alan Webster - 635724

Objection 1, dated 28/04/20

I wish to object to the provisional TPO dated 01/04/2020 in regard to T1 Oak on the plan and request that the order should not be formally confirmed for the following reasons :

After purchasing the property I checked with 2 local tree surgeons and it was confirmed by the authority that the tree was not protected by a TPO or conservation area status and that the tag on the tree was a tree survey tag. I would have expected the authority during this identification procedure to have identified any species which provided amenity and therefore worthy of a TPO before the development commenced.

In the original development planning application number 2015/2535 dated 13/07/2016 condition 10 stipulates a scheme of landscaping and also retention of existing trees and hedgerows.

Condition 11 stipulates the replanting of removed trees and plants. The reason given by the authority for both condition 10 and 11 is 'in order to provide for suitable landscaping for the site in the interests of visual amenity' Thus far the developer has not complied with either condition.

The design and access statement REV D (12.01.2016) submitted by AP Architecture and Planning Ltd states in section I on landscaping that ' The existing hedges, trees and shrubbery on the boundaries will be kept where possible'.

Also in section K on environmental sustainability it states ' The soft landscaping will contain a wide variety of shrubs to increase the bio diversity on site'.

The planting plan provided by the developer from Catherine Etchell associates has not been carried out and no trees or shrubs that have been removed have been replaced.

The majority of the trees and shrubs that have been removed are from the southern boundary of the site in the bank next to Llwyn Mawr Close adjacent to the tree in question.

If both condition 10 and 11 had been satisfied then there would be more than enough landscape amenity in the area. The onus should be on the developer to rectify these matters and provide landscape amenity to the area.

Only one household in the area contacted the Council in approval of the TPO while many others find the size of the tree makes the area very shady, slippery with too much leaf waste. This leaf waste also blocks the drains and roof guttering.

Furthermore the tree's sheer size is overwhelming and shades my garden and the house next door No 42 Llwyn Mawr Close.

In addition the tree is close to and overhangs the pavement and road and the possibility exists that schoolchildren walking to the nearby Sketty school may be harmed from falling branches.

The tree may also be unstable and dangerous as it is growing on top of a wall.

At the bottom of my garden adjacent to the tree are 2 very large attenuation tanks installed at the request of the authority and Welsh Water to collect drainage water. These tanks are made from stackable plastic crates and there is a real potential for damage to these tanks from the tree's root system.

In addition I would have preferred to obtain further legal advice regarding the TPO however this has not been possible due to the current lockdown measures that are in place.

However I am prepared without prejudice and not withstanding the developer's own planning permission commitments to replant the bank behind my property with hedgerow shrubs and trees as specified by the authority. This will far exceed the visual amenity provided by one tree at the far end of a completely bare and decimated bank.

If you require any documentary or photographic evidence please do not hesitate to contact me.

Letter from the Tree Officer in reply to Objection 1 dated 13/08/2020

I acknowledge your objection, confirm that it is in the correct format, and received within the given time limit.

Ideally, I would try to arrange meeting you to discuss your objection, but due to the current Covid situation hopefully I can discuss your points with this letter.

I summarise your objections to making the Order permanent as: 1. the Council should have identified this tree for suitability for protection at an earlier stage; 2. leaf cover causes shade, blocks gutters and causes slippery surfaces; 3. danger of falling branches to school children; 4. tree may be unstable as it grows on wall; 5. potential damage to attenuation tanks and 6. that you are prepared to plant the bank to provide increased amenity.

1. The TPO was only served following a known threat to the tree was realised. Prior to this, the tree had remained untouched.
2. Problems with falling leaves and shading are part of the natural process associated with urban trees. Acceptance of these problems are considered the necessary trade-off for enjoying the benefits such trees provide to all.
3. The serving of the TPO has not changed potential hazards from falling dead branches. Dead wood can be removed under the exemptions to the Regulations and should be considered by the tree owner to discharge their duty of care.

4. At the time of serving the TPO I did not observe any indications of poor rooting. If there is a problem with this area, an application can be made to remove the tree.
5. The adoptable attenuation tank closest to the tree is at a depth of at least 1.6 metres and covered with a geotextile. The roots of the tree are unlikely to affect this structure at this distance from it. If conflicts are identified in the future, work can be applied for to prevent significant damage.
6. Planting of shrubs and young trees will is unlikely to mitigate the loss of a mature tree.

Considering the details I have provided, I ask you to re-consider your objection if they address your concerns. I would be grateful to hear your thoughts and any expansion on your objection if you maintain it.

If either of the two objections are maintained, the confirmation of the order will be considered at Planning Committee later in the year.

If you have any questions about the content of this letter please contact me.

Email from objector dated 11/05/20

As stated in the original objection and to further support my case I have attached some documentary and photographic evidence for the authority to consider.

The first attachment is from the planning application 2015/2535 dated 13/07/2016 condition 10 stipulates a scheme of landscaping and also retention of existing trees and hedgerows.

Condition 11 stipulates the replanting of removed trees and plants.

The second attachment is from the design and access statement REV D (12.01.2016) submitted by AP Architecture and Planning Ltd which states in section I on landscaping that ' The existing hedges, trees and shrubbery on the boundaries will be kept where possible'.

Also in section K on environmental sustainability it states ' The soft landscaping will contain a wide variety of shrubs to increase the bio diversity on site'.

The third attachment is the planting plan provided by the developer from Catherine Etchell associates which has not been carried out.

The fourth attachment is the drainage layout plan provided by CB3 showing the 2 large attenuation tanks.

The remaining attachments are photographs, one shows the tree growing on top of a wall and the other two highlight the completely barren bank next to Llwyn Mawr Close and Sketty School.

This was once covered by hedgerow trees and shrubs which have not been replaced by the developer.

1st attachment

- * (10) No development or site clearance shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping. The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

Reason: In order to provide for suitable landscaping of the site in the interests of visual amenity.

- * (11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planning season with others of similar size and species.

Reason: In order to provide for suitable landscaping of the site in the interests of visual amenity.

2nd attachment

* (I) CHARACTER: LANDSCAPING

The area in front of the dwellings are likely to be landscaped with a selection of low shrubbery. The driveways will be finished in tarmac or block paving. The pathways around the buildings are likely to be paved while the rear gardens will be grassed. The existing hedges, trees and shrubbery on the boundaries will be kept where possible. Please refer to drawings for details.

J - COMMUNITY SAFETY

The proposed dwellings will be designed to ensure their security with 1.8m fencing where necessary. New dwellings in this location will aid community safety and provide greater surveillance over the surrounding area.

* (K) ENVIRONMENTAL SUSTAINABILITY

The development will be designed to meet the minimum standard of the Building Regulations. The buildings will be designed in line with the energy hierarchy, which is a methodology used to ensure the optimum use of energy on site. The energy hierarchy follows the pyramid principle of firstly reducing energy usage, secondly improving energy efficiency and then finally investigating on-site, low carbon and renewable technologies.

To reduce energy usage the buildings will contain a high performance building fabric. To achieve this the proposal will contain high levels of insulation within the floors, walls and roof along with high performance windows and doors. Energy efficiency will be provided by an efficient boiler with a programmer, thermostat and TRV's. The high fabric option is preferred over low or zero technologies (LZC) as it future proofs the buildings. This is because the lifespan of LZC's are limited while the buildings will maintain high performance fabric for its duration. A LZC can also be retrofitted at a later date while increasing the performance of the fabric would be far more difficult.

The soft landscaping will contain a wide variety of shrubs, to increase the bio diversity on site. Sustainable drainage will be provided through the use of soakaways or permeable paving (subject to percolation tests).

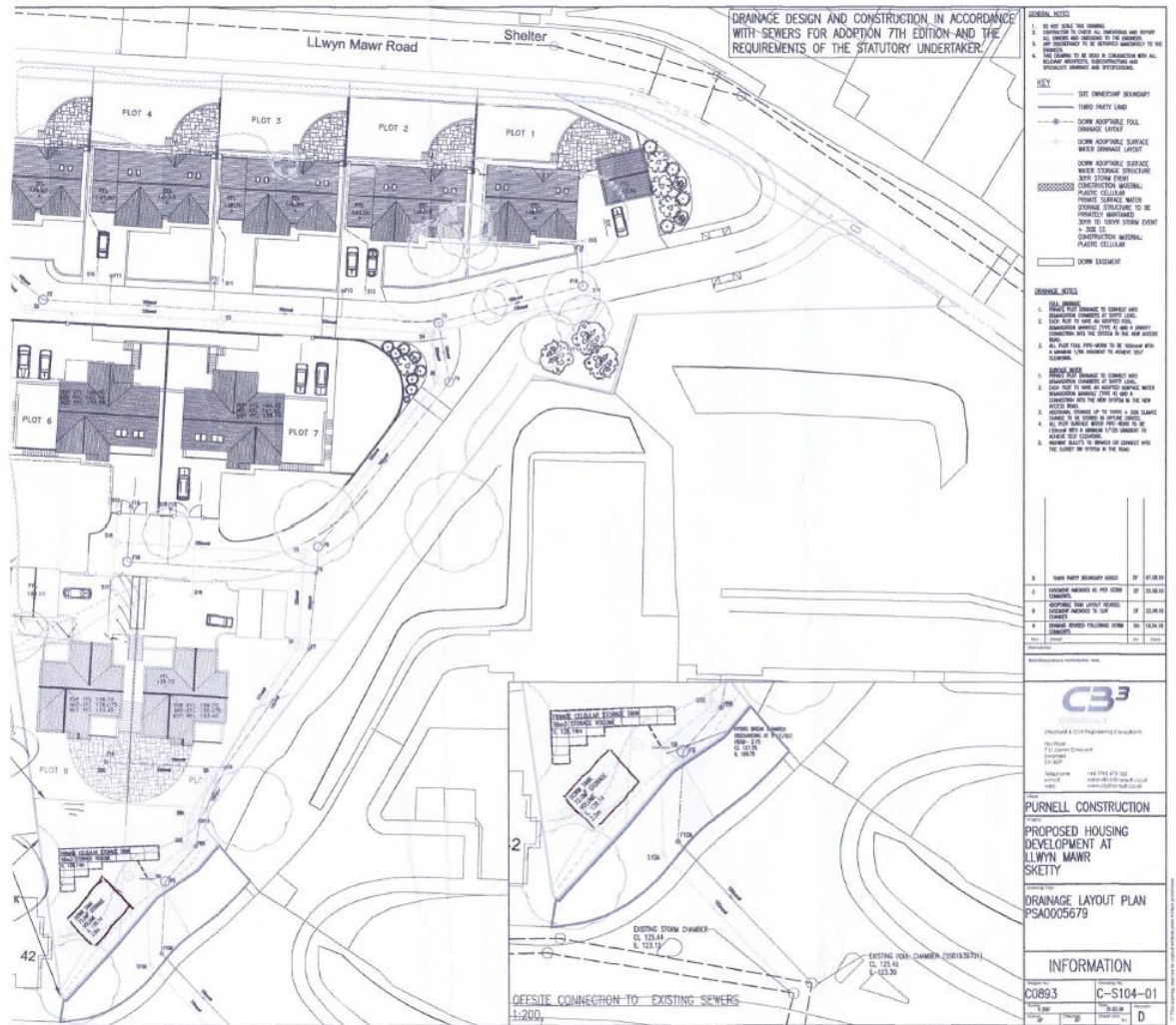


Image 1



Image 2



Image 3



Email reply from Objector 1 received 30/09/2020

Thank you for your letter dated 13/08/2020.

I have considered the details you have provided and have decided to proceed with my objection.

I have responded to the points you have raised below and also expanded further on my objection.

Also please can my original objection Rev 2 dated 28/04/2020 and my subsequent email dated 11/05/2020 with further documentary and photographic evidence both be considered alongside this response.

1.

In your letter you state that 'The TPO was only served following a known threat to the tree was realised. Prior to this the tree has remained untouched' I disagree as there was no 'threat' to the tree - the tree was covered in ivy and the leaf canopy very overgrown.

All the ivy was removed and the leaf canopy reduced. The tree's health and appearance has been improved as a result.

On 3/01/2020 a local tree surgeon Mr Leon Thomas emailed you on my behalf to check if the tree with tag number 00286 (the tree in question) had a preservation order.

Your reply was as follows 'The tree in question is not protected by TPO or conservation area status. The tag on the tree would be a survey tag related to a tree survey carried out when the new houses were built.'

Therefore I would have expected the authority to have identified any trees worthy of a TPO from the granting of planning permission back in 2016 or at least during the construction phase.

Also surely any perceived 'threat' to the tree should have been realised when enquiries were made by a tree surgeon back in January of this year.

The tree surgeon who carried out the work, Rachel Downs also checked in March 2020 that there was no TPO before she carried out the work.

2.

Only one household in the area has contacted the Council in support of a TPO while the majority find the size of the tree makes the area very shady, slippery, leaf waste blocks drains and the tree is dangerous to pedestrians and road traffic. The shading prevents the land from drying out and falling leaves block drains and guttering and this will only exacerbate the flooding problems already experienced by the residents of Llwyn Mawr Close earlier this year.

3.

The problem of falling branches is not just from dead wood but also from living wood as this year's storms have proved with many branches falling off the tree already.

The proximity to Sketty School is also a grave cause for concern.

Surely prevention is better than waiting for the benefit of hindsight following an injury to a child..

4.

The tree is growing on a sloping bank on top of a wall with exposed roots and its stability is in question and this poses a danger to passing pedestrians and traffic.

5.

The tree's root system is very close to the attenuation tanks at the rear of the development and there is a real threat of damage creating further drainage and flooding problems.

The attenuation tanks have been installed at great expense at the behest of the authority to combat drainage problems and flooding in the area.

Why would the authority wish to put this at risk especially after this summer's storms and severe flooding ?

Who would be responsible for any damage to the attenuation tanks ?

I suspect it would be myself as the landowner.

Surely it would be better to prevent any future damage now.

6

The replanting of trees and shrubs will far exceed the visual amenity provided by one tree at the far end of a completely bare and decimated bank. I am prepared to replant the bank with trees and shrubs which will greatly increase the visual amenity for the local residents instead of a barren bank. I will go further and invite the local residents to decide on it's future and how they would like it planted.

On a recent site visit with Mr Rob Latham senior planning officer a local resident asked him when the bank was going to be re-turfed so there is an obvious local interest in improving this eyesore.

Furthermore with regard to visual amenity senior planning officer Mr Rob Latham has recently investigated whether there had been any breaches of planning control by the developer.

He concluded the following :

There has been one breach of planning control related to the landscaping and planting scheme which had not been carried out and I quote :

'I have spoken to the developer who is aware of their obligations in the public open areas of the site and the need to undertake the appropriate planting at the earliest opportunity '

This planting will also greatly increase the visual amenity in the area.

Mr Latham did not find any breach of planning control by the developer on the removal of trees and shrubs from the southern boundary with Llwyn Mawr Close. However he did state that

' I accept that shrubs and trees may have been removed from this area of land by the developer' and ' the landscaping of the area between your property's rear boundary and the footway edge does not currently have a positive effect on visual amenity.'

Therefore had the landscaping plan been carried out and shrubs and trees not removed then there would have been more than enough visual amenity in the area.

I feel aggrieved that I have followed all the procedures correctly and have improved the tree's health but I have been penalised for doing so.

I look forward to receiving the outcome in due course.

Objection 2 undated, received 28/04/20

We would like to strongly object to the proposed tree preservation order REFF:TPO671.

Our main reasons for this is the Turkey Oak (T2) overhangs onto our property/back garden where our children constantly play.

During bad storms the tree continually looks like its either going to fall or one of the large branches will break and fall onto our garden.

With this, we would please like to request that the tree be taken down. If not taken down then allowing us (we will get a professional company in), at our own cost, to 'trim' the tree right back to a suitable height which wont be of any danger to my family.

We would like to do this please while the school is currently closed for the safety of the Children.

Thank you.

Tree Officer response to Objection 2 dated 13/08/2020

I acknowledge your objection that was undated, confirm that it is in the correct format, and received within the given time limit.

Ideally, I would try to arrange meeting you to discuss your objection, but due to the current Covid situation hopefully I can put your mind at rest with this letter.

Your objection is based on fears that overhanging branches will break in bad weather or the tree might fall over.

You may apply to do work on the tree; any immediate danger can be dealt with quickly by telephoning the Council and without application. Although even healthy trees can suffer breakages and windthrow in severe weather, I did not observe anything to suggest that this is likely with this tree. If you have observed defects in the tree please let me know.

Prior to the TPO being served you had the legal right to cut branches overhanging your boundary; you could not have removed the tree, in that respect the TPO has not changed the situation.

As I have outlined what you are able to do in terms of applying for work and dealing with imminent danger would you re-consider your objection? I would be grateful to hear your thoughts and any expansion on your objection if you maintain it.

If either of the two objections are maintained the confirmation of the order will be considered at Planning Committee later in the year.

If you have any questions about the content of this letter please contact me.

Town and Country Planning Act 1990
Land adjacent to: 42 Llwyn Close, Sketty, Swansea. (2020)

The COUNCIL OF THE CITY AND COUNTY OF SWANSEA

in exercise of the powers conferred on them by sections 198 and 201^(a) of the Town and Country Planning Act 1990^(b) hereby make the following Order—

Citation

1. This Order may be cited as **Land adjacent to: 42 Llwyn Close, Sketty, Swansea. (2020)**

Interpretation

2. In this Order “the authority” means the Council of the City and County of Swansea and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders)[®] shall apply to this Order and, accordingly, this Order shall take effect provisionally on

31st March 2020

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners), and subject to article 5, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exemptions

5.—(1) Nothing in article 4 shall prevent—

- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land^(d) of the statutory undertaker and the work is necessary—
 - (i) in the interests of the safe operation of the undertaking;
 - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or

a) Under section 199(1), tree preservation orders generally do not take effect until confirmed, but a direction may be given under section 201 for an order to take provisional effect immediately.

b) Where the Order is to be made under the sections cited and section 300 of the Town and Country Planning Act 1990, all those provisions should be cited, as should the fact of the consent of the appropriate authority. As to the circumstances in which the consent of the Forestry Commission is required (and should be cited) see section 200(1) of that Act.

c) Subsection (6) of section 198 exempts from the application of tree preservation orders the cutting down, uprooting, topping or lopping of trees which are dying, dead or have become dangerous, or the undertaking of those acts in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance. Subsection (7) of that section makes section 198 subject to section 39(2) of the Housing and Planning Act 1986(c. 63) (saving for effect of section 2(4) of the Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c. 10) (licences under that Act to fell trees comprised in a tree preservation order).

- (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (aa) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders and schemes);
- (ab) the cutting down, topping, lopping or uprooting of a tree where that work is urgently necessary for national security purposes;
- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
- (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development Order) 1995;
- (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose “drainage body” and “drainage” have the same meanings as in the Land Drainage Act 1991^(a); or
- (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989^(b).
- (2) In paragraph (1), “statutory undertaker” means any of the following—
- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
 - a relevant airport operator (within the meaning of Part V of the Airports Act 1986)^(c),
 - the holder of a licence under section 6 of the Electricity Act 1989,

(a) 1991 c.59, see section 72

(b) 1989 c.29.

(c) 1986 c.31.

- a gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984^(d) to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewerage undertaker,
- the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000,
- a universal postal service provider in connection with the provision of a universal postal service.

1

Application of provisions of the Town and Country Planning Act 1990

7.—(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

Directions as to replanting

8.—(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated (“the relevant land”) a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to—

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

Compensation

9.—(1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of—

- (a) the refusal of any consent required under this Order; or

- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article—

- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person—

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article—

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

“owner” has the meaning given to it by section 34 of the Forestry Act 1967.

[Application to trees to be planted pursuant to a condition

[10.] In relation to the tree[s] identified in the first column of Schedule 1 by the letter “C”, being [a tree] [trees] to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees)), this Order takes effect as from the time when [that tree is planted] [those trees are planted].]

Dated this 31st day of March 2020 [insert month and year]

[if the Council's Standing Orders require the sealing of such documents:]

~~[The Common Seal of the City and County of Swansea Council was heronunto affixed in the presence of]~~

[if the Council's Standing Orders do not require the sealing of such documents:]

Signed on behalf of the City and County of Swansea Council



Authorised by the Council to sign in that behalf]

CONFIRMATION OF ORDER

This Order was confirmed by the City and County of Swansea Council without modification on the day of20....

OR

This Order was confirmed by the City and County of Swansea Council subject to the modifications indicated by.....

..... [state how indicated], on the day of20....

.....
Authorised by the Council to sign in that behalf]

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by City and County of Swansea Council on the day of[insert month and year

.....
Authorised by the Council to sign in that behalf]

VARIATION OF ORDER

This Order was varied by the City and County of Swansea Council on the day of[insert month and year] under the reference number..... [insert reference number of the variation order]]

.....
Authorised by the Council to sign in that behalf]

REVOCATION OF ORDER

This Order was revoked by the City and County of Swansea Council on the day of[insert month and year] under the reference number..... [insert reference number of the revocation order]]

.....
Authorised by the Council to sign in that behalf]

SCHEDULE 1**SPECIFICATION OF TREES****Trees specified individually**
(encircled in black on the map)

| Reference on map | Description | Situation |
|------------------|-------------|------------------------------|
| T1 | Oak | |
| T2 | Turkey oak | Inside Sketty Primary School |

Trees specified by reference to an area
(within a dotted black line on the map)

| Reference on map | Description | Situation |
|------------------|-------------|-----------|
| NONE | | |

Groups of trees
(within a broken black line on the map)

| Reference on map | Description (including number of trees in the group) | Situation |
|------------------|---|-----------|
| NONE | | |

Woodlands
(within a continuous black line on the map)

| Reference on map | Description | Situation |
|------------------|-------------|-----------|
| NONE | | |

SCHEDULE 2

PART I PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

| Provision of the Town and Country Planning Act 1990 | Adaptation or Modification |
|--|--|
| Section 69 (registers) | <p>(a) In subsection (1)—</p> <p style="padding-left: 40px;">(i) omit—</p> <p style="padding-left: 80px;">“, in such manner as may be prescribed by a development order,”,</p> <p style="padding-left: 80px;">“such” in the second place where it appears, and</p> <p style="padding-left: 80px;">“as may be so prescribed”; and</p> <p style="padding-left: 40px;">(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2)—</p> <p style="padding-left: 40px;">(i) after “contain” insert “, as regards each such order”; and</p> <p style="padding-left: 40px;">(ii) for paragraphs (a) and (b) substitute—</p> <p style="padding-left: 80px;">“(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p style="padding-left: 80px;">(b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.”.</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p> |
| Section 70 (determination of applications: general considerations) | <p>(a) In subsection (1)—</p> <p style="padding-left: 40px;">(i) substitute—</p> <p style="padding-left: 80px;">“Subject to subsections (1A) and (1B), where” for “Where”;</p> |

| | |
|--|---|
| | <p>“the authority” for “a local planning authority”;</p> <p>“consent under a tree preservation order” for “planning permission” where those words first appear; and</p> <p>“consent under the order” for “planning permission” in both of the other places where those words appear;</p> <p>(ii) after “think fit”, insert—</p> <p>“(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and</p> <p>(iii) omit “subject to sections 91 and 92,”.</p> <p>(b) After subsection (1) insert—</p> <p>“(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”.</p> <p>(c) Omit subsections (2) and (3).</p> |
| <p>Section 75 (effect of planning permission)</p> | <p>(a) In subsection (1) substitute—</p> <p>(i) “Any” for the words from “Without” to “any”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission to develop land”;</p> <p>(iii) “the consent” for “the permission”; and</p> <p>(iv) “the land to which the order relates” for “the land”.</p> <p>(b) Omit subsections (2) and (3).</p> |
| <p>Section 78 (right to appeal against planning decisions)</p> | <p>(a) In subsection (1) substitute—</p> <p>(i) “the authority” for “a local planning authority”;</p> |

and failure to take such decisions)

- (ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;
- (iii) “consent under such an order” for “planning permission” in the second place where those words appear;
- (iv) for paragraph (c) substitute—
 - “(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
 - (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority.”.

(b) Omit subsection (2).

(c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.” substitute—

“in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.”.

(d) For subsection (4), substitute—

“(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”.

| | |
|---------------------------------------|---|
| | <p>(e) For subsection (5), substitute—</p> <p>“(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”.</p> |
| Section 79 (determination of appeals) | <p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute—</p> <ul style="list-style-type: none"> (i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”; (ii) “consent under a tree preservation order” for “planning permission”; and (iii) “the authority,” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of sections 65 or 71.”. <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78”.</p> |

PART II
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990,
AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order—

- (a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and
- (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

.....

(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

(1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order—

- (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

.....

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

(1) Where the authority—

- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

.....

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

.....

Section 79

(1) On an appeal under section 78 the Secretary of State may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

.....

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

.....

(7) Schedule 6 applies to appeals under section 78.



Cyngor **Abertawe**
Swansea Council

CITY & COUNTY OF SWANSEA

DINAS A SIR ABERTAWE

**TOWN & COUNTY PLANNING ACT
1990**

SECTIONS 198 & 201

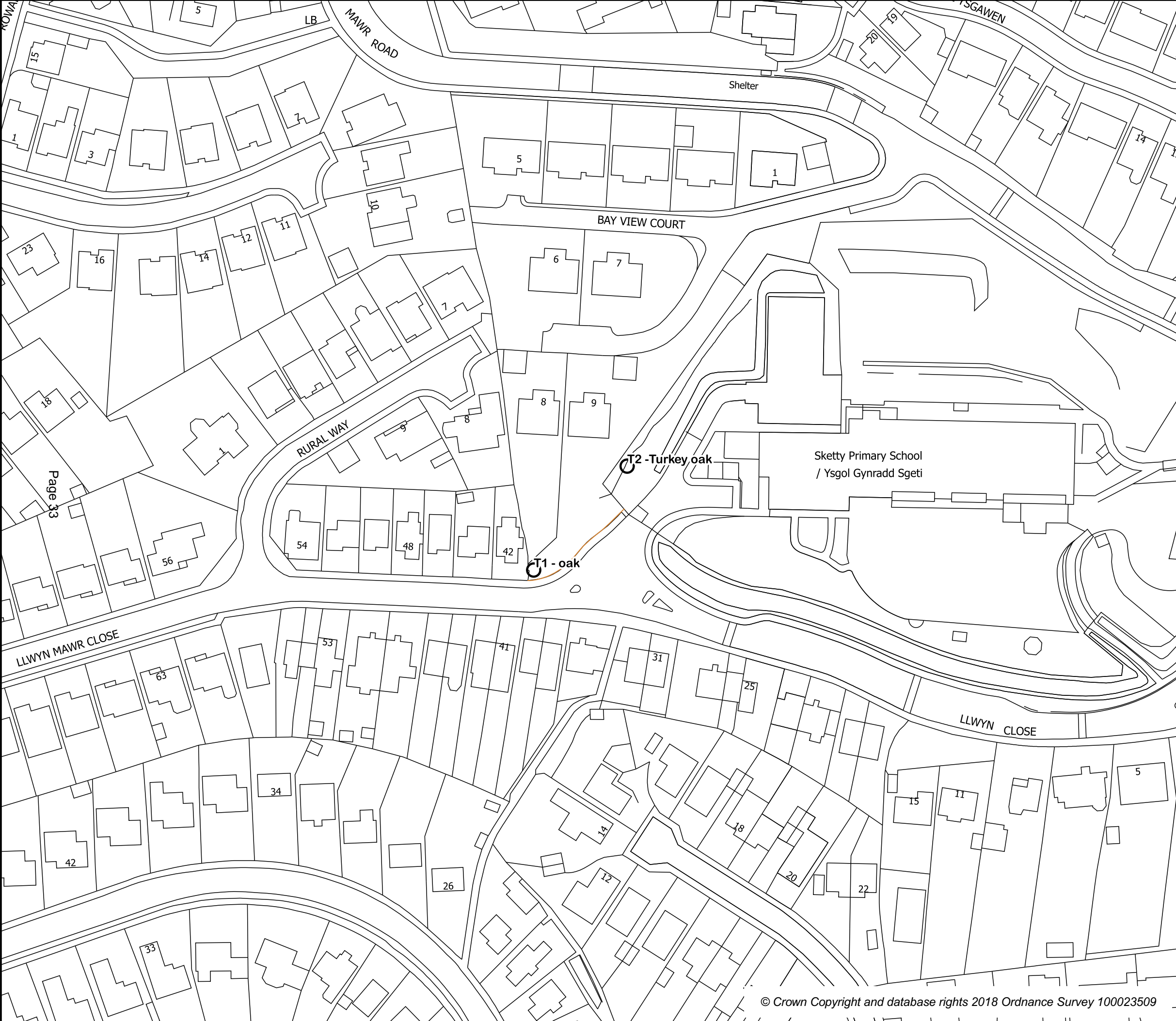
**TOWN & COUNTY PLANNING
(TREES) REGULATIONS 1999**

**TREE PRESERVATION ORDER:
LAND ADJACENT TO 42 LLWYN
CLOSE, SKETTY, SWANSEA. (2020)
TPO: 671**

DATE: 31ST MARCH 2020

Prepared by Landscape Team (AW)

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Head of Planning and City Regeneration



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